

# DNA ON ARREST

## EXECUTIVE SUMMARY OF SB 150 / HB 191

**Definition of DNA:** Changes from “blood or swab” to any biological sample. This is a massive expansion which can be used even without the subject’s knowledge.

**Taking of DNA (search):** Changes DNA collection from conviction to arrest. Key difference is those are presumed innocent vs. those who are confirmed guilty (loss of Constitutional rights).

**Costs and payments:** Pays any law enforcement \$5 for each swab collected. No information on likelihood of getting it tested.

**Expungement of innocent people:** If the swab is untested by the time of dismissal, it can be discarded. Once it goes to the FBI, there is no provision for expungement. Time factors are unknown and based on time and money supply.

## SUMMARY OF ISSUES

**DNA is not for identification:** The identity must be established before collection requirements are established (second or subsequent arrest scenes do not require DNA).

**DNA expansion and backlog:** In 2009 Kentucky passed the bill to allow DNA collection for ALL felony convictions. This includes white-collar crimes and variety of non-physical-contact crimes in which DNA has no connection to the case. Studies show crime scene evidence is rarely collected, much less tested. Some samples from as far back as 1970 are said to be yet untested in Kentucky.

**Supreme Court:** The federal and other state laws have various forms of DNA collection. The Supreme Court has never approved mass collection of DNA on arrest. Most states do not allow it.

**Innocence:** DNA is already collected on conviction. The only people affected by the net outcome are those who maintain their innocence.

**Science not foolproof:** The Supreme Court has said, “DNA testing—even when performed with modern STR technology, and even when performed in perfect accordance with protocols—often fails to provide ‘absolute proof’ of anything.”

## LIST OF ISSUES

**Constitution:** CODIS database allows blanket search for unsolved (uncharged/no probable cause) cases.

**Cost:** Analysis only includes mouth swabs. Testing is expensive.

**Court:** The Supreme Court maintains that DNA collection must be tied to reasonable search and seizure.

**Practicality:** More DNA samples added to the rape kits waiting to be tested. KSP does not have ability to handle such a large harvest.

**Priorities:** Studies show that most DNA that needs to be collected isn’t, and the fewer the samples, the better outcomes will be for unsolved cases.

**Science:** 25% of British searches result in more than one match. (FBI does not disclose.)

*“I doubt that the proud men who wrote the charter of our liberties would have been so eager to open their mouths for royal inspection.”*

*- Justice Antonin Scalia, dissenting opinion in Maryland v. King, 569 U.S. \_\_\_\_ (2013)*