

*C.R.S. 16-23-101*

COLORADO REVISED STATUTES

TITLE 16. CRIMINAL PROCEEDINGS  
OFFENDERS - REGISTRATION

ARTICLE 23. DNA CRIME PREVENTION AND EXONERATION OF THE INNOCENT ACT

16-23-101. Short title

This article shall be known and may be cited as "Katie's Law".

16-23-102. Legislative declaration

(1) The general assembly hereby finds and declares that:

- (a) The collection and use of DNA by law enforcement agencies is a valuable tool in preventing crime;
- (b) The analysis of DNA has been used numerous times in the exoneration of innocent individuals charged with or convicted of crimes; and
- (c) The implementation of this article will result in preventing a significant number of violent crimes in Colorado and in solving a number of unsolved crimes in Colorado.

16-23-103. Collection of biological samples from persons arrested for or charged with felonies

(1) The following persons shall submit to collection of a biological substance sample for testing to determine the genetic markers thereof, unless the person has previously provided a biological substance sample for such testing pursuant to a statute of this state and the Colorado bureau of investigation has that sample:

(a) Every adult arrested on or after September 30, 2010, for a felony offense or for the investigation of a felony offense. The arresting law enforcement agency shall collect the biological substance sample from the arrested person as part of the booking process.

(b)

(I) Every adult who is charged with a felony by an indictment, information, or felony complaint filed on or after September 30, 2010, and who is not arrested in connection with the felony charge on or after September 30, 2010, whether because the person's arrest occurred before that date, because the person's appearance is procured by summons rather than arrest, or for other reasons.

(II) In cases where a booking process occurs on or after September 30, 2010, the law enforcement agency conducting the booking process shall collect the biological substance sample from the charged adult as part of the booking process.

(III) In all other cases, upon the adult's first appearance in court following the filing of charges, the court shall require the adult to submit to collection of a biological substance sample by the investigating agency responsible for fingerprinting pursuant to [section 16-21-104](#), and that agency shall collect the sample.

(2) (a) At the person's first appearance in court following the filing of charges, the court shall advise

the person that the biological substance sample collected pursuant to this section shall be destroyed and the results of the testing of the sample shall be expunged from the federal combined DNA index system and any state index system pursuant to the circumstances described in [section 16-23-105](#).

(b) When an action occurs that qualifies an adult for expungement pursuant to [section 16-23-105 \(1\)](#), the court or district attorney shall advise the adult that the adult may make a request to the Colorado bureau of investigation to have the biological substance sample collected pursuant to this section destroyed and results of the testing of the sample expunged from the federal combined DNA index system and any state index system pursuant to the process described in [section 16-23-105](#).

(3) If collection of a biological substance sample is impractical at the time specified in subsection (1) of this section, an appropriate agency may collect a sample at any other time during the adult's detention or during the pendency of charges.

(4) An agency collecting a biological substance sample pursuant to this section shall make reasonable efforts to determine if the Colorado bureau of investigation already holds a biological substance sample from the adult. If, but only if, the agency determines that the Colorado bureau of investigation already holds a sample from the adult, then the agency need not collect a sample.

(5) A law enforcement agency may use reasonable force to collect biological substance samples in accordance with this article using medically recognized procedures.

(6) Each law enforcement agency that collects a biological substance sample shall submit the sample to the Colorado bureau of investigation for testing.

#### 16-23-104. Collection and testing

(1) The Colorado bureau of investigation shall provide all specimen vials, mailing tubes, labels, and other materials and instructions necessary for the collection of biological substance samples required pursuant to this article.

(2) The Colorado bureau of investigation shall chemically test the biological substance samples collected pursuant to this article. The Colorado bureau of investigation shall file and maintain the testing results in the state index system after receiving confirmation from the arresting or charging agency that the adult was charged with a felony. If the Colorado bureau of investigation does not receive confirmation of a felony charge within a year after receiving the sample for testing, the Colorado bureau of investigation shall destroy the biological sample and any results from the testing of the sample. The Colorado bureau of investigation shall furnish the results to a law enforcement agency upon request. The Colorado bureau of investigation shall store and preserve all biological substance samples obtained pursuant to this article.

#### 16-23-105. Expungement

(1) Except as provided in subsection (7) of this section, a person whose biological substance sample is collected pursuant to [section 16-23-103](#) qualifies for expungement if:

(a) In the case of a sample collected based upon the filing of a charge or based upon a final court order, each felony charge stemming from the charges has, by final court order, been dismissed, resulted in an acquittal, or resulted in a conviction for an offense other than a felony offense;

(b) In the case of a sample collected based upon an arrest:

(I) A felony charge was not filed within ninety days after the arrest; or

(II) Each felony charge stemming from the arrest has, by final court order, been dismissed, resulted in an acquittal, or resulted in a conviction for an offense other than a felony offense.

(2) A person who qualifies for expungement under subsection (1) of this section may submit a written

request for expungement to the Colorado bureau of investigation. The request shall include the items listed in this subsection (2) and may include any additional information that may assist the bureau in locating the records of arrest or charges or the biological substance sample or testing results. The following information shall be included in the submitted request:

- (a) The person's name, date of birth, and mailing address;
- (b) The name of the agency that collected the biological substance sample;
- (c) The date of arrest or other date when the sample was taken;
- (d) Whether any charges were filed stemming from the arrest for which a biological substance sample was collected, the identity of the court, and the case number of each case in which charges were filed; and
- (e) A declaration that, to the best of the person's knowledge, he or she qualifies for expungement.

(3) Upon receipt of a request satisfying the requirements of subsection (2) of this section, the Colorado bureau of investigation shall promptly submit a written inquiry to the district attorney in the jurisdiction in which the person's biological substance sample was collected concerning the outcome of the arrest or charges.

(4) Within ninety days after receiving the request submitted pursuant to subsection (2) of this section, the Colorado bureau of investigation shall destroy the biological substance sample collected pursuant to [section 16-23-103](#) and expunge the results of the testing of the sample from the federal combined DNA index system and any state index system, unless the bureau receives written notification from the applicable district attorney that the person does not qualify for expungement and the reasons that the person does not qualify.

(5) Within thirty days after receiving a notice from a district attorney pursuant to subsection (4) of this section, or at the end of the ninety-day period identified in subsection (4) of this section, whichever is earlier, the Colorado bureau of investigation shall send notification by first class mail to the person arrested or charged, either stating that the bureau has destroyed the biological substance sample and expunged the results of the testing of the sample or stating why the bureau has not destroyed the sample and expunged the test results.

(6) A data bank or database match shall not be admitted as evidence against a person in a criminal prosecution and shall not be used as a basis to identify a person if the match is:

- (a) Derived from a biological substance sample that is required to be destroyed or expunged pursuant to this section; and
- (b) Obtained after the required date of destruction or expungement.

(7) This section shall not apply if the person has been arrested for, charged with, or convicted of some other offense on the basis of which a biological substance sample was or could have been collected under state statute.

(8) For purposes of this section, a court order shall not be deemed final if time remains for an appeal or application for discretionary review with respect to the order.

# Notes

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**Editor's note:** In *Maryland v. King*, 569 U.S. 435 , the United States Supreme Court held that DNA identification of arrestees is a reasonable search under the Fourth Amendment of the United States Constitution that can be considered part of the routine booking procedure.

## Case Notes

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### **ANNOTATION**

**Although the collection of defendant's DNA sample was not authorized by this section, the seizure did not violate the constitutional prohibition on unreasonable searches and seizures.** The seizure was not willful and recurrent; the government interest in the DNA sample outweighed defendant's privacy interest since the sample was taken while defendant was in custody and on probation; and the intrusion was minimal. The seizure meets the special needs exception because DNA databases serve a number of special needs beyond securing evidence of wrongdoing. *People v. Lancaster*, 2015 COA 93, 373 P.3d 655.

**Applied** in *People v. Valdez*, 2017 COA 41, 405 P.3d 413.