

ARTICLE 9

State DNA Database

SECTION 23-3-600. Short title.

This article may be cited as the State Deoxyribonucleic Acid Identification Record Database Act.

HISTORY: 1994 Act No. 497, Part II, Section 131A.

SECTION 23-3-610. State DNA Database established; purpose.

There is established in the South Carolina Law Enforcement Division (SLED) the State Deoxyribonucleic Acid (DNA) Identification Record Database (State DNA Database). The State Law Enforcement Division shall develop DNA profiles on samples for law enforcement purposes and for humanitarian and nonlaw enforcement purposes, as provided for in Section 23-3-640(B).

HISTORY: 1994 Act No. 497, Part II, Section 131A.

SECTION 23-3-615. Definitions.

As used in this article:

(A) "DNA sample" means the tissue, saliva, blood, or any other bodily fluid taken at the time of arrest from which identifiable information can be obtained.

(B) "DNA profile" means the results of any testing performed on a DNA sample.

(C) "DNA record" means the tissue or saliva samples and the results of the testing performed on the samples.

HISTORY: 2008 Act No. 413, Section 4.B, eff January 1, 2009.

Editor's Note

2008 Act No. 413, Section 4.A provides as follows:

"This SECTION may be cited as the 'South Carolina Protection from Violence Against Women and Children Act'."

2008 Act No. 413, Section 4.I provides as follows:

"This SECTION takes effect on January 1, 2009. However, the implementation of the procedures provided for in this SECTION is contingent upon the State Law Enforcement Division's receipt of funds necessary to implement these provisions. Until the provisions of this SECTION are fully funded and executed, implementation of the provisions of this SECTION shall not prohibit the collection and testing of DNA samples by the methods allowed prior to the implementation of this SECTION from persons convicted, adjudicated delinquent, or on probation or parole for those crimes listed in Section 23-3-620. Upon this SECTION taking effect, a South Carolina law enforcement agency, which has in its possession any DNA samples that have been included in the State DNA Database, immediately must destroy and dispose of the DNA samples in accordance with regulations promulgated by SLED pursuant to Section 23-3-640."

2008 Act No. 413, Section 7 provides as follows:

"The provisions of Section 17-28-350 become effective upon the signature of the Governor. All other provisions become effective January 1, 2009. The enactment of these provisions prior to the effective date indicates the intent of the General Assembly that statewide laws or practices shall exist to ensure additional procedures for post-conviction DNA testing, and proper preservation of biological evidence connected to murder, rape, and nonnegligent homicide in order that application for available federal funds shall be made by the appropriate agencies and considered by the appropriate federal agencies prior to the effective date."

SECTION 23-3-620. When DNA samples required.

(A) Following a lawful custodial arrest, the service of a courtesy summons, or a direct indictment for:

(1) a felony offense or an offense that is punishable by a sentence of five years or more; or

(2) eavesdropping, peeping, or stalking, any of which are committed in this State, a person, except for any juvenile, arrested or ordered by a court must provide a saliva or tissue sample from which DNA may be obtained for inclusion in the State DNA Database. Additionally, any person, including any juvenile, ordered to do so by a court, and any juvenile convicted or adjudicated delinquent for an offense contained in items (1) or (2), must provide a saliva or tissue sample from which DNA may be obtained for inclusion in the State DNA Database.

This sample must be taken at a jail, sheriff's office that serves a courtesy summons, courthouse where a direct presentment indictment is served, or detention facility at the time the person is booked and processed into the jail or detention facility following the custodial arrest, or other location when the taking of fingerprints is required prior to a conviction. The sample must be submitted to SLED as directed by SLED. If appropriately trained personnel are not available to take a sample from which DNA may be obtained, the failure of the arrested person to provide a DNA sample shall not be the sole basis for refusal to release the person from custody. An arrested person who is released from custody before providing a DNA sample must provide a DNA sample at a location specified by the law enforcement agency with jurisdiction over the offense on or before the first court appearance.

(B) Unless a sample has already been provided pursuant to the provisions of subsection (A), before a person may be paroled or released from confinement, the person must provide a suitable sample from which DNA may be obtained for inclusion in the State DNA Database.

(C) An agency having custody of an offender who is required to provide a DNA sample pursuant to subsection (B) must notify SLED at least three days, excluding weekends and holidays, before the person is paroled or released from confinement.

(D) Unless a sample has already been provided pursuant to the provisions of subsection (A), before a person is released from confinement or released from the agency's jurisdiction, a suitable sample from which DNA may be obtained for inclusion in the State DNA Database must be provided as a condition of probation or parole.

(E) A person required to provide a sample pursuant to this section may be required to provide another sample if the original sample is lost, damaged, contaminated, or unusable for examination prior to the creation of a DNA record or DNA profile suitable for inclusion in the State DNA Database.

HISTORY: 1994 Act No. 497, Part II, Section 131A; 2000 Act No. 396, Section 4; 2001 Act No. 99, Section 1; 2004 Act No. 230, Section 1; 2008 Act No. 413, Section 4.C, eff January 1, 2009.

Editor's Note

2008 Act No. 413, Section 4.A provides as follows:

"This SECTION may be cited as the 'South Carolina Protection from Violence Against Women and Children Act'."

2008 Act No. 413, Section 4.I provides as follows:

"This SECTION takes effect on January 1, 2009. However, the implementation of the procedures provided for in this SECTION is contingent upon the State Law Enforcement Division's receipt of funds necessary to implement these provisions. Until the provisions of this SECTION are fully funded and executed, implementation of the provisions of this SECTION shall not prohibit the collection and testing of DNA samples by the methods allowed prior to the implementation of this SECTION from persons convicted, adjudicated delinquent, or on probation or parole for those crimes listed in Section 23-3-620. Upon this SECTION taking effect, a South Carolina law enforcement agency, which has in its possession any DNA samples that have been included in the State DNA Database, immediately must destroy and dispose of the DNA samples in accordance with regulations promulgated by SLED pursuant to Section 23-3-640."

2008 Act No. 413, Section 7 provides as follows:

"The provisions of Section 17-28-350 become effective upon the signature of the Governor. All other provisions become effective January 1, 2009. The enactment of these provisions prior to the effective date indicates the intent of the General Assembly that statewide laws or practices shall exist to ensure additional procedures for post-conviction DNA testing, and proper preservation of biological evidence connected to murder, rape, and nonnegligent homicide in order that application for available federal funds shall be made by the appropriate agencies and considered by the appropriate federal agencies prior to the effective date."

Effect of Amendment

The 2008 amendment rewrote this section.

SECTION 23-3-625. DNA samples of missing persons.

Family members of a missing person may submit DNA samples to the State Law Enforcement Division (SLED). If the person is missing thirty days after a missing person report has been submitted to the Missing Person Information Center, SLED must conduct DNA identification, typing, and testing on the family members' samples. SLED may, within its discretion, conduct DNA identification, typing, and testing on the family members' samples prior to thirty days if SLED determines that such DNA identification, typing, and testing is necessary. If SLED does not have the technology necessary for a particular method of DNA identification, typing, or testing, SLED may submit the DNA samples to a Combined DNA Indexing System (CODIS) laboratory that has the appropriate technology. The results of the identification, typing, and testing must be entered into CODIS.

HISTORY: 2008 Act No. 413, Section 3.B, eff October 21, 2008.

Editor's Note

2008 Act No. 413, Section 3.A provides as follows:

"This SECTION may be referred to and cited as the 'Unidentified Human Remains DNA Database Act'."

SECTION 3.A. This SECTION may be referred to and cited as the "Unidentified Human Remains DNA Database Act".

2008 Act No. 413, Section 7 provides as follows:

"The provisions of Section 17-28-350 become effective upon the signature of the Governor. All other provisions become effective January 1, 2009. The enactment of these provisions prior to the effective date indicates the intent of the General Assembly that statewide laws or practices shall exist to ensure additional procedures for post-conviction DNA testing, and proper preservation of biological evidence connected to murder, rape, and nonnegligent homicide in order that application for available federal funds shall be made by the appropriate agencies and considered by the appropriate federal agencies prior to the effective date."

SECTION 23-3-630. Persons authorized to take DNA sample; immunity from liability.

(A) Only an appropriately trained person may take a sample from which DNA may be obtained.

(B) A person taking a sample pursuant to this article is immune from liability if the sample was taken according to recognized procedures. However, no person is relieved from liability for negligence in the taking of a sample.

HISTORY: 1994 Act No. 497, Part II, Section 131A; 2004 Act No. 230, Section 2; 2008 Act No. 413, Section 4.D, eff January 1, 2009.

Editor's Note

2008 Act No. 413, Section 4.A provides as follows:

"This SECTION may be cited as the 'South Carolina Protection from Violence Against Women and Children Act'."

2008 Act No. 413, Section 4.I provides as follows:

"This SECTION takes effect on January 1, 2009. However, the implementation of the procedures provided for in this SECTION is contingent upon the State Law Enforcement Division's receipt of funds necessary to implement these provisions. Until the provisions of this SECTION are fully funded and executed, implementation of the provisions of this SECTION shall not prohibit the collection and testing of DNA samples by the methods allowed prior to the implementation of this SECTION from persons convicted, adjudicated delinquent, or on probation or parole for those crimes listed in Section 23-3-620. Upon this SECTION taking effect, a South Carolina law enforcement agency, which has in its possession any DNA samples that have been included in the State DNA Database, immediately must destroy and dispose of the DNA samples in accordance with regulations promulgated by SLED pursuant to Section 23-3-640."

2008 Act No. 413, Section 7 provides as follows:

"The provisions of Section 17-28-350 become effective upon the signature of the Governor. All other provisions become effective January 1, 2009. The enactment of these provisions prior to the effective date indicates the intent of the General Assembly that statewide laws or practices shall exist to ensure additional procedures for post-conviction DNA testing, and proper preservation of biological evidence connected to murder, rape, and nonnegligent homicide in order that application for available federal funds shall be made by the appropriate agencies and considered by the appropriate federal agencies prior to the effective date."

Effect of Amendment

The 2008 amendment, in subsection (A), substituted "an appropriately trained person" for "a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, laboratory technician, or other appropriately trained health care worker"; and, in subsection (B), in the first sentence deleted "medical" preceding "procedures", and in the second sentence substituted "a sample" for "any blood sample".

SECTION 23-3-635. DNA identification, typing, and testing of unidentified person's tissue and fluid samples.

Upon notification by the Medical University of South Carolina or other facility preserving the body of an unidentified person that the body remains unidentified after thirty days, the State Law Enforcement Division (SLED) must conduct DNA identification, typing, and testing of the unidentified person's tissue and fluid samples provided to SLED pursuant to Section 17-7-25. SLED may, within its discretion, conduct DNA identification, typing, and testing of the unidentified person's tissue and fluid samples prior to thirty days if SLED determines that such DNA identification, typing, and testing is necessary. The results of the identification, typing, and testing must be entered into the Combined DNA Indexing System.

HISTORY: 2008 Act No. 413, Section 3.C, eff October 21, 2008.

Editor's Note

2008 Act No. 413, Section 3.A provides as follows:

"This SECTION may be referred to and cited as the 'Unidentified Human Remains DNA Database Act'."

2008 Act No. 413, Section 7 provides as follows:

"The provisions of Section 17-28-350 become effective upon the signature of the Governor. All other provisions become effective January 1, 2009. The enactment of these provisions prior to the effective date indicates the intent of the General Assembly that statewide laws or practices shall exist to ensure additional procedures for post-conviction DNA testing, and proper preservation of biological evidence connected to murder, rape, and nonnegligent homicide in order that application for available federal funds shall be made by the appropriate agencies and considered by the appropriate federal agencies prior to the effective date."

SECTION 23-3-640. Specifications, procedures, and equipment; use of DNA profiles; disposition of samples.

(A) Samples must be taken and submitted to SLED pursuant to specifications and procedures developed by SLED in regulation. SLED must conduct DNA identification testing, typing, and analysis in accordance with regulations promulgated by the State Law Enforcement Division on samples received for the purpose of developing a DNA profile, and SLED must use procedures, equipment, supplies, and computer software that are compatible with those used by the Federal Bureau of Investigation.

(B) The DNA profile on a sample may be used:

- (1) to develop a convicted offender database to identify suspects in otherwise nonsuspect cases;
- (2) to develop a population database when personal identifying information is removed;
- (3) to support identification research and protocol development of forensic DNA analysis methods;
- (4) to generate investigative leads in criminal investigations;
- (5) for quality control or quality assurance purposes, or both;
- (6) to assist in the recovery and identification of human remains from mass disasters;
- (7) for other humanitarian purposes including identification of missing persons.

(C) The disposition of all samples obtained pursuant to this article is at the discretion of SLED.

(D) SLED must securely store DNA samples. The samples are confidential and must remain in the custody of SLED or a private laboratory designated by SLED if the laboratory's standards for confidentiality and security are at least as stringent as those of SLED.

HISTORY: 1994 Act No. 497, Part II, Section 131A; 2004 Act No. 230, Section 3.

SECTION 23-3-650. Confidentiality of DNA record and profile; availability; wilful disclosure; penalty.

(A) The DNA record and the results of a DNA profile of an individual provided under this article are confidential and must be securely stored, except that SLED must make available the results to federal, state, and local law enforcement agencies and to approved crime laboratories which serve these agencies and to the solicitor or the solicitor's designee upon a written or electronic request and in furtherance of an official investigation of a criminal offense. These records and results of an individual also must be made available as required by a court order following a hearing directing SLED to release the record or results. However, SLED must not make the DNA record or the DNA profile available to any entity that is not a law enforcement agency unless instructed to do so by order of a court with competent jurisdiction.

(B) To prevent duplications of DNA samples, SLED must coordinate with any law enforcement agency obtaining a DNA sample to determine whether a DNA sample from the person under lawful custodial arrest has been previously obtained and is in the State DNA Database.

(C) A person who wilfully discloses in any manner individually identifiable DNA information contained in the State DNA Database to a person or agency not entitled to receive this information is guilty of a misdemeanor and, upon conviction, must be fined ten thousand dollars or three times the amount of any financial gain realized by the person, whichever is greater, or imprisoned not more than five years, or both.

(D) A person who, without authorization, wilfully obtains individually identifiable DNA information from the State DNA Database is guilty of a misdemeanor and, upon conviction, must be fined ten thousand dollars or three times the amount of any financial gain realized by the person, whichever is greater, or imprisoned not more than five years, or both.

HISTORY: 1994 Act No. 497, Part II, Section 131A; 2004 Act No. 230, Section 4; 2008 Act No. 413, Section 4.E, eff

January 1, 2009.

Editor's Note

2008 Act No. 413, Section 4.A provides as follows:

"This SECTION may be cited as the 'South Carolina Protection from Violence Against Women and Children Act'."

2008 Act No. 413, Section 4.I provides as follows:

"This SECTION takes effect on January 1, 2009. However, the implementation of the procedures provided for in this SECTION is contingent upon the State Law Enforcement Division's receipt of funds necessary to implement these provisions. Until the provisions of this SECTION are fully funded and executed, implementation of the provisions of this SECTION shall not prohibit the collection and testing of DNA samples by the methods allowed prior to the implementation of this SECTION from persons convicted, adjudicated delinquent, or on probation or parole for those crimes listed in Section 23-3-620. Upon this SECTION taking effect, a South Carolina law enforcement agency, which has in its possession any DNA samples that have been included in the State DNA Database, immediately must destroy and dispose of the DNA samples in accordance with regulations promulgated by SLED pursuant to Section 23-3-640."

2008 Act No. 413, Section 7 provides as follows:

"The provisions of Section 17-28-350 become effective upon the signature of the Governor. All other provisions become effective January 1, 2009. The enactment of these provisions prior to the effective date indicates the intent of the General Assembly that statewide laws or practices shall exist to ensure additional procedures for post-conviction DNA testing, and proper preservation of biological evidence connected to murder, rape, and nonnegligent homicide in order that application for available federal funds shall be made by the appropriate agencies and considered by the appropriate federal agencies prior to the effective date."

Effect of Amendment

The 2008 amendment, in subsection (A), in the first sentence substituted "record" for "sample", in the second sentence substituted "records and results" for "results or the DNA sample" and "results" for "sample" and added the third sentence; added subsection (B) relating to preventing duplication of DNA samples; redesignated subsections (B) and (C) as subsections (C) and (D) and in both substituted "ten thousand dollars or three times the amount of any financial gain realized by the person, whichever is greater," for "not more than five hundred dollars" and "five years" for "one year".

SECTION 23-3-660. Expungement of DNA record; grounds for requesting.

(A) A person whose DNA record or DNA profile has been included in the State DNA Database must have his DNA record and his DNA profile expunged if:

(1) the charges pending against the person who has been arrested or ordered to submit a sample:

(a) have been nolle prossed;

(b) have been dismissed; or

(c) have been reduced below the requirement for inclusion in the State DNA Database; or

(2) the person has been found not guilty, or the person's conviction has been reversed, set aside, or vacated.

(B) The solicitor in the county in which the person was charged must notify SLED when the person becomes eligible to have his DNA record and DNA profile expunged. Upon receiving this notification, SLED must begin the expungement procedure.

(C) SLED, at no cost to the person, must purge DNA and all other identifiable record information and the DNA profile

from the State DNA Database if SLED receives either:

(1) a document certified:

(a) by a circuit court judge;

(b) by a prosecuting agency; or

(c) by a clerk of court;

that must be produced to the requestor at no charge within fourteen days after the request is made and after one of the events in subsection (A) has occurred, and no new trial has been ordered by a court of competent jurisdiction; or

(2) a certified copy of the court order finding the person not guilty, or reversing, setting aside, or vacating the conviction.

(D) The person's entry in the State DNA Database shall not be removed if the person has another qualifying offense.

(E) The jail intake officer, sheriff's office employee, courthouse employee, or detention facility intake officer shall provide written notification to the person of his right to have his DNA record and DNA profile expunged and the procedure for the expungement pursuant to this section at the time that the person's saliva or tissue sample is taken. The written notification must include that the person is eligible to have his DNA record and his DNA profile expunged at no cost to the person when:

(1) the charges pending against the person are:

(a) nolle prossed;

(b) dismissed; or

(c) reduced below the requirement for inclusion in the State DNA Database; or

(2) when the person has been found not guilty, or the person's conviction has been reversed, set aside, or vacated.

(F) When SLED completes the expungement process, SLED must notify the person whose DNA record and DNA profile have been expunged and inform him, in writing, that the expungement process has been completed.

HISTORY: 1994 Act No. 497, Part II, Section 131A; 2008 Act No. 413, Section 4.F, eff January 1, 2009.

Editor's Note

2008 Act No. 413, Section 4.A provides as follows:

"This SECTION may be cited as the 'South Carolina Protection from Violence Against Women and Children Act'."

2008 Act No. 413, Section 4.I provides as follows:

"This SECTION takes effect on January 1, 2009. However, the implementation of the procedures provided for in this SECTION is contingent upon the State Law Enforcement Division's receipt of funds necessary to implement these provisions. Until the provisions of this SECTION are fully funded and executed, implementation of the provisions of this SECTION shall not prohibit the collection and testing of DNA samples by the methods allowed prior to the implementation of this SECTION from persons convicted, adjudicated delinquent, or on probation or parole for those crimes listed in Section 23-3-620. Upon this SECTION taking effect, a South Carolina law enforcement agency, which has in its possession any DNA samples that have been included in the State DNA Database, immediately must destroy and dispose of the DNA samples in accordance with regulations promulgated by SLED pursuant to Section 23-3-640."

2008 Act No. 413, Section 7 provides as follows:

"The provisions of Section 17-28-350 become effective upon the signature of the Governor. All other provisions become effective January 1, 2009. The enactment of these provisions prior to the effective date indicates the intent of the General Assembly that statewide laws or practices shall exist to ensure additional procedures for post-conviction DNA testing, and proper preservation of biological evidence connected to murder, rape, and nonnegligent homicide in order that application for available federal funds shall be made by the appropriate agencies and considered by the appropriate federal agencies prior to the effective date."

Effect of Amendment

The 2008 amendment rewrote this section.

SECTION 23-3-670. Cost of collection supplies for processing samples; processing fees.

(A) The cost of collection supplies for processing a sample pursuant to this article must be paid by the general fund of the State. A person who is required to provide a sample pursuant to this article, upon conviction, pleading guilty or nolo contendere, or forfeiting bond, must pay a two hundred fifty dollar processing fee which may not be waived by the court. However:

(1) if the person is incarcerated, the fee must be paid before the person is paroled or released from confinement and may be garnished from wages the person earns while incarcerated; and

(2) if the person is not sentenced to a term of confinement, payment of the fee must be a condition of the person's sentence and may be paid in installments if so ordered by the court.

(B) The processing fee assessed pursuant to this section must be remitted to the general fund of the State and credited to the State Law Enforcement Division to offset the expenses SLED incurs in carrying out the provisions of this article.

HISTORY: 1994 Act No. 497, Part II, Section 131A; 2008 Act No. 413, Section 4.G, eff January 1, 2009.

Editor's Note

2008 Act No. 413, Section 4.A provides as follows:

"This SECTION may be cited as the 'South Carolina Protection from Violence Against Women and Children Act!'"

2008 Act No. 413, Section 4.I provides as follows:

"This SECTION takes effect on January 1, 2009. However, the implementation of the procedures provided for in this SECTION is contingent upon the State Law Enforcement Division's receipt of funds necessary to implement these provisions. Until the provisions of this SECTION are fully funded and executed, implementation of the provisions of this SECTION shall not prohibit the collection and testing of DNA samples by the methods allowed prior to the implementation of this SECTION from persons convicted, adjudicated delinquent, or on probation or parole for those crimes listed in Section 23-3-620. Upon this SECTION taking effect, a South Carolina law enforcement agency, which has in its possession any DNA samples that have been included in the State DNA Database, immediately must destroy and dispose of the DNA samples in accordance with regulations promulgated by SLED pursuant to Section 23-3-640."

2008 Act No. 413, Section 7 provides as follows:

"The provisions of Section 17-28-350 become effective upon the signature of the Governor. All other provisions become effective January 1, 2009. The enactment of these provisions prior to the effective date indicates the intent of the General Assembly that statewide laws or practices shall exist to ensure additional procedures for post-conviction DNA testing, and proper preservation of biological evidence connected to murder, rape, and nonnegligent homicide in order that application for available federal funds shall be made by the appropriate agencies and considered by the appropriate federal agencies prior to the effective date."

Effect of Amendment

The 2008 amendment, in subsection (A), added the first sentence relating to the cost of collection supplies, in the second sentence added ", upon conviction, pleading guilty or nolo contendere, or forfeiting bond, and designated paragraphs (1) and (2) from the last two sentences of the subsection.

SECTION 23-3-680. Promulgation of regulations.

SLED shall promulgate regulations to carry out the provisions of this article.

HISTORY: 1994 Act No. 497, Part II, Section 131A.

SECTION 23-3-690. Promulgation of regulations for processes regarding samples.

SLED shall promulgate regulations for sample testing and analysis and for sample collection, identification, handling, transporting, and shipment which must be complied with by the agency having jurisdiction over the offender.

HISTORY: 1994 Act No. 497, Part II, Section 131A.

SECTION 23-3-700. Implementation of article contingent on funding and regulations; implementation of DNA sample collection.

Implementation of this article and the requirements under this article are contingent upon annual appropriations of sufficient funding and upon promulgation of regulations. However, the State Law Enforcement Division shall begin collecting DNA samples for analysis for crimes outlined in this article no later than July 30, 2000.

HISTORY: 1994 Act No. 497, Part II, Section 131B; 2000 Act No. 396, Section 5.