

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 1764

03/12/2015 Authored by Cornish

The bill was read for the first time and referred to the Committee on Public Safety and Crime Prevention Policy and Finance

1.1 A bill for an act
1.2 relating to public safety; addressing the collection of biological specimens for
1.3 DNA analysis; imposing criminal penalties; amending Minnesota Statutes 2014,
1.4 section 299C.105.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2014, section 299C.105, is amended to read:

1.7 **299C.105 DNA DATA REQUIRED.**

1.8 Subdivision 1. **Required collection of biological specimen for DNA testing.** (a)
1.9 Sheriffs, peace officers, and community corrections agencies operating secure juvenile
1.10 detention facilities shall take or cause to be taken biological specimens for the purpose of
1.11 DNA analysis as defined in section 299C.155, of the following:
1.12 (1) persons who have ~~appeared in court and have had a judicial probable cause~~
1.13 ~~determination on a charge of committing, or persons having been convicted of or~~
1.14 ~~attempting to commit, any of the following~~ been convicted of committing or attempting to
1.15 commit a felony offense;

1.16 (2) persons who have been arrested for committing or attempting to commit any of
1.17 the following offenses after reaching the age of 18 years:

- 1.18 (i) murder under section 609.185, 609.19, or 609.195;
1.19 (ii) manslaughter under section 609.20 or 609.205;
1.20 (iii) assault under section 609.221, 609.222, or 609.223;
1.21 (iv) robbery under section 609.24 or aggravated robbery under section 609.245;
1.22 (v) kidnapping under section 609.25;
1.23 (vi) false imprisonment under section 609.255;

(vii) criminal sexual conduct under section 609.342, 609.343, 609.344, 609.345, 609.3451, subdivision 3, or 609.3453;

(viii) incest under section 609.365;

(ix) burglary under section 609.582, subdivision 1; or

(x) indecent exposure under section 617.23, subdivision 3;

~~(2)~~ (3) persons sentenced as patterned sex offenders under section 609.3455, subdivision 3a; or

~~(3)~~ (4) juveniles who have appeared in court and have had a judicial probable cause determination on a charge of committing, or juveniles having been adjudicated delinquent for committing or attempting to commit, any of the following:

(i) murder under section 609.185, 609.19, or 609.195;

(ii) manslaughter under section 609.20 or 609.205;

(iii) assault under section 609.221, 609.222, or 609.223;

(iv) robbery under section 609.24 or aggravated robbery under section 609.245;

(v) kidnapping under section 609.25;

(vi) false imprisonment under section 609.255;

~~(vii) criminal sexual conduct under section 609.342, 609.343, 609.344, 609.345, 609.3451, subdivision 3, or 609.3453;~~

~~(viii) incest under section 609.365;~~

~~(ix) burglary under section 609.582, subdivision 1; or~~

~~(x) indecent exposure under section 617.23, subdivision 3~~ a felony offense.

(b) Unless the superintendent of the bureau requires a shorter period, within 72 hours the biological specimen required under paragraph (a) must be forwarded to the bureau in such a manner as may be prescribed by the superintendent.

(c) Prosecutors, law enforcement, courts, and probation officers shall attempt to ensure that the biological specimen is taken on a person described in paragraph (a).

Subd. 2. **Law enforcement training; duties.** (a) The persons who collect the biological specimens required under subdivision 1 must be trained to bureau-established standards in the proper method of collecting and transmitting biological specimens.

(b) A law enforcement officer who seeks to collect a biological specimen from a juvenile pursuant to subdivision 1 must notify the juvenile's parent or guardian prior to collecting the biological specimen.

Subd. 3. **Bureau duty Destruction of biological sample.** ~~(a) The bureau shall destroy the biological specimen and return all records to a person who submitted a biological specimen under subdivision 1 but who was found not guilty of a felony. Upon the request of a person who submitted a biological specimen under subdivision 1 but~~

where the charge against the person was later dismissed, the bureau shall destroy the person's biological specimen and return all records to the individual.

~~(b) If the bureau destroys a biological specimen under paragraph (a), the bureau shall also remove the person's information from the bureau's combined DNA index system and return all related records and all copies or duplicates of them.~~

(a) A person may request that the bureau destroy the person's biological specimen, remove all related DNA records from the DNA index system, and return the records to the person on the following grounds:

(1) the conviction or delinquency adjudication that led to the inclusion of the specimen has been reversed; or

(2) the arrest that led to the inclusion of the specimen has:

(i) resulted in a felony charge that has been resolved by a dismissal, successful completion of a preprosecution diversion program, or acquittal; or

(ii) not resulted in a felony charge within one year of arrest.

(b) The bureau shall destroy a person's biological specimen, remove all related DNA records from the DNA index system, and return the records to the person when the person provides the bureau with a written request for this, and:

(1) for specimens included pursuant to a conviction or adjudication, a certified copy of the court order that reversed the conviction or adjudication that led to the inclusion of the specimen; or

(2) for specimens included pursuant to arrest:

(i) a certified copy of the dismissal or acquittal, or satisfactory proof of successful completion of a preprosecution diversion program; or

(ii) a sworn affidavit that no felony charges arising out of the arrest have been filed within one year.

(c) When a person's biological specimen is destroyed and related DNA records are removed from the DNA index system, the superintendent of the bureau shall ensure that the person's specimen and records are removed from the Federal Bureau of Investigation's Combined DNA Index System.

(d) The bureau may not act under this subdivision if the person has a prior felony conviction or delinquency adjudication or a pending felony charge for which collection of a biological specimen is required under this section.

Subd. 4. **Enforcement.** (a) The attorney general or a county attorney may petition a court for an order directing a person required to provide a biological specimen under this section to:

(1) provide a specimen; or

4.1 (2) provide a specimen by alternative means if the person will not cooperate.

4.2 (b) Nothing in this subdivision shall prevent the collection of biological specimens
4.3 by order of a court of competent jurisdiction or the collection of specimens of covered
4.4 offenders.

4.5 Subd. 5. **Limitation on liability.** (a) Persons authorized to collect biological
4.6 specimens are not civilly or criminally liable for the collection of a specimen under this
4.7 section if the person performs these duties in good faith and in a reasonable manner
4.8 according to generally accepted medical or other professional practices.

4.9 (b) The detention, arrest, or conviction of a person based upon a match in the DNA
4.10 index system is not invalidated if the DNA profile was obtained or placed in the DNA
4.11 index system by mistake, provided that the bureau can demonstrate that a good-faith effort
4.12 has been made to comply with all laws and regulations governing the inclusion of this
4.13 information in the DNA index system, and shall not prohibit the law enforcement officials
4.14 from the legitimate use of the information in furtherance of a criminal investigation.

4.15 Subd. 6. **Unlawful dissemination or use of information; criminal penalties;**
4.16 **civil action.** (a) Any person who, without authority, knowingly obtains any biological
4.17 specimen submitted to the bureau for analysis or disseminates information contained in
4.18 the DNA index system is guilty of a felony and may be sentenced to imprisonment for not
4.19 more than one year and a day or to payment of a fine of not more than \$3,000, or both.

4.20 (b) A person who by virtue of employment or official position has possession of, or
4.21 access to, any biological specimen submitted to the bureau for analysis or individually
4.22 identifiable DNA information in the DNA index system and knowingly discloses the
4.23 specimen or information in any manner to any person or agency not authorized to receive
4.24 it is guilty of a felony and may be sentenced to imprisonment for not more than one year
4.25 and a day or to payment of a fine of not more than \$3,000, or both.

4.26 (c) Any person who disseminates, receives, or otherwise uses any biological
4.27 specimen submitted to the bureau for analysis or information in the DNA index system,
4.28 knowing that the conduct is for a purpose other than as authorized by law is guilty of a
4.29 felony and may be sentenced to imprisonment for not more than one year and a day or to
4.30 payment of a fine of not more than \$3,000, or both.

4.31 (d) Any individual who is harmed as a result of a violation of this section may bring
4.32 a cause of action against the person whose violation caused the harm.

4.33 (e) Except as authorized by law, any person who, for purposes of having DNA
4.34 analysis performed, obtains any biological specimen submitted to the bureau for analysis
4.35 is guilty of a felony and may be sentenced to imprisonment for not more than one year and
4.36 a day or to payment of a fine of not more than \$3,000, or both.

5.1 Subd. 7. **Definition.** As used in this section, "DNA index system" means the
5.2 centralized DNA data bank described in section 299C.155, subdivision 3.

5.3 **EFFECTIVE DATE.** This section is effective August 1, 2015, and applies to crimes
5.4 committed on or after that date.