

LEGISLATIVE BILL 278

Approved by the Governor June 10, 1997

Introduced by Abboud, 12; Hudkins, 21; Jones, 43; Dw. Pedersen, 39; Robak, 22; Witek, 31

AN ACT relating to law enforcement; to adopt the DNA Detection of Sexual and Violent Offenders Act; and to provide penalties.

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

Section 1. This act shall be known and may be cited as the DNA Detection of Sexual and Violent Offenders Act.

Sec. 2. 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, and in deterring and detecting recidivist acts. 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. 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.

Sec. 3. For purposes of the DNA Detection of Sexual and Violent Offenders 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 or tissue sample provided by any person with respect to offenses covered by the DNA Detection of Sexual and Violent Offenders 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 pursuant to section 28-320.01;

(e) Sexual assault of a vulnerable adult pursuant to subdivision (1)(c) of section 28-386; and

(f) 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, town marshal, county sheriff, and the Nebraska State Patrol;

(8) Other specified offense means an offense, or an attempt, conspiracy, or solicitation to commit an offense, under any of the following:

(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; or

(d) Stalking pursuant to sections 28-311.02 to 28-311.05; and

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

Sec. 4. The State DNA Data Base is established. The Nebraska State Patrol shall administer the State DNA Data Base and shall provide DNA records

to the Federal Bureau of Investigation for storage and maintenance in the Combined DNA Index System. The patrol shall provide for liaison with the Federal Bureau of Investigation and other law enforcement agencies in regard to the state's participation in the Combined DNA Index System. The State DNA Data Base shall store and maintain DNA records related to:

- (1) Forensic casework;
- (2) Convicted offenders required to provide a DNA sample under the DNA Detection of Sexual and Violent Offenders Act; and
- (3) Anonymous DNA records used for research or quality control.

Sec. 5. (1) The Nebraska State Patrol shall prescribe procedures to be used in the collection, submission, identification, analysis, storage, and disposition of DNA samples and DNA records under the DNA Detection of Sexual and Violent Offenders Act. These procedures shall include quality assurance guidelines for laboratories which submit DNA records to the State DNA Data Base. The State DNA Data Base shall be compatible with the procedures specified by the Federal Bureau of Investigation, including the use of comparable test procedures, laboratory equipment, supplies, and computer software. The DNA records shall be securely stored in the State DNA Data Base and retained in a manner consistent with the procedures established by the Federal Bureau of Investigation.

(2) The Nebraska State Patrol may contract with the University of Nebraska Medical Center to establish the State DNA Sample Bank at the medical center and for DNA typing tests. The State DNA Sample Bank shall serve as the repository of DNA samples collected under the act. The University of Nebraska Medical Center in contracting under the act is subject to the same restrictions and requirements of the act, insofar as applicable, as the Nebraska State Patrol, as well as any additional restrictions imposed by the patrol.

(3) The DNA samples and DNA records shall only be used by the Nebraska State Patrol to create a separate population data base comprised of DNA records obtained under the act after all personal identification is removed. The patrol may share or disseminate the population data base with other law enforcement agencies or forensic DNA laboratories which assist the patrol with statistical data bases. The population data base may be made available to and searched by other agencies participating in the Combined DNA Index System.

Sec. 6. (1) A person who is convicted of a felony sex offense or other specified offense on or after the effective date of this act shall have a DNA sample drawn:

(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 drawn immediately after the sentencing. Such DNA samples shall be drawn at the place of incarceration or confinement. Such person shall not be released unless and until a DNA sample has been drawn; 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 drawn 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 drawn.

(2) A person who has been convicted of a felony sex offense or other specified offense before the effective date of this act and who is still serving a term of confinement for such offense on the effective date of this act shall not be released prior to the expiration of his or her maximum term of confinement unless and until a DNA sample has been drawn.

Sec. 7. (1) Only individuals (a) who are physicians or registered nurses, (b) who are trained to withdraw human blood for scientific or medical purposes and are obtaining blood specimens while working under orders of or protocols and procedures approved by a physician, registered nurse, or other independent health care practitioner licensed to practice by the state if the scope of practice of that practitioner permits the practitioner to obtain blood specimens, or (c) who are both employed by a licensed institution or facility and have been trained to withdraw human blood for scientific or medical purposes shall draw a DNA sample under the DNA Detection of Sexual and Violent Offenders Act. In addition to the DNA sample, a full set of fingerprints shall be taken from the person from whom the DNA sample is being drawn for the exclusive purpose of verifying the identity of such person. The DNA sample and the set of fingerprints shall be delivered to the Nebraska State Patrol within forty-eight hours after drawing the sample.

(2) A person authorized to draw DNA samples under this section is not criminally liable for drawing a DNA sample and transmitting DNA records pursuant to the act if he or she performs these activities in good faith and

is not civilly liable for such activities if he or she performed such activities in a reasonable manner according to generally accepted medical and other professional practices.

Sec. 8. (1) All DNA samples and DNA records submitted pursuant to the DNA Detection of Sexual and Violent Offenders Act are confidential except as otherwise provided in the act. The Nebraska State Patrol shall make DNA records in the State DNA Data Base available:

(a) To law enforcement agencies and forensic DNA laboratories which serve such agencies; and

(b) Upon written or electronic request and in furtherance of an official investigation of a criminal offense or offender or suspected offender.

(2) The Nebraska State Patrol shall adopt and promulgate rules and regulations governing the methods of obtaining information from the State DNA Data Base and the Combined DNA Index System and procedures for verification of the identity and authority of the requester.

(3) The Nebraska State Patrol may, for good cause shown, revoke or suspend the right of a forensic DNA laboratory in this state to have access to or submit records to the State DNA Data Base.

(4) For purposes of this subsection, person means a law enforcement agency, the Federal Bureau of Investigation, any forensic DNA laboratory, or person. No records or DNA samples shall be provided to any person unless such person enters into a written agreement with the Nebraska State Patrol to comply with the provisions of section 9 of this act relative to expungement, when notified by the Nebraska State Patrol that expungement has been granted. Every person shall comply with the provisions of section 9 of this act within ten calendar days of receipt of such notice and certify in writing to the Nebraska State Patrol that such compliance has been effectuated. The Nebraska State Patrol shall provide notice of such certification to the person who was granted expungement.

Sec. 9. A person whose DNA record has been included in the State DNA Data Base pursuant to the DNA Detection of Sexual and Violent Offenders Act may request expungement on the grounds that the conviction on which the authority for including such person's DNA record was based has been reversed and the case dismissed. The Nebraska State Patrol shall purge all DNA records and identifiable information in the data base pertaining to the person and destroy all DNA samples from the person upon receipt of a written request for expungement pursuant to this section and a certified copy of the final court order reversing and dismissing the conviction.

Within ten calendar days of granting expungement, the Nebraska State Patrol shall provide written notice of such expungement pursuant to subsection (4) of section 8 of this act, to any person to whom DNA records and samples have been made available. The Nebraska State Patrol shall establish procedures for providing notice of certification of expungement to the person who was granted expungement.

Sec. 10. (1) Any person who has possession of or access to individually identifiable DNA samples or DNA records in the State DNA Data Base or in the State DNA Sample Bank shall not disclose such samples or records in any manner to any person or agency not authorized to receive them knowing that such person or agency is not authorized to receive them.

(2) No person shall obtain individually identifiable DNA samples or DNA records from the State DNA Data Base or the State DNA Sample Bank without authorization to do so. Any person who knowingly violates this subsection is guilty of a Class III misdemeanor.

Sec. 11. (1) Any person who has possession of or access to individually identifiable DNA samples or DNA records contained in the State DNA Data Base or in the State DNA Sample Bank and who for pecuniary gain for such person or for any other person discloses such samples and records in any manner to any person or agency not authorized to receive them is guilty of a Class III misdemeanor.

(2) Any person aggrieved by a knowing violation of this section has the substantive right to bring an action for damages for such violation in a court of competent jurisdiction. A person found by the court to have been aggrieved by a knowing violation of this section may receive damages of not less than one hundred dollars for each violation and may recover the reasonable costs of the litigation and attorney's fees.

Sec. 12. The Nebraska State Patrol or any other aggrieved individual or agency may institute an action in a court of proper jurisdiction against any person, including law enforcement agencies, to enjoin such person or agency from violating the DNA Detection of Sexual and Violent Offenders Act.

Sec. 13. The Nebraska State Patrol may recommend to the Legislature

that the Legislature enact legislation for the inclusion of additional offenses for which DNA samples shall be taken and otherwise subjected to the DNA Detection of Sexual and Violent Offenders Act. In determining whether to recommend additional offenses, the Nebraska State Patrol shall consider those offenses for which DNA testing will have a substantial impact on the detection and identification of sexual offenders and violent offenders.

Sec. 14. The Nebraska State Patrol shall adopt and promulgate rules and regulations to carry out the DNA Detection of Sexual and Violent Offenders Act.

Sec. 15. Nothing in the DNA Detection of Sexual and Violent Offenders Act limits or abrogates any existing authority of peace officers to take, maintain, store, and utilize DNA samples for law enforcement purposes.