

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 496

FINAL READING

Introduced by Hilkemann, 4; Lathrop, 12; Slama, 1; McCollister, 20.

Read first time January 19, 2021

Committee: Judiciary

1 A BILL FOR AN ACT relating to criminal procedure; to amend sections
2 29-3001, 29-4102, 29-4103, 29-4104, 29-4106, 29-4106.01, and
3 29-4109, Reissue Revised Statutes of Nebraska; to change a motion
4 for postconviction limitation; to require collection of DNA samples
5 under the DNA Identification Information Act from persons arrested
6 for burglary or crimes of violence; to define terms; to provide for
7 expungement; to harmonize provisions; to provide operative dates;
8 and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-3001, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-3001 (1) A prisoner in custody under sentence and claiming a
4 right to be released on the ground that there was such a denial or
5 infringement of the rights of the prisoner as to render the judgment void
6 or voidable under the Constitution of this state or the Constitution of
7 the United States, may file a verified motion, in the court which imposed
8 such sentence, stating the grounds relied upon and asking the court to
9 vacate or set aside the sentence.

10 (2) Unless the motion and the files and records of the case show to
11 the satisfaction of the court that the prisoner is entitled to no relief,
12 the court shall cause notice thereof to be served on the county attorney,
13 grant a prompt hearing thereon, and determine the issues and make
14 findings of fact and conclusions of law with respect thereto. If the
15 court finds that there was such a denial or infringement of the rights of
16 the prisoner as to render the judgment void or voidable under the
17 Constitution of this state or the Constitution of the United States, the
18 court shall vacate and set aside the judgment and shall discharge the
19 prisoner or resentence the prisoner or grant a new trial as may appear
20 appropriate. Proceedings under the provisions of sections 29-3001 to
21 29-3004 shall be civil in nature. Costs shall be taxed as in habeas
22 corpus cases.

23 (3) A court may entertain and determine such motion without
24 requiring the production of the prisoner, whether or not a hearing is
25 held. Testimony of the prisoner or other witnesses may be offered by
26 deposition. The court need not entertain a second motion or successive
27 motions for similar relief on behalf of the same prisoner.

28 (4) A one-year period of limitation shall apply to the filing of a
29 verified motion for postconviction relief. The one-year limitation period
30 shall run from the later of:

31 (a) The date the judgment of conviction became final by the

1 conclusion of a direct appeal or the expiration of the time for filing a
2 direct appeal;

3 (b) The date on which the factual predicate of the constitutional
4 claim or claims alleged could have been discovered through the exercise
5 of due diligence;

6 (c) The date on which an impediment created by state action, in
7 violation of the Constitution of the United States or the Constitution of
8 Nebraska or any law of this state, is removed, if the prisoner was
9 prevented from filing a verified motion by such state action;

10 (d) The date on which a constitutional claim asserted was initially
11 recognized by the Supreme Court of the United States or the Nebraska
12 Supreme Court, if the newly recognized right has been made applicable
13 retroactively to cases on postconviction collateral review; or

14 (e) The date on which the Supreme Court of the United States denies
15 a writ of certiorari or affirms a conviction appealed from the Nebraska
16 Supreme Court August 27, 2011. This subdivision only applies if, within
17 thirty days after petitioning the Supreme Court of the United States for
18 a writ of certiorari, the prisoner files a notice in the district court
19 of conviction stating that the prisoner has filed such petition.

20 Sec. 2. Section 29-4102, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 29-4102 The Legislature finds that DNA data banks are an important
23 tool in criminal investigations, in the exclusion of individuals who are
24 the subject of criminal investigations or prosecutions, in deterring and
25 detecting recidivist acts, and in locating and identifying missing
26 persons and human remains. Several states have enacted laws requiring
27 persons convicted of certain crimes to provide genetic samples for DNA
28 typing tests. Moreover, it is the policy of this state to assist federal,
29 state, and local criminal justice and law enforcement agencies in the
30 identification and detection of individuals in criminal investigations
31 and in locating and identifying missing persons and human remains. It is

1 in the best interest of this state to establish a State DNA Database for
2 DNA records and a State DNA Sample Bank as a repository for DNA samples
3 from individuals convicted of felony offenses and other specified
4 offenses, from individuals nineteen years of age or older charged with
5 crimes of violence or burglary, and from individuals for purposes of
6 assisting in locating and identifying missing persons and human remains.

7 Sec. 3. Section 29-4103, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 29-4103 For purposes of the DNA Identification Information Act:

10 (1) Burglary means burglary with intent to commit a felony pursuant
11 to section 28-507;

12 (2) ~~(1)~~ Combined DNA Index System means the Federal Bureau of
13 Investigation's national DNA identification index system that allows the
14 storage and exchange of DNA records submitted by state and local forensic
15 DNA laboratories;

16 (3) Crime of violence means any of the following offenses when
17 charged as a felony:

18 (a) Arson in the first degree pursuant to section 28-502;

19 (b) Assault in the first degree pursuant to section 28-308;

20 (c) Assault in the second degree pursuant to section 28-309;

21 (d) Kidnapping pursuant to section 28-313;

22 (e) Manslaughter pursuant to section 28-305;

23 (f) Murder in the first degree pursuant to section 28-303;

24 (g) Murder in the second degree pursuant to section 28-304;

25 (h) Sexual assault in the first degree pursuant to section 28-319;

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

28 (j) Sexual assault in the second degree pursuant to section 28-320;

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

31 (l) Child enticement by means of an electronic communication device

1 pursuant to section 28-320.02;

2 (m) Sexual abuse of an inmate or parolee in the first degree
3 pursuant to section 28-322.02;

4 (n) Sexual abuse of an inmate or parolee in the second degree
5 pursuant to section 28-322.03;

6 (o) Sexual abuse of a protected individual pursuant to section
7 28-322.04;

8 (p) Robbery pursuant to section 28-324;

9 (q) Violation of the Homicide of the Unborn Child Act pursuant to
10 sections 28-388 through 28-393;

11 (r) Incest with a person who is under eighteen years of age pursuant
12 to section 28-703; or

13 (s) Any attempt or conspiracy to commit an offense listed in
14 subdivision (3)(a) through (r) of this section;

15 (4) ~~(2)~~ DNA means deoxyribonucleic acid which is located in the
16 cells and provides an individual's personal genetic blueprint. DNA
17 encodes genetic information that is the basis of human heredity and
18 forensic identification;

19 (5) ~~(3)~~ DNA record means the DNA identification information stored
20 in the State DNA Database or the Combined DNA Index System which is
21 derived from DNA typing test results;

22 (6) ~~(4)~~ DNA sample means a blood, tissue, or bodily fluid sample
23 provided by any person covered by the DNA Identification Information Act
24 for analysis or storage, or both;

25 (7) ~~(5)~~ DNA typing tests means the laboratory procedures which
26 evaluate the characteristics of a DNA sample which are of value in
27 establishing the identity of an individual;

28 (8) ~~(6)~~ Law enforcement agency includes a police department, a town
29 marshal, a county sheriff, and the Nebraska State Patrol;

30 (9) ~~(7)~~ Other specified offense means misdemeanor stalking pursuant
31 to sections 28-311.02 to 28-311.05 or false imprisonment in the second

1 degree pursuant to section 28-315 or an attempt, conspiracy, or
2 solicitation to commit stalking pursuant to sections 28-311.02 to
3 28-311.05, false imprisonment in the first degree pursuant to section
4 28-314, false imprisonment in the second degree pursuant to section
5 28-315, knowing and intentional sexual abuse of a vulnerable adult or
6 senior adult pursuant to subdivision (1)(c) of section 28-386, or a
7 violation of the Sex Offender Registration Act pursuant to section
8 29-4011; and

9 (10) ~~(8)~~ Released means any release, parole, furlough, work release,
10 prerelease, or release in any other manner from a prison, a jail, or any
11 other detention facility or institution.

12 Sec. 4. Section 29-4104, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 29-4104 The State DNA Database is established. The Nebraska State
15 Patrol shall administer the State DNA Database and shall provide DNA
16 records to the Federal Bureau of Investigation for storage and
17 maintenance in the Combined DNA Index System. The patrol shall provide
18 for liaison with the Federal Bureau of Investigation and other law
19 enforcement agencies in regard to the state's participation in the
20 Combined DNA Index System. The State DNA Database shall store and
21 maintain DNA records related to:

22 (1) Forensic casework, including, but not limited to, forensic
23 casework relating to missing persons, relatives of missing persons, and
24 unidentified human remains;

25 (2) Convicted or charged offenders required to provide a DNA sample
26 under the DNA Identification Information Act;

27 (3) Anonymous DNA records used for research or quality control; and

28 (4) Missing persons, relatives of missing persons, and unidentified
29 human remains.

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

1 29-4106 (1) A person who is convicted of a felony offense or other
2 specified offense on or after July 15, 2010, who does not have a DNA
3 sample available for use in the State DNA Sample Bank, shall, at his or
4 her own expense, have a DNA sample collected:

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

11 (b) As a condition for any sentence which will not involve an intake
12 into a prison, jail, or other detention facility or institution. Such DNA
13 samples shall be collected as follows:

14 (i) In any county containing a city of the metropolitan class, a
15 person placed on probation or who received a penalty of a fine or time
16 served shall have such DNA sample collected by a probation officer at a
17 probation office. Such person shall not be released unless and until a
18 DNA sample has been collected; and

19 (ii) In all other counties, a person placed on probation shall have
20 such DNA sample collected by a probation officer at a probation office,
21 and a person not placed on probation who receives a penalty of a fine or
22 time served shall have such DNA sample collected by the county sheriff.
23 Such person shall not be released unless and until a DNA sample has been
24 collected.

25 (2) A person who has been convicted of a felony offense or other
26 specified offense before July 15, 2010, who does not have a DNA sample
27 available for use in the State DNA Sample Bank, and who is still serving
28 a term of confinement or probation for such felony offense or other
29 specified offense on July 15, 2010, shall not be released prior to the
30 expiration of his or her maximum term of confinement or revocation or
31 discharge from his or her probation unless and until a DNA sample has

1 been collected.

2 (3)(a) A person nineteen years of age or older who is charged with a
3 crime of violence or burglary on or after the operative date of this
4 section, who does not have a DNA sample available for use in the State
5 DNA Sample Bank, shall have a DNA sample collected by a law enforcement
6 official at the receiving criminal detention facility during the booking
7 process. If the first appearance of such person in court for the alleged
8 crime of violence or burglary is not due to arrest but by citation or
9 summons, the court shall order collection of a DNA sample.

10 (b) A DNA sample collected under this subsection shall not be tested
11 or placed in the State DNA Database until after a judicial determination
12 of probable cause pursuant to section 29-506 or 29-1607 on the crime of
13 violence or burglary has been made or a hearing to determine probable
14 cause has been waived, unless requested or consented to by the person
15 whose DNA sample is to be collected. If the charges for the crime of
16 violence or burglary are determined to be unsupported by probable cause,
17 the DNA sample shall be immediately destroyed and notice that the sample
18 was destroyed shall be sent to the person whose DNA sample was collected
19 and counsel of record for such person.

20 (c) Nothing in this subsection shall be construed to authorize the
21 collection of DNA samples from persons who are younger than nineteen
22 years of age.

23 (4) ~~(3)~~ A person who is serving a term of probation and has a DNA
24 sample collected pursuant to this section shall pay all costs associated
25 with the collection of the DNA sample.

26 (5) ~~(4)~~ If the court waives the cost of taking a DNA sample for any
27 reason, a county jail or other county detention facility or institution
28 collecting the DNA sample shall not be held financially responsible for
29 the cost of the DNA sample kit.

30 Sec. 6. Section 29-4106.01, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 29-4106.01 (1) A person required to submit a DNA sample pursuant to
2 subsection (1) or (2) of section 29-4106 shall be given the choice of
3 having the sample collected by a blood draw or a buccal cell collection
4 kit. Any person who collects a DNA sample pursuant to section 29-4106
5 shall honor the choice of collection method made by the person providing
6 the DNA sample. If the person required to submit the DNA sample does not
7 indicate a preference as to the method of collection, either method may
8 be used to collect the sample.

9 (2) A person required to submit a DNA sample pursuant to subsection
10 (3) of section 29-4106 shall have the sample collected by buccal cell
11 collection kit.

12 Sec. 7. Section 29-4109, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 29-4109 (1) A person whose DNA record has been included in the
15 State DNA Database pursuant to the DNA Identification Information Act may
16 request expungement on the grounds that: ~~the~~

17 (a) The conviction on which the authority for including such
18 person's DNA record was based has been reversed and the case dismissed;
19 or -

20 (b) The charge on which the authority for including such person's
21 DNA record was based has been dismissed.

22 (2) The Nebraska State Patrol shall purge all DNA records and
23 identifiable information in the database pertaining to the person and
24 destroy all DNA samples from the person upon receipt of a written request
25 for expungement pursuant to this section and a certified copy of the
26 final court order reversing and dismissing the conviction or dismissing
27 the charge.

28 (3) Within ten calendar days of granting expungement, the Nebraska
29 State Patrol shall provide written notice of such expungement pursuant to
30 subsection (4) of section 29-4108, to any person to whom DNA records and
31 samples have been made available. The Nebraska State Patrol shall

1 establish procedures for providing notice of certification of expungement
2 to the person who was granted expungement.

3 Sec. 8. Sections 2, 3, 4, 5, 6, 7, and 10 of this act become
4 operative on January 1, 2022. The other sections of this act become
5 operative on their effective date.

6 Sec. 9. Original section 29-3001, Reissue Revised Statutes of
7 Nebraska, is repealed.

8 Sec. 10. Original sections 29-4102, 29-4103, 29-4104, 29-4106,
9 29-4106.01, and 29-4109, Reissue Revised Statutes of Nebraska, are
10 repealed.