

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H3/20/03 H3/31/03 H4/4/03

A Bill

Act 1470 of 2003
HOUSE BILL 1074

5 By: Representative Verkamp
6
7

For An Act To Be Entitled

9 AN ACT TO REQUIRE DNA SAMPLING OF PERSONS
10 CONVICTED OF FELONY OFFENSES RESULTING IN
11 CONFINEMENT; AND FOR OTHER PURPOSES.
12

Subtitle

13 TO REQUIRE DNA SAMPLING OF PERSONS
14 CONVICTED OF FELONY OFFENSES RESULTING
15 IN CONFINEMENT.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 *SECTION 1. Arkansas Code § 12-12-1101 is amended to read as follows:*
22 *12-12-1101. Short title.*

23 *This subchapter shall be known and may be cited as the "~~DNA Detection~~*
24 *~~of Sexual and Violent Offenders~~ State Convicted Offender DNA Database Act".*
25

26 *SECTION 2. Arkansas Code § 12-12-1103 is amended to read as follows:*
27 *12-12-1103. Definitions.*

28 *As used in this subchapter:*

29 *(1) "Adjudication of guilt" and words of similar import mean a*
30 *plea of guilty, a plea of nolo contendere, a negotiated plea, a finding of*
31 *guilt by a judge, or a finding of guilt by a jury;*

32 *(2)(A) "Administration of criminal justice" means performing*
33 *functions of investigation, apprehension, detention, prosecution,*
34 *adjudication, correctional supervision, or rehabilitation of accused persons*
35 *or criminal offenders.*

36 *(B) The administration of criminal justice also includes*



1 *criminal identification activities and the collection, maintenance, and*
2 *dissemination of criminal justice information;*

3 (3)(A) *"CODIS" means the Federal Bureau of Investigation's*
4 *national deoxyribonucleic acid (DNA) identification index system that allows*
5 *the storage and exchange of deoxyribonucleic acid (DNA) records submitted by*
6 *state and local forensic laboratories.*

7 (B) *The term is derived from Combined DNA Index System;*

8 (4) *"Criminal justice agency" means a government agency, or any*
9 *subunit thereof, which is authorized by law to perform the administration of*
10 *criminal justice, and which allocates more than one-half (1/2) its annual*
11 *budget to the administration of criminal justice;*

12 (5)(A) *"DNA" means deoxyribonucleic acid.*

13 (B)(i) *Deoxyribonucleic acid (DNA) is located in the cells*
14 *and provides an individual's personal genetic blueprint.*

15 (ii) *Deoxyribonucleic acid (DNA) encodes genetic*
16 *information that is the basis of human heredity and forensic identification;*

17 (6)(A) *"Deoxyribonucleic acid (DNA) record" means*
18 *deoxyribonucleic acid (DNA) identification information stored in the State*
19 *DNA Data Base or CODIS for the purpose of generating investigative leads or*
20 *supporting statistical interpretation of deoxyribonucleic acid (DNA) test*
21 *results.*

22 (B) *The deoxyribonucleic acid (DNA) record is the result*
23 *obtained from the deoxyribonucleic acid (DNA) typing tests.*

24 (C) *The deoxyribonucleic acid (DNA) record is composed of*
25 *the characteristics of a deoxyribonucleic acid (DNA) sample which are of*
26 *value in establishing the identity of individuals.*

27 (D) *The results of all deoxyribonucleic acid (DNA)*
28 *identification tests on an individual's deoxyribonucleic acid (DNA) sample*
29 *are also collectively referred to as the deoxyribonucleic acid (DNA) profile*
30 *of an individual;*

31 (7) *"Deoxyribonucleic acid (DNA) sample" means a blood or tissue*
32 *sample provided by any person with respect to offenses covered by this*
33 *subchapter or submitted to the State Crime Laboratory for analysis or storage*
34 *or both;*

35 (8) *"FBI" means the Federal Bureau of Investigation;*

36 (9) *"Qualifying Offense" means any felony offense as defined in*

1 the Arkansas Criminal Code, §§ 5-1-101 et seq. or a sexual offense classified
 2 as a misdemeanor as defined by Arkansas Criminal Code, §§ 5-1-101 et seq. or
 3 a repeat offense as defined in this section; and

4 ~~(9)(10)~~ "Repeat offense" means a second or subsequent
 5 adjudication of guilt in a separate criminal action for the commission of any
 6 misdemeanor or felony offense involving violence as set forth in Arkansas
 7 law, the law of another state, federal law, or military law~~;~~.

8 ~~(10)~~ "Sex offense" means:

9 ~~(A)(i)~~ Rape — § 5-14-103;

10 ~~(ii)~~ Carnal abuse in the first degree — § 5-14-104;

11 ~~(iii)~~ Carnal abuse in the second degree — § 5-14-
 12 105;

13 ~~(iv)~~ Carnal abuse in the third degree — § 5-14-106;

14 ~~(v)~~ Sexual misconduct — § 5-14-107;

15 ~~(vi)~~ Sexual abuse in the first degree — § 5-14-108;

16 ~~(vii)~~ Sexual abuse in the second degree — § 5-14-
 17 109;

18 ~~(viii)~~ Sexual solicitation of a child — § 5-14-110;

19 ~~(ix)~~ Violation of a minor in the first degree — § 5-
 20 14-120;

21 ~~(x)~~ Violation of a minor in the second degree — § 5-
 22 14-121;

23 ~~(xi)~~ Incest — § 5-26-202;

24 ~~(xii)~~ Engaging children in sexually explicit conduct
 25 for use in visual or print medium — § 5-27-303;

26 ~~(xiii)~~ Transportation of minors for prohibited
 27 sexual conduct — § 5-27-305;

28 ~~(xiv)~~ Employing or consenting to use of child in
 29 sexual performance — § 5-27-402;

30 ~~(xv)~~ Producing, directing, or promoting sexual
 31 performance — § 5-27-403;

32 ~~(xvi)~~ Promoting prostitution in the first degree — §
 33 5-70-104;

34 ~~(xvii)~~ Stalking — § 5-71-229;

35 ~~(B)~~ An attempt, solicitation, or conspiracy to commit any
 36 of the offenses enumerated in subdivision (10)(A) of this section; or

1 ~~(C) A violation of any former law of this state which is~~
 2 ~~substantially equivalent to any of the offenses enumerated in subdivision~~
 3 ~~(10)(A) of this section; and~~

4 ~~(11) "Violent offense" means:~~

5 ~~(A)(i) Murder — § 5-10-101, 5-10-102, or 5-10-103;~~

6 ~~(ii) Manslaughter — § 5-10-104;~~

7 ~~(iii) Robbery — § 5-12-102;~~

8 ~~(iv) Aggravated robbery — § 5-12-103;~~

9 ~~(v) Battery in the first degree — § 5-13-201;~~

10 ~~(vi) Battery in the second degree — § 5-13-202;~~

11 ~~(vii) Aggravated assault — § 5-13-204;~~

12 ~~(viii) Terroristic threatening in the first degree —~~

13 ~~§ 5-13-301;~~

14 ~~(ix) Domestic battering — §§ 5-26-303 — 5-26-305;~~

15 ~~(x) Aggravated assault on family or household member~~
 16 ~~— § 5-26-306;~~

17 ~~(xi) Engaging in a continuing criminal gang,~~
 18 ~~organization, or enterprise — § 5-74-104;~~

19 ~~(xii) Kidnapping — § 5-11-102;~~

20 ~~(xiii) False imprisonment in the first degree — § 5-~~
 21 ~~11-103;~~

22 ~~(xiv) Permanent detention or restraint — § 5-11-106;~~

23 ~~(B) An attempt, solicitation, or conspiracy to commit any~~
 24 ~~of these enumerated offenses; or~~

25 ~~(C) A violation of any former law of this state which is~~
 26 ~~substantially equivalent to any of the offenses enumerated in subdivision~~
 27 ~~(11)(A) of this section.~~

28
 29 SECTION 3. Arkansas Code § 12-12-1105 is amended to read as follows:
 30 12-12-1105. State DNA Data Base.

31 (a)(1) There is established the State DNA Data Base.

32 (2) It shall be administered by the State Crime Laboratory and
 33 provide deoxyribonucleic acid (DNA) records to the Federal Bureau of
 34 Investigation for storage and maintenance in CODIS.

35 (b) The State DNA Data Base shall have the capability provided by
 36 computer software and procedures administered by the State Crime Laboratory

1 to store and maintain deoxyribonucleic acid (DNA) records related to:

2 (1) ~~Forensic casework~~ Crime scene evidence and forensic
3 casework;

4 (2) ~~Offenders who are required to provide a deoxyribonucleic~~
5 ~~acid (DNA) sample under this subchapter~~ Convicted offenders and juveniles
6 adjudicated delinquent who are required to provide a DNA sample under this
7 subchapter;

8 (3) Offenders who were required to provide a deoxyribonucleic
9 acid (DNA) sample under former § 12-12-1101 et seq. (repealed); ~~and~~

10 (4) Anonymous deoxyribonucleic acid (DNA) records used for
11 ~~research or~~ forensic validation, quality control, or establishment of a
12 population statistics database;

13 (5) Unidentified persons or body parts; and

14 (6) Relatives of missing persons.

15
16 SECTION 4. Arkansas Code §§ 12-12-1109 through 12-12-1111 are amended
17 to read as follows:

18 12-12-1109. DNA sample required upon adjudication of guilt.

19 (a) Adjudication of guilt. A person who is adjudicated guilty ~~or~~
20 ~~adjudicated delinquent for a sex offense, a violent offense, a residential or~~
21 ~~commercial burglary under § 5-39-201 (a) or (b), or a repeat qualifying~~
22 ~~offense on or after August 1, 1997, shall have a deoxyribonucleic acid (DNA)~~
23 ~~sample drawn as follows:~~

24 (1)(A) A person who is adjudicated guilty or ~~adjudicated~~
25 ~~delinquent for a sex offense, a violent offense, a residential or commercial~~
26 ~~burglary under § 5-39-201(a) or (b), or a repeat qualifying offense and~~
27 ~~sentenced to a term of confinement for that sex offense, violent offense,~~
28 ~~residential or commercial burglary under § 5-39-201(a) or (b), or repeat~~
29 ~~qualifying offense shall have a deoxyribonucleic acid (DNA) sample drawn upon~~
30 ~~intake to a prison, jail, juvenile detention facility, or any other detention~~
31 ~~facility or institution.~~

32 (B) If the person is already confined at the time of
33 sentencing, the person shall have a deoxyribonucleic acid (DNA) sample drawn
34 immediately after the sentencing;

35 (2)(A) A person who is adjudicated guilty ~~or adjudicated~~
36 ~~delinquent for a sex offense, a violent offense, a residential or commercial~~

1 ~~burglary under § 5-39-201(a) or (b), or a repeat~~ qualifying offense shall
2 have a deoxyribonucleic acid (DNA) sample drawn as a condition of any
3 sentence in which disposition will not involve an intake into a prison, jail,
4 ~~juvenile detention facility~~, or any other detention facility or institution;

5 (B) Unless otherwise ordered by the court, the agency
6 supervising the convicted offender shall determine the time and collection of
7 the DNA sample.

8 (3) A person who is acquitted on the grounds of mental disease
9 or defect of the commission of a ~~sex offense, a violent offense, a~~
10 ~~residential or commercial burglary under § 5-39-201(a) or (b), or a repeat~~
11 qualifying offense and committed to an institution or other facility shall
12 have a deoxyribonucleic acid (DNA) sample drawn upon intake to that
13 institution or other facility; and

14 (4) Under no circumstance shall a person who is adjudicated
15 ~~guilty or adjudicated delinquent for a sex offense, a violent offense, a~~
16 ~~residential or commercial burglary under § 5-39-201(a) or (b), or a repeat~~
17 qualifying offense be released in any manner after such disposition unless
18 and until a deoxyribonucleic acid (DNA) sample has been drawn.

19 (b) Adjudication of guilt before August 1, 1997. A person who has been
20 adjudicated guilty ~~or adjudicated delinquent for a sex offense, a violent~~
21 ~~offense, a residential or commercial burglary under § 5-39-201(a) or (b), or~~
22 ~~a repeat~~ qualifying offense before August 1, 1997, and who is still serving a
23 term of confinement in connection therewith on August 1, 1997, shall not be
24 released in any manner prior to the expiration of his maximum term of
25 confinement unless and until a deoxyribonucleic acid (DNA) sample has been
26 drawn.

27 (c) Supervision of deoxyribonucleic acid (DNA) samples. All
28 deoxyribonucleic acid (DNA) samples taken pursuant to this section shall be
29 taken in accordance with regulations promulgated by the State Crime
30 Laboratory in consultation with the Department of Correction, the Department
31 of Community Correction, the Department of Human Services, and the
32 Administrative Office of the Courts.

33 (d) Interstate transfer on parole or probation.

34 (1) When the state accepts a person from another state under any
35 interstate compact, or under any other reciprocal agreement with any county,
36 state or federal agency, or any other provision of law, whether or not the

1 person is confined or released, the acceptance is conditional on the person
2 providing a DNA sample if the person was convicted of an offense in any other
3 jurisdiction which would be considered a qualifying offense as defined in §
4 12-12-1103 if committed in this state, or if the person was convicted of an
5 equivalent offense in any other jurisdiction.

6 (2) The person shall provide the DNA sample in accordance with
7 the rules of the custodial institution or supervising agency.

8 (e) Applicability and additional sample.

9 (1) The requirements of this subchapter are mandatory and apply
10 regardless of whether a court advises a person that a DNA sample must be
11 provided to the State DNA databank and database as a condition of probation
12 or parole.

13 (2) A person who has been sentenced to death or life without the
14 possibility of parole, or to any life or indeterminate term of incarceration
15 is not exempt from the requirements of this subchapter.

16 (3) Any person subject to this subchapter, who has not provided
17 a DNA sample for any reason, including the person's release prior to the
18 effective date of this subsection, an oversight, or because of the person's
19 transfer from another jurisdiction, shall give a DNA sample for inclusion in
20 the State DNA database after being notified by the supervising agency.

21 (4) In the event that a person's DNA sample is not adequate for
22 any reason, the person shall provide another DNA sample for analysis.

23
24 12-12-1110. Procedures of withdrawal, collection, and transmission of
25 DNA samples.

26 (a) ~~Drawing of~~ Taking deoxyribonucleic acid (DNA) samples.

27 (1)(A) Each deoxyribonucleic acid (DNA) sample required to be
28 ~~drawn taken~~ pursuant to § 12-12-1109 from persons who are incarcerated shall
29 ~~be drawn at the place of incarceration or confinement as provided for in §~~
30 ~~12-12-1109~~ taken by the agency supervising the convicted offender.

31 (B) Deoxyribonucleic acid (DNA) samples from persons who
32 are not committed or sentenced to a term of confinement shall be drawn at
33 another facility to be specified by the sentencing court.

34 (C) Only those individuals qualified to draw
35 deoxyribonucleic acid (DNA) samples in a medically approved manner shall draw
36 a deoxyribonucleic acid (DNA) sample to be submitted for analysis.

1 (2) In addition to the deoxyribonucleic acid (DNA) sample, a
2 right thumbprint shall be taken from the person from whom the
3 deoxyribonucleic acid (DNA) sample is drawn for the exclusive purpose of
4 verifying the identity of the person.

5 (3) Contracting with third parties. The agency or institution
6 having custody or control or the agency providing supervision of persons
7 convicted or adjudicated delinquent for qualifying offenses, as appropriate,
8 is authorized to contract with third parties to provide for the collection of
9 the DNA samples.

10 (b) Delivery of deoxyribonucleic acid (DNA) samples. The
11 deoxyribonucleic acid (DNA) sample and the right thumbprint provided for in
12 subdivision (a)(2) of this section shall be delivered to the State Crime
13 Laboratory in accordance with guidelines established by the State Crime
14 Laboratory.

15 (c) Limitation on liability.

16 (1) Persons authorized to draw blood by this section shall not
17 be criminally liable for drawing a deoxyribonucleic acid (DNA) sample and
18 transmitting the deoxyribonucleic acid (DNA) sample pursuant to this
19 subchapter if they perform these activities in good faith.

20 (2) Persons authorized to draw blood by this section shall not
21 be civilly liable for such activities when the persons acted in a reasonable
22 manner and according to generally accepted medical and other professional
23 practices.

24 (d) Reasonable use of force.

25 (1) Authorized law enforcement and corrections personnel may
26 employ reasonable force in cases where an individual refuses to submit to
27 deoxyribonucleic acid (DNA) testing authorized under this subchapter.

28 (2) No such employee shall be criminally or civilly liable for
29 the use of reasonable force.

30 (e) Refusal to provide deoxyribonucleic acid (DNA) sample.

31 (1) Any person who refuses to provide a deoxyribonucleic acid
32 (DNA) sample required by this subchapter will receive no further sentence
33 reduction from meritorious good time until such time as a sample is provided,
34 and the Department of Correction shall notify the Post Prison Transfer Board
35 regarding the refusal.

36 (2) Any person who is subject to this subchapter, and who, after

1 receiving notification of the requirement to provide a DNA sample, knowingly
2 refuses to provide the DNA sample, shall be guilty of a Class D felony.

3
4 12-12-1111. Procedures for conduct, disposition, and use of DNA
5 analysis.

6 (a) Conduct.

7 (1) The State Crime Laboratory shall adopt rules governing the
8 procedures to be used in the submission, identification, analysis, storage,
9 and disposition of deoxyribonucleic acid (DNA) samples and typing results of
10 deoxyribonucleic acid (DNA) samples submitted under this subchapter.

11 (2) These procedures shall also include quality assurance
12 guidelines to ensure that deoxyribonucleic acid (DNA) identification records
13 meet standards for laboratories which submit deoxyribonucleic acid (DNA)
14 records to the State DNA Data Base.

15 (b) Disposition. The typing results of deoxyribonucleic acid (DNA)
16 samples shall be securely stored in the State DNA Data Base and records of
17 testing shall be retained on file with the State Crime Laboratory consistent
18 with the procedures established by the Federal Bureau of Investigation.

19 (c) Use of tests.

20 (1) Except as otherwise provided in § 12-12-1112, the tests to
21 be performed on each deoxyribonucleic acid (DNA) sample shall be used only
22 for law enforcement identification purposes or to assist in the recovery or
23 identification of human remains from disasters or for other humanitarian
24 identification purposes, including identification of missing persons.

25 (2) The results of the analysis conducted pursuant to this
26 subchapter from a person adjudicated delinquent may be used for any law
27 enforcement agency identification purpose, including adult prosecution.

28 (3) Mistakes do not invalidate a database match. The detention,
29 arrest, or conviction of a person based on a database match or database
30 information is not invalidated if the sample was obtained or placed in the
31 database by mistake.

32 (d) Contracting. (1) The State Crime Laboratory is authorized to
33 contract with third parties for purposes of this subchapter.

34 (2) Any other party contracting to carry out the functions of
35 this subchapter shall be subject to the same restrictions and requirements of
36 this subchapter, insofar as applicable, as the State Crime Laboratory as well

1 as any additional restrictions imposed by the State Crime Laboratory.

2
3 SECTION 5. Arkansas Code §§ 12-12-1114 and 12-12-1115 are amended to
4 read as follows:

5 12-12-1114. Confidentiality.

6 (a) All deoxyribonucleic acid (DNA) profiles and samples submitted to
7 the State Crime Laboratory pursuant to this subchapter shall be treated as
8 confidential except as otherwise provided in this subchapter.

9 (b) All DNA records and DNA samples submitted to the State Crime
10 Laboratory pursuant to this subchapter are exempt from the Freedom of
11 Information Act of 1967, §§ 25-19-101 et seq.

12
13 12-12-1115. Prohibition against disclosure.

14 (a)(1) Any person who by virtue of employment, or official position,
15 or any person contracting to carry out any functions under this subchapter,
16 including any officers, employees, and agents of such contractor, who has
17 possession of, or access to, individually identifiable deoxyribonucleic acid
18 (DNA) information contained in the State DNA Data Base or State DNA Data Bank
19 shall not disclose it in any manner to any person or agency not entitled to
20 receive it knowing that such person is not entitled to receive it.

21 (2) No person shall obtain individually identifiable
22 deoxyribonucleic acid (DNA) information from the State DNA Data Base or the
23 State DNA Data Bank without authorization to do so.

24 (3) In order to maintain the computer system security of the
25 State Crime Laboratory, DNA database, and DNA databank program, the computer
26 software, and database structures used by the State Crime Laboratory to
27 implement this subchapter are confidential.

28 (b) Any person who knowingly violates this section is guilty of a
29 Class A misdemeanor.

30
31 /s/ Verkamp

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34 APPROVED: 4/16/2003