

LEGISLATIVE BILL 190

Approved by the Governor March 3, 2010

Introduced by Avery, 28; Giese, 17; Karpisek, 32; Pirsch, 4.

FOR AN ACT relating to the DNA Identification Information Act; to amend sections 29-2262, 29-4101, 29-4102, 29-4103, and 29-4106, Reissue Revised Statutes of Nebraska, and section 59-1608.04, Revised Statutes Cumulative Supplement, 2008, as amended by section 34, Legislative Bill 3, One Hundred First Legislature, First Special Session, 2009; to change and eliminate definitions; to provide for the collection of DNA samples from individuals convicted of felony offenses and individuals released on probation; to require such individuals to pay the costs of such collection; to provide for applicability; to create a fund; to provide for transfers from the State Settlement Cash Fund; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 29-2262, Reissue Revised Statutes of Nebraska, is amended to read:

29-2262 (1) When a court sentences an offender to probation, it shall attach such reasonable conditions as it deems necessary or likely to insure that the offender will lead a law-abiding life. No offender shall be sentenced to probation if he or she is deemed to be a habitual criminal pursuant to section 29-2221.

(2) The court may, as a condition of a sentence of probation, require the offender:

- (a) To refrain from unlawful conduct;
- (b) To be confined periodically in the county jail or to return to custody after specified hours but not to exceed (i) for misdemeanors, the lesser of ninety days or the maximum jail term provided by law for the offense and (ii) for felonies, one hundred eighty days;
- (c) To meet his or her family responsibilities;
- (d) To devote himself or herself to a specific employment or occupation;
- (e) To undergo medical or psychiatric treatment and to enter and remain in a specified institution for such purpose;
- (f) To pursue a prescribed secular course of study or vocational training;
- (g) To attend or reside in a facility established for the instruction, recreation, or residence of persons on probation;
- (h) To refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;

(i) To possess no firearm or other dangerous weapon if convicted of a felony, or if convicted of any other offense, to possess no firearm or other dangerous weapon unless granted written permission by the court;

(j) To remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his or her address or his or her employment and to agree to waive extradition if found in another jurisdiction;

(k) To report as directed to the court or a probation officer and to permit the officer to visit his or her home;

- (l) To pay a fine in one or more payments as ordered;
- (m) To pay for tests to determine the presence of drugs or alcohol, psychological evaluations, offender assessment screens, and rehabilitative services required in the identification, evaluation, and treatment of offenders if such offender has the financial ability to pay for such services;

(n) To perform community service as outlined in sections 29-2277 to 29-2279 under the direction of his or her probation officer;

(o) To be monitored by an electronic surveillance device or system and to pay the cost of such device or system if the offender has the financial ability;

(p) To participate in a community correctional facility or program as provided in the Community Corrections Act;

(q) To successfully complete an incarceration work camp program as determined by the Department of Correctional Services;

(r) To satisfy any other conditions reasonably related to the rehabilitation of the offender;

(s) To make restitution as described in sections 29-2280 and 29-2281; or

(t) To pay for all costs imposed by the court, including court costs and the fees imposed pursuant to section 29-2262.06.

(3) In all cases in which the offender is guilty of violating section 28-416, a condition of probation shall be mandatory treatment and counseling as provided by such section.

(4) In all cases in which the offender is guilty of a crime covered by the DNA Identification Information Act, a condition of probation shall be the collecting of a DNA sample pursuant to the act and the paying of all costs associated with the collection of the DNA sample prior to release or from probation.

Sec. 2. Section 29-4101, Reissue Revised Statutes of Nebraska, is amended to read:

29-4101 Sections 29-4101 to 29-4115 and section 6 of this act shall be known and may be cited as the DNA Identification Information Act.

Sec. 3. Section 29-4102, Reissue Revised Statutes of Nebraska, is amended to read:

29-4102 The Legislature finds that DNA data banks are an important tool in criminal investigations, in the exclusion of individuals who are the subject of criminal investigations or prosecutions, in deterring and detecting recidivist acts, and in locating and identifying missing persons and human remains. Several states have enacted laws requiring persons convicted of certain crimes, especially sex offenses, to provide genetic samples for DNA typing tests. Moreover, it is the policy of this state to assist federal, state, and local criminal justice and law enforcement agencies in the identification and detection of individuals in criminal investigations and in locating and identifying missing persons and human remains. It is in the best interest of this state to establish a State DNA Data Base for DNA records and a State DNA Sample Bank as a repository for DNA samples from individuals convicted of felony sex offenses and other specified offenses and from individuals for purposes of assisting in locating and identifying missing persons and human remains.

Sec. 4. Section 29-4103, Reissue Revised Statutes of Nebraska, is amended to read:

29-4103 For purposes of the DNA Identification Information Act:

(1) Combined DNA Index System means the Federal Bureau of Investigation's national DNA identification index system that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories;

(2) DNA means deoxyribonucleic acid which is located in the cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification;

(3) DNA record means the DNA identification information stored in the State DNA Data Base or the Combined DNA Index System which is derived from DNA typing test results;

(4) DNA sample means a blood, tissue, or bodily fluid sample provided by any person covered by the DNA Identification Information Act for analysis or storage, or both;

(5) DNA typing tests means the laboratory procedures which evaluate the characteristics of a DNA sample which are of value in establishing the identity of an individual;

(6) Felony sex offense means a felony offense, or an attempt, conspiracy, or solicitation to commit a felony offense, under any of the following:

(a) Kidnapping of a minor pursuant to section 28-313, except when the person is the parent of the minor and was not convicted of any other offense in this subdivision;

(b) Incest of a minor pursuant to section 28-703;

(c) Sexual assault in the first or second degree pursuant to section 28-319 or 28-320;

(d) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

(e) Sexual assault of a child in the first degree pursuant to section 28-319.01;

(f) Sexual assault of a vulnerable adult pursuant to subdivision

(1)-(e) of section 28-386; and

(g) False imprisonment of a minor in the first degree pursuant to section 28-314, except when the person is the parent of the minor and was not convicted of any other offense in this subdivision;

(7) Law enforcement agency includes a police department, a town marshal, a county sheriff, and the Nebraska State Patrol;

(8) Other specified offense means an offense, misdemeanor stalking pursuant to sections 28-311.02 to 28-311.05 or false imprisonment

in the second degree pursuant to section 28-315 or an attempt, conspiracy, or solicitation to commit an offense, under any of the following: stalking pursuant to sections 28-311.02 to 28-311.05, false imprisonment in the first degree pursuant to section 28-314, false imprisonment in the second degree pursuant to section 28-315, knowing and intentional sexual abuse of a vulnerable adult pursuant to subdivision (1)(c) of section 28-386, or a violation of the Sex Offender Registration Act pursuant to section 29-4011; and

- (a) Murder in the first degree pursuant to section 28-303;
 - (b) Murder in the second degree pursuant to section 28-304;
 - (c) Manslaughter pursuant to section 28-305;
 - (d) Stalking pursuant to sections 28-311.02 to 28-311.05;
 - (e) Burglary pursuant to section 28-507 provided that the real estate is a dwelling place intended for human occupancy; or
 - (f) Robbery pursuant to section 28-324; and
- (g) (8) Released means any release, parole, furlough, work release, prerelease, or release in any other manner from a prison, a jail, or any other detention facility or institution.

Sec. 5. Section 29-4106, Reissue Revised Statutes of Nebraska, is amended to read:

29-4106 (1) A person who is convicted of a felony ~~sex~~ offense or other specified offense on or after July 14, 2006, the effective date of this act, who does not have a DNA sample available for use in the State DNA Sample Bank, shall, at his or her own expense, have a DNA sample collected:

(a) Upon intake to a prison, jail, or other detention facility or institution to which such person is sentenced. If the person is already confined at the time of sentencing, the person shall have a DNA sample collected immediately after the sentencing. Such DNA samples shall be collected at the place of incarceration or confinement. Such person shall not be released unless and until a DNA sample has been collected; or

(b) As a condition for any sentence which will not involve an intake into a prison, jail, or other detention facility or institution. Such DNA samples shall be collected at a detention facility or institution as specified by the court. Such person shall not be released unless and until a DNA sample has been collected.

(2) A person who has been convicted of a felony ~~sex~~ offense or other specified offense before July 14, 2006, the effective date of this act, who does not have a DNA sample available for use in the State DNA Sample Bank, and who is still serving a term of confinement or probation for such felony offense or other specified offense on July 14, 2006, the effective date of this act, shall not be released prior to the expiration of his or her maximum term of confinement or revocation or discharge from his or her probation unless and until a DNA sample has been collected.

(3) A person who is serving a term of probation and has a DNA sample collected pursuant to this section shall pay all costs associated with the collection of the DNA sample.

Sec. 6. The State DNA Sample and Data Base Fund is created. The fund shall be maintained by the Department of Justice and administered by the Attorney General. The fund shall consist of any funds transferred to the fund by the Legislature or made available by any department or agency of the United States Government if so directed by such department or agency. The fund shall be used to pay the expenses of the Department of Correctional Services and the Nebraska State Patrol as needed to collect DNA samples as provided in section 29-4106. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 7. Section 59-1608.04, Revised Statutes Cumulative Supplement, 2008, as amended by section 34, Legislative Bill 3, One Hundred First Legislature, First Special Session, 2009, is amended to read:

59-1608.04 The State Settlement Cash Fund is created. The fund shall be maintained by the Department of Justice and administered by the Attorney General. Except as otherwise provided by law, the fund shall consist of all recoveries received pursuant to the Consumer Protection Act, including any money, funds, securities, or other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, or any other payments received on behalf of the state by the Department of Justice and administered by the Attorney General for the benefit of the state or the general welfare of its citizens, but excluding all funds held in a trust capacity where specific benefits accrue to specific individuals, organizations, or governments. All money in the fund shall be subject to legislative review and shall be

appropriated and expended for any allowable legal purposes as determined by the Legislature. The fund shall only be appropriated to a separate and distinct budget program and such appropriations shall only be expended from a separate and distinct budget subprogram and shall not be commingled with any other revenue or expenditure. Transfers may be made from the fund to the General Fund and the State DNA Sample and Data Base Fund at the direction of the Legislature. To provide necessary financial accountability and management oversight, revenue from individual settlement agreements or other separate sources credited to the State Settlement Cash Fund may be tracked and accounted for within the state accounting system through the use of separate and distinct funds, subfunds, or any other available accounting mechanism specifically approved by the Accounting Administrator for use by the Department of Justice. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 8. Original sections 29-2262, 29-4101, 29-4102, 29-4103, and 29-4106, Reissue Revised Statutes of Nebraska, and section 59-1608.04, Revised Statutes Cumulative Supplement, 2008, as amended by section 34, Legislative Bill 3, One Hundred First Legislature, First Special Session, 2009, are repealed.