

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 86th General Assembly
3 Regular Session, 2007

A Bill

SENATE BILL 873

4
5 By: Senator Miller
6
7

For An Act To Be Entitled

8
9 AN ACT TO PROVIDE FOR THE COLLECTION OF A DNA
10 SAMPLE FOLLOWING AN ARREST OR CRIMINAL CHARGE FOR
11 CERTAIN OFFENSES; TO ESTABLISH PROCEDURES FOR THE
12 COLLECTION, MAINTENANCE, AND DISSEMINATION OF DNA
13 SAMPLES SUBMITTED FOLLOWING AN ARREST OR CRIMINAL
14 CHARGE; AND FOR OTHER PURPOSES.

Subtitle

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16
17 TO PROVIDE FOR THE COLLECTION OF A DNA
18 SAMPLE FOLLOWING AN ARREST OR CRIMINAL
19 CHARGE FOR CERTAIN OFFENSES AND TO
20 ESTABLISH PROCEDURES FOR THE COLLECTION,
21 MAINTENANCE, AND DISSEMINATION OF DNA
22 SAMPLES.
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24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code § 12-12-1001 is amended to read as follows:
28 12-12-1001. Definitions.

29 As used in this subchapter:

30 (1)(A) "Administration of criminal justice" means performing
31 functions of investigation, apprehension, detention, prosecution,
32 adjudication, correctional supervision, or rehabilitation of accused persons
33 or criminal offenders.

34 (B) Administration of criminal justice also includes
35 criminal identification activities and the collection, maintenance, and
36 dissemination of criminal justice information;



1 (2) "Arrest tracking number" means a unique number assigned to
2 an arrestee at the time of each arrest that is used to link that arrest to
3 the final disposition of that charge;

4 (3) "Central repository" means the Arkansas Crime Information
5 Center, which is authorized to collect, maintain, and disseminate criminal
6 history information;

7 (4) "CODIS" means the Federal Bureau of Investigation's Combined
8 DNA Index System that allows the storage and exchange of DNA records
9 submitted by state and local forensic laboratories;

10 ~~(4)~~(5) "Conviction information" means criminal history
11 information disclosing that a person has pleaded guilty or nolo contendere
12 to, or was found guilty of, a criminal offense in a court of law, together
13 with sentencing information;

14 ~~(5)~~(6)(A) "Criminal history information" means a record compiled
15 by a central repository, ~~or~~ the Identification Bureau of the Department of
16 Arkansas State Police, or the State Crime Laboratory on an individual
17 consisting of names and identification data, notations of arrests,
18 detentions, indictments, informations, or other formal criminal charges.
19 This record also includes any dispositions of the charges, as well as
20 notations on correctional supervision and release.

21 (B) Criminal history information does not include
22 fingerprint records on individuals not involved in the criminal justice
23 system, or driver history records;

24 ~~(6)~~(7) "Criminal history information system" means the
25 equipment, procedures, agreements, and organizations thereof, for the
26 compilation, processing, preservation, and dissemination of criminal history
27 information;

28 ~~(7)~~(8) "Criminal justice agency" means a government agency, or
29 any subunit of a government agency, which is authorized by law to perform the
30 administration of criminal justice, and which allocates more than one-half
31 (1/2) its annual budget to the administration of criminal justice;

32 ~~(8)~~(9) "Criminal justice official" means an employee of a
33 criminal justice agency performing the administration of criminal justice;

34 (10)(A) "DNA record" means DNA identification information stored
35 in the State DNA Data Base or CODIS for the purpose of generating
36 investigative leads or supporting statistical interpretation of DNA test

1 results.

2 (B) The DNA record is the result obtained from the DNA
3 typing tests.

4 (C) The DNA record is composed of the characteristics of a
5 DNA sample that are of value in establishing the identity of individuals.

6 (D) The results of all DNA identification tests on an
7 individual's DNA sample are also collectively referred to as the DNA profile
8 of an individual;

9 (11) "DNA sample" means a blood or tissue sample provided by any
10 person as required by this subchapter or submitted to the State Crime
11 Laboratory for analysis or storage, or both;

12 ~~(9)~~(12)(A) "Disposition" means information describing the
13 outcome of any criminal charges, including notations that law enforcement
14 officials have elected not to refer the matter to a prosecutor, that a
15 prosecutor has elected not to commence criminal proceedings, or that
16 proceedings have been indefinitely postponed.

17 (B) Disposition also ~~include~~ includes acquittals,
18 dismissals, probations, charges pending due to mental disease or defect,
19 guilty pleas, nolle prosequi, nolo contendere pleas, findings of guilt,
20 youthful offender determinations, first offender programs, pardons, commuted
21 sentences, mistrials in which the defendant is discharged, executive
22 clemencies, paroles, releases from correctional supervision, or deaths;

23 ~~(10)~~(13) "Dissemination" means disclosing criminal history
24 information or the absence of criminal history information to any person or
25 organization outside the agency possessing the information;

26 (14) "DNA" means deoxyribonucleic acid that is located in the
27 cells and provides an individual's personal genetic blueprint and encodes
28 genetic information that is the basis of human heredity and forensic
29 identification;

30 ~~(11)~~(15) "Expunge" means to restrict access to specific criminal
31 justice purposes as other laws permit;

32 ~~(12)~~(16) "Identification Bureau" means the Identification Bureau
33 of the Department of Arkansas State Police, which may maintain fingerprint
34 card files and other identification information on individuals;

35 ~~(13)~~(17)(A) "Juvenile aftercare and custody information" means
36 information maintained by the Division of Youth Services of the Department of

1 Health and Human Services regarding the status of a juvenile committed to or
 2 otherwise placed in the custody of the division from the date of commitment
 3 until the juvenile is released from aftercare or custody, whichever is later.

4 (B) Juvenile aftercare and custody information may include
 5 the name, address, and phone number of a contact person or entity responsible
 6 for the juvenile;

7 ~~(14)~~(18) "Nonconviction information" means arrest information
 8 without disposition if an interval of one (1) year has elapsed from the date
 9 of arrest and no active prosecution of the charge is pending, as well as all
 10 acquittals and all dismissals; and

11 ~~(15)~~(19) "Pending information" means criminal history
 12 information in some stage of active prosecution or processing.

13
 14 SECTION 2. Arkansas Code § 12-12-1002 is amended to read as follows:
 15 12-12-1002. Penalties.

16 (a)(1) Any criminal justice agency or official subject to
 17 fingerprinting or reporting requirements under this subchapter that knowingly
 18 fails to comply with such reporting requirements ~~shall be deemed upon~~
 19 conviction is guilty of a Class B misdemeanor.

20 (2) Any criminal justice agency or official required to collect,
 21 maintain, or transmit a DNA sample under this subchapter that knowingly fails
 22 to collect, maintain, or transmit a DNA sample as required by this subchapter
 23 upon conviction is guilty of a Class B misdemeanor.

24 (b) Every person who shall knowingly release or disclose to any
 25 unauthorized person any information collected and maintained under this
 26 subchapter, and any person who knowingly obtains such information for
 27 purposes not authorized by this subchapter, ~~shall be deemed upon conviction~~
 28 is guilty of a Class D felony.

29
 30 SECTION 3. Arkansas Code § 12-12-1003 is amended to read as follows:
 31 12-12-1003. Scope.

32 (a) This subchapter governs the:

33 (1) Collection, maintenance, and dissemination of criminal
 34 history information on identifiable individuals charged with or pleading
 35 guilty or nolo contendere to, or being found guilty of, criminal offenses
 36 under the laws of the State of Arkansas; and

1 (2) Dissemination of juvenile aftercare and custody information.

2 (b)(1) The Except as provided in subdivision (b)(2) of this section,
 3 the Arkansas Crime Information Center shall have general authority to may
 4 issue regulations rules and implement the provisions of this subchapter.

5 (2) The State Crime Laboratory may promulgate rules to implement
 6 the provisions of this subchapter relating to the collection, maintenance,
 7 and dissemination of DNA samples or DNA records.

8 (c) The reporting requirements of this subchapter apply to prosecuting
 9 attorneys, judges, and law enforcement, court, probation, correction, and
 10 parole officials, within the limits defined in §§ 12-12-1006 and 12-12-1007.

11 (d) This subchapter does not apply to records of traffic offenses,
 12 including misdemeanor offenses of driving while intoxicated, maintained by
 13 the Department of Finance and Administration.

14 (e) Criminal history information collected and maintained by the
 15 center or the State Crime Laboratory is not considered public record
 16 information within the intent and meaning of the Freedom of Information Act
 17 of 1967, § 25-19-101 et seq.

18
 19 SECTION 4. Arkansas Code § 12-12-1004 is amended to read as follows:
 20 12-12-1004. Completeness and accuracy.

21 (a) The Arkansas Crime Information Center and the State Crime
 22 Laboratory shall implement procedures that will, to the maximum extent
 23 feasible, ensure the completeness and accuracy of all criminal history
 24 information in this state.

25 (b) ~~It shall be the duty of all~~ All criminal justice agencies and
 26 officials ~~to shall~~ maintain complete and accurate records, as may be
 27 appropriate to their area of operation, and ~~to shall~~ report information from
 28 such records as required in §§ 12-12-1006 and 12-12-1007.

29 (c) ~~It shall be the duty of the center to~~ The Arkansas Crime
 30 Information Center shall maintain all information reported under this
 31 subchapter in a complete and permanent manner, to ensure that no records are
 32 altered, purged, or otherwise lost.

33 (d) The State Crime Laboratory shall maintain all DNA samples or DNA
 34 records obtained under this subchapter in a complete and permanent manner to
 35 ensure that no DNA samples or DNA records are altered or lost.

36

1 SECTION 5. Arkansas Code § 12-12-1006 is amended to read as follows:
2 12-12-1006. Fingerprinting, DNA sample collection, and photographing.

3 (a) Immediately following an arrest, the arresting official shall
4 take, or cause to be taken, the fingerprints, a DNA sample, and a photograph
5 of the arrested person if the offense is a felony or a Class A misdemeanor.

6 (b) When the first appearance of a defendant in court is caused by a
7 citation or summons, the arresting official shall take, or cause to be taken,
8 the fingerprints, a DNA sample, and a photograph of the arrested person when
9 the offense is a felony or a Class A misdemeanor.

10 (c) When felony or Class A misdemeanor charges are brought against a
11 person already in the custody of a law enforcement or correctional agency,
12 and the charges are separate from the charges for which the person was
13 previously arrested or confined, the agency shall again take the
14 fingerprints, a DNA sample, and photograph of the person in connection with
15 the new charges.

16 (d) When a defendant pleads guilty or nolo contendere to, or is found
17 guilty of, any felony or Class A misdemeanor charge, the court shall order
18 that the defendant be immediately fingerprinted and photographed by the
19 appropriate law enforcement official and that the defendant provide a DNA
20 sample to the appropriate law enforcement official.

21 (e)(1)(A) Fingerprints or photographs taken after arrest or court
22 appearance pursuant to subsections (a) and (b) of this section, or taken from
23 persons already in custody pursuant to subsection (c) of this section, shall
24 be forwarded to the Identification Bureau of the Department of Arkansas State
25 Police within forty-eight (48) hours after the arrest or appearance.

26 (B) A DNA sample taken after arrest or court appearance
27 pursuant to subsections (a) and (b) of this section or taken from a person
28 already in custody pursuant to subsection (c) of this section shall be
29 forwarded to the State Crime Laboratory within forty-eight (48) hours after
30 the taking of the DNA sample.

31 (2)(A) Fingerprints or photographs taken pursuant to subsection
32 (d) of this section shall be forwarded to the bureau by the fingerprinting
33 official within five (5) working days after the plea or finding of guilt.

34 (B) A DNA sample taken pursuant to subsection (d) of this
35 section shall be forwarded to the State Crime Laboratory by the law
36 enforcement official that collected the DNA sample within five (5) working

1 days after the plea or finding of guilt.

2 (f) Fingerprint cards or fingerprint images may be retained by the
 3 bureau, and criminal history information may be retained by the central
 4 repository for any criminal offense.

5 (g)(1) A DNA sample provided under this section shall be delivered to
 6 the State Crime Laboratory in accordance with rules promulgated by the
 7 laboratory.

8 (2) Any DNA sample provided under this section shall be retained
 9 in the State DNA Data Bank established under § 12-12-1106.

10 (h)(1) Any DNA sample provided under this section shall be taken in
 11 accordance with rules promulgated by the State Crime Laboratory in
 12 consultation with the Department of Arkansas State Police and the Department
 13 of Health and Human Services.

14 (2) Only a person qualified to draw a DNA sample in a medically
 15 approved manner shall draw a DNA sample to be submitted for analysis under
 16 this section.

17 (i) ~~Any individual who is arrested for a criminal offense and who~~
 18 ~~refuses~~ Refusal to be fingerprinted or photographed or to provide a DNA
 19 sample as required under by this subchapter ~~shall be guilty of~~ is a Class B
 20 misdemeanor.

21
 22 SECTION 6. Arkansas Code § 12-12-1008, pertaining to the dissemination
 23 of criminal history information for criminal justice purposes, is amended to
 24 add an additional subsection to read as follows:

25 (e) A DNA sample or DNA record obtained under this subchapter shall be
 26 disseminated only to criminal justice agencies and criminal justice officials
 27 for the administration of criminal justice.

28
 29 SECTION 7. Arkansas Code § 12-12-1009, pertaining to the dissemination
 30 of conviction information for noncriminal justice purposes, is amended to add
 31 an additional subsection to read as follows:

32 (f) A DNA sample or DNA record obtained under this subchapter shall
 33 not be available under this subchapter for noncriminal justice purposes.

34
 35 SECTION 8. Arkansas Code § 12-12-1013 is amended to read as follows:
 36 12-12-1013. Right of review and challenge.

1 (a)(1) A person, upon positive verification of his or her identity,
2 may review criminal history information pertaining to the person compiled and
3 maintained by the Identification Bureau of the Department of Arkansas State
4 Police, the State Crime Laboratory, or the central repository and may
5 challenge the completeness or accuracy of the information.

6 (2)(A) The criminal history information may be reviewed only by
7 the subject, or the subject's attorney or other designee authorized in
8 writing by the subject.

9 (B) A copy of criminal history information maintained in
10 the Arkansas Crime Information Center or the State Crime Laboratory on the
11 subject may be made available to the subject, or the subject's attorney or
12 other designee authorized in writing by the subject.

13 (C) Requests for a copy of any criminal history
14 information maintained in the National Crime Information Center or CODIS
15 shall be addressed to the Federal Bureau of Investigation.

16 (b) If the subject, after appropriate review, believes that the
17 records are incorrect or incomplete in any way, he or she may request an
18 examination and correction of the records by the agency responsible for the
19 records.

20 (c)(1) Should it be determined as a result of the challenge that the
21 criminal history information is inaccurate, incomplete, or improperly
22 maintained, that information shall be appropriately corrected.

23 (2) Immediately thereafter, the agency responsible for the
24 records shall notify every agency or person known to have received this
25 information within the previous one-year period and provide them with
26 corrected information.

27 (3) A person whose record has been corrected shall be entitled
28 to ascertain the names of those agencies or individuals known to have
29 received the previously incorrect criminal history information.

30 (d)(1)(A) Criminal history information which was recorded prior to
31 August 13, 1993, is subject to the right of review and challenge in
32 accordance with this section.

33 (B) However, the duty is to make a reasonable search for
34 such information.

35 (2) There is no duty to provide access to that segment of
36 criminal history information that cannot be located after a reasonable

1 search.

2 (e) The right of a person to review his or her criminal history record
3 shall not be used by a prospective employer or others as a means to
4 circumvent procedures or fees for accessing records for noncriminal justice
5 purposes.

6

7 SECTION 9. Arkansas Code Title 12, Chapter 12, Subchapter 10 is
8 amended to add additional sections to read as follows:

9 12-12-1016. Powers and duties of State Crime Laboratory.

10 In addition to any other power and duty conferred by this subchapter,
11 the State Crime Laboratory shall expand the:

12 (1) State DNA Data Base established under § 12-12-1105 to store
13 and maintain DNA records generated under this subchapter; and

14 (2) State DNA Data Bank established under § 12-12-1106 to retain
15 DNA samples provided under this subchapter.

16

17 12-12-1017. Procedures for conduct, disposition, and use of DNA
18 analysis.

19 (a)(1) The State Crime Laboratory shall promulgate rules governing the
20 procedures to be used in the submission, identification, analysis, storage,
21 and disposition of DNA samples and typing results of DNA samples submitted
22 under this subchapter.

23 (2) The procedures described in subdivision (a)(1) of this
24 section shall include quality assurance guidelines to ensure that DNA
25 identification records meet standards for laboratories that submit DNA
26 records to the State DNA Data Base.

27 (b) The typing results of DNA samples shall be securely stored in the
28 State DNA Data Base, and records of testing shall be retained on file with
29 the State Crime Laboratory in accordance with the procedures established by
30 the Federal Bureau of Investigation.

31 (c)(1) Except as provided in § 12-12-1018, the tests to be performed
32 on each DNA sample shall be used only for law enforcement identification
33 purposes or to assist in the recovery or identification of human remains from
34 disasters or for other humanitarian identification purposes, including
35 identification of missing persons.

36 (2) The results of the analysis conducted pursuant to this

1 subchapter from a person adjudicated delinquent may be used for any law
2 enforcement agency identification purpose, including adult prosecution.

3 (3) The detention, arrest, or conviction of a person based on a
4 State DNA Data Base match or State DNA Data Base information is not
5 invalidated if the DNA sample was obtained or placed in the State DNA Data
6 Base by mistake.

7 (d)(1) The State Crime Laboratory may contract with a third party for
8 purposes of carrying out a function of this subchapter.

9 (2) Any third party contracting to carry out a function of this
10 subchapter is subject to any restriction and requirement of this subchapter
11 that applies to the State Crime Laboratory as well as any additional
12 restriction imposed by the State Crime Laboratory.

13
14 12-12-1018. Receipt and analysis of DNA samples - Availability of
15 information.

16 (a) The State Crime Laboratory shall:

17 (1) Receive, store, and perform analysis on DNA samples or
18 contract for DNA typing analysis with a qualified DNA laboratory that meets
19 guidelines as established by the State Crime Laboratory;

20 (2) Classify and file the DNA record of identification
21 characteristic profiles of DNA samples submitted under this subchapter; and

22 (3) Make information available from the State DNA Data Base as
23 provided in this section.

24 (b) The results of the DNA profile of individuals in the State DNA
25 Data Base shall be made available:

26 (1) To criminal justice agencies or to approved crime
27 laboratories that serve criminal justice agencies; or

28 (2) To a criminal justice official upon written or electronic
29 request from the criminal justice official and in furtherance of an official
30 investigation of a criminal offense.

31 (c) The State Crime Laboratory shall promulgate rules governing the
32 methods of obtaining information from the State DNA Data Base and CODIS and
33 procedures for verification of the identity and authority of the requester.

34 (d)(1) The State Crime Laboratory may create a separate population
35 database composed of DNA samples obtained under this subchapter after all
36 personal identification is removed.

1 (2) The State Crime Laboratory may share or disseminate the
2 population database with other criminal justice agencies or crime
3 laboratories that serve to assist the State Crime Laboratory with statistical
4 databases.

5 (3) The population database may be made available to and
6 searched by other agencies participating in the CODIS system.

7
8 12-12-1019. Removal and destruction of the DNA record and DNA sample.

9 (a)(1) Any person whose DNA record has been included in the State DNA
10 Data Base and whose DNA sample is stored in the State DNA Data Bank following
11 the taking of a DNA sample as required by § 12-12-1006 may apply to any
12 circuit court for removal and destruction of the DNA record and DNA sample on
13 the grounds that the criminal offense was subsequently nolle prossed or
14 dismissed or the person was acquitted at trial.

15 (2) A copy of the application for removal and destruction shall
16 be served on the prosecutor for the county where the arrest was made and the
17 State Crime Laboratory not less than twenty (20) days prior to the date of
18 the hearing on the application.

19 (b)(1) Upon receipt of an order of removal and destruction the State
20 Crime Laboratory shall remove and destroy the DNA record and other
21 identifiable information from the State DNA Data Base and the DNA sample
22 stored in the State DNA Data Bank covered by the order.

23 (2) If the entry in the State DNA Data Base or State DNA Data
24 Bank reflects more than one (1) DNA record or DNA sample taken as required by
25 § 12-12-1006, the entry shall not be removed and destroyed unless the person
26 has obtained an order of removal and destruction for each DNA record or DNA
27 sample on a ground contained in subsection (a) of this section.

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