

As Amended by House Committee

Session of 2013

HOUSE BILL No. 2120

By Committee on Corrections and Juvenile Justice

1-29

1 AN ACT concerning crimes, criminal procedure and punishment; relating
2 to collection and maintenance of DNA evidence; amending K.S.A.
3 2012 Supp. 21-2511 and repealing the existing section.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2012 Supp. 21-2511 is hereby amended to read as
7 follows: 21-2511. (a) *On and after May 2, 1991, any person convicted as*
8 *an required to register as an offender pursuant to K.S.A. 22-4901, and*
9 *amendments thereto, any adult arrested or charged or adjudicated as a*
10 *juvenile offender because of placed in custody for or charged with the*
11 *commission of any felony, a violation of the following offenses, regardless*
12 *of the sentence imposed, shall be required to submit biological samples*
13 *authorized by and given to the Kansas bureau of investigation in*
14 *accordance with the provisions of this act section:*

15 (1) *Any felony;*

16 (2) *subsection (a)(1) of K.S.A. 21-3505, prior to its repeal, or*
17 *subsection (a)(1) or (a)(2) of K.S.A. 2012 Supp 21-5504, and amendments*
18 *thereto;*

19 (3) *a violation of K.S.A. 21-3508, prior to its repeal, or K.S.A. 2012*
20 *Supp. 21-5513, and amendments thereto, when committed in the presence*
21 *of a person 16 or more years of age;*

22 (4) *a violation of K.S.A. 21-4310, prior to its repeal, or K.S.A. 2012*
23 *Supp. 21-6412, and amendments thereto;*

24 (5) *a violation of K.S.A. 21-3424, prior to its repeal, or K.S.A. 2012*
25 *Supp. 21-5411, and amendments thereto, when the victim is less than 18*
26 *years of age;*

27 (6) *a violation of K.S.A. 21-3507, prior to its repeal, or K.S.A. 2012*
28 *Supp. 21-5511, and amendments thereto, when one of the parties involved*
29 *is less than 18 years of age;*

30 (7) *a violation of subsection (b)(1) of K.S.A. 21-3513, prior to its*
31 *repeal, or subsection (b)(1)(A) of K.S.A. 2012 Supp. 21-6420, and*
32 *amendments thereto, when one of the parties involved is less than 18 years*
33 *of age;*

34 (8) *a violation of K.S.A. 21-3515, prior to its repeal, or K.S.A. 2012*
35 *Supp. 21-6421, and amendments thereto, when one of the parties involved*
36 *is less than 18 years of age; or*

1 ~~(9) a violation of K.S.A. 21-3517, prior to its repeal, or subsection~~
2 ~~(a) of K.S.A. 2012 Supp. 21-5505, and amendments thereto; or~~

3 ~~(10) including an attempt, conspiracy or criminal solicitation, as~~
4 ~~defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or~~
5 ~~K.S.A. 2012 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto,~~
6 ~~of any such offenses provided in this subsection. regardless of the sentence~~
7 ~~imposed, shall be required to submit specimens of blood or an oral or other~~
8 ~~biological sample authorized by the Kansas bureau of investigation to the~~
9 ~~Kansas bureau of investigation in accordance with the provisions of this~~
10 ~~act, if such person is:~~

11 ~~(1) Convicted as an adult or adjudicated as a juvenile offender~~
12 ~~because of the commission of a crime specified in subsection (a) on or~~
13 ~~after the effective date of this act;~~

14 ~~(2) ordered institutionalized as a result of being convicted as an adult~~
15 ~~or adjudicated as a juvenile offender because of the commission of a crime~~
16 ~~specified in subsection (a) on or after the effective date of this act; or~~

17 ~~(3) convicted as an adult or adjudicated as a juvenile offender~~
18 ~~because of the commission of a crime specified in this subsection before~~
19 ~~the effective date of this act and is presently confined as a result of such~~
20 ~~conviction or adjudication in any state correctional facility or county jail or~~
21 ~~is presently serving a sentence under K.S.A. 21-4603, 21-4603d, 22-3717~~
22 ~~or K.S.A. 2012 Supp. 38-2361, and amendments thereto.~~

23 (b) Notwithstanding any other provision of law, the Kansas bureau of
24 investigation is authorized to obtain fingerprints and other identifiers for
25 all persons, ~~whether juveniles or adults, covered by~~ *required to submit a*
26 *sample under the provisions of this act section.*

27 ~~(c) Any person required by paragraphs (a)(1) and (a)(2) to provide~~
28 ~~such specimen or sample shall be ordered by the court to have such~~
29 ~~specimen or sample collected within 10 days after sentencing or~~
30 ~~adjudication:~~

31 ~~(1) If placed directly on probation, that person must provide such~~
32 ~~specimen or sample, at a collection site designated by the Kansas bureau~~
33 ~~of investigation. Collection of specimens shall be conducted by qualified~~
34 ~~volunteers, contractual personnel or employees designated by the Kansas~~
35 ~~bureau of investigation. Failure to cooperate with the collection of the~~
36 ~~specimens and any deliberate act by that person intended to impede, delay~~
37 ~~or stop the collection of the specimens shall be punishable as contempt of~~
38 ~~court and constitute grounds to revoke probation;~~

39 ~~(2) if sentenced to the secretary of corrections, such specimen or~~
40 ~~sample will be obtained as soon as practical upon arrival at the~~
41 ~~correctional facility; or~~

42 ~~(3) if a juvenile offender is placed in the custody of the commissioner~~
43 ~~of juvenile justice, in a youth residential facility or in a juvenile~~

1 correctional facility, such specimen or sample will be obtained as soon as
2 practical upon arrival.

3 *Persons required to submit a sample pursuant to subsection (a) shall*
4 *be required to submit such sample at the same time such person is*
5 *fingerprinted pursuant to the booking procedure.*

6 ~~(d) Any person required by paragraph (a)(3) convicted as an adult or~~
7 ~~adjudicated as a juvenile offender and who was incarcerated on May 2,~~
8 ~~1991, for a crime committed prior to May 2, 1991, shall be required to~~
9 ~~provide such specimen or submit a sample shall be required to provide~~
10 ~~such samples prior to final discharge or conditional release at a collection~~
11 ~~site designated by the Kansas bureau of investigation. Collection of~~
12 ~~specimens shall be conducted by qualified volunteers, contractual~~
13 ~~personnel or employees designated by the Kansas bureau of investigation.~~

14 ~~(e) (1) On and after January 1, 2007 through June 30, 2008, any adult~~
15 ~~arrested or charged or juvenile placed in custody for or charged with the~~
16 ~~commission or attempted commission of any person felony or drug~~
17 ~~severity level 1 or 2 felony shall be required to submit such specimen or~~
18 ~~sample at the same time such person is fingerprinted pursuant to the~~
19 ~~booking procedure.~~

20 ~~(2) On and after July 1, 2008, except as provided further, any adult~~
21 ~~arrested or charged or juvenile placed in custody for or charged with the~~
22 ~~commission or attempted commission of any felony; a violation of~~
23 ~~subsection (a)(1) of K.S.A. 21-3505; a violation of K.S.A. 21-3508; a~~
24 ~~violation of K.S.A. 21-4310; a violation of K.S.A. 21-3424, and~~
25 ~~amendments thereto, when the victim is less than 18 years of age; a~~
26 ~~violation of K.S.A. 21-3507, and amendments thereto, when one of the~~
27 ~~parties involved is less than 18 years of age; a violation of subsection (b)~~
28 ~~(1) of K.S.A. 21-3513, and amendments thereto, when one of the parties~~
29 ~~involved is less than 18 years of age; a violation of K.S.A. 21-3515, and~~
30 ~~amendments thereto, when one of the parties involved is less than 18 years~~
31 ~~of age; or a violation of K.S.A. 21-3517, and amendments thereto; shall be~~
32 ~~required to submit such specimen or sample at the same time such person~~
33 ~~is fingerprinted pursuant to the booking procedure.~~

34 ~~(3) (e) The court may order a person to submit a sample upon a~~
35 ~~conviction or adjudication for any crime.~~

36 ~~(f) (e) Prior to taking such samples, the arresting, charging or~~
37 ~~custodial law enforcement or juvenile justice agency shall search the~~
38 ~~Kansas criminal history files through the Kansas criminal justice~~
39 ~~information system to determine if such person's sample is currently on~~
40 ~~file with the Kansas bureau of investigation. In the event that it cannot~~
41 ~~reasonably be established that a DNA sample for such person is on file at~~
42 ~~the Kansas bureau of investigation, the arresting, charging or custodial law~~
43 ~~enforcement or juvenile justice agency shall cause a sample to be~~

1 collected. If such person's sample is on file with the Kansas bureau of
2 investigation, the law enforcement *or juvenile justice* agency ~~is~~ shall not
3 be required to take the sample.

4 ~~(4)(g)~~ **(f)** (1) If a court later determines that there was not probable
5 cause for the arrest, charge or placement in custody or the charges are
6 otherwise dismissed, and the case is not appealed, the Kansas bureau of
7 investigation, upon petition by such person, shall expunge both the DNA
8 sample and the profile record of such person.

9 ~~(5)(2)~~ If a conviction against a person; who is required to submit such
10 specimen or sample; is expunged or a verdict of acquittal with regard to
11 such person is returned, the Kansas bureau of investigation shall, upon
12 petition by such person, expunge both the DNA sample and the profile
13 record of such person.

14 ~~(f)~~ All persons required to register as offenders pursuant to K.S.A.
15 22-4901 et seq., and amendments thereto, shall be required to submit
16 specimens of blood or an oral or other biological sample authorized by the
17 Kansas bureau of investigation to the Kansas bureau of investigation in
18 accordance with the provisions of this act.

19 ~~(g)(h)~~ **(g)** The Kansas bureau of investigation shall provide all
20 specimen vials, mailing tubes, labels kits, supplies and instructions
21 necessary for the collection of blood, oral or other biological samples. The
22 collection of samples shall be performed in a medically approved manner.
23 No person authorized by this section to withdraw blood, and no person
24 assisting in the collection of these samples pursuant to the provisions of
25 this section shall be liable in any civil or criminal action when the act is
26 performed in a reasonable manner according to generally accepted medical
27 practices. The withdrawal of blood for purposes of this act may be
28 performed only by: (1) A person licensed to practice medicine and surgery
29 or a person acting under the supervision of any such licensed person; (2) a
30 registered nurse or a licensed practical nurse; or (3) any qualified medical
31 technician including, but not limited to, an emergency medical technician-
32 intermediate, mobile intensive care technician, advanced emergency
33 medical technician or a paramedic, as those terms are defined in K.S.A.
34 65-6112, and amendments thereto, or a phlebotomist. The *Such* samples
35 shall thereafter be forwarded to the Kansas bureau of investigation; and
36 the bureau shall analyze the *such* samples to the extent allowed by funding
37 available for this purpose.

38 ~~(h)(i)~~ **(h)** (1) The DNA (deoxyribonucleic acid) records and DNA
39 samples shall be maintained by the Kansas bureau of investigation. The
40 Kansas bureau of investigation shall establish, implement and maintain a
41 statewide automated DNA databank and DNA database capable of, but not
42 limited to, searching, matching and storing DNA records. The DNA
43 database as established by this act **section** shall be compatible with the

1 procedures specified by the federal bureau of investigation's combined
2 DNA index system—(~~CODIS~~). The Kansas bureau of investigation shall
3 participate in the—~~CODIS~~ *federal bureau of investigation's combined DNA*
4 *index system* program by sharing data and utilizing compatible test
5 procedures, laboratory equipment, supplies and computer software.

6 ~~(2)~~ **(2)** The DNA records obtained pursuant to this ~~aet~~ **section** shall be
7 confidential and shall be released only to authorized criminal justice
8 agencies.—~~The~~ *Such* DNA records shall be used only for law enforcement
9 identification purposes or to assist in the recovery or identification of
10 human remains from disasters or for other humanitarian identification
11 purposes, including, *but not limited to*, identification of missing persons.

12 ~~(1)(3)~~ **(3)** The Kansas bureau of investigation shall be the state central
13 repository for all DNA records and—~~DNA~~ samples obtained pursuant to this
14 ~~aet~~ **section**. *No DNA records shall be accepted for admission or*
15 *comparison unless obtained in substantial compliance with the provisions*
16 *of this section by an accredited forensic laboratory meeting the national*
17 *DNA index guidelines established by the federal bureau of investigation.*

18 ~~(i)~~ **(i)** *(1)* The Kansas bureau of investigation shall promulgate rules
19 and regulations for:

20 (A) The form and manner of the collection and maintenance of DNA
21 samples;

22 (B) a procedure which allows—the ~~defendant~~ *defendants* to petition to
23 expunge and destroy the DNA samples and profile record in the event of a
24 dismissal of charges, expungement or acquittal at trial; and

25 (C) *any* other procedures for the operation of this ~~aet~~ **section**.

26 (2) ~~These~~ *Such* rules and regulations also shall require compliance
27 with national quality assurance standards to ensure that—the *such* DNA
28 records satisfy standards of acceptance of such records into the national
29 DNA identification index.

30 (3) The provisions of the Kansas administrative procedure act shall
31 apply to all actions taken—~~under the~~ *pursuant to such* rules and regulations
32 ~~so promulgated~~.

33 ~~(j)~~ **(j)** The Kansas bureau of investigation is authorized to contract
34 with third parties for the purposes of implementing this section. Any other
35 party contracting to carry out the functions of this section shall be subject
36 to the same restrictions and requirements of this section, insofar as
37 applicable, as the bureau, as well as any additional restrictions *or*
38 *requirements* imposed by the bureau.

39 ~~(k)~~ **(k)** In the event that a person's DNA sample is lost, *was not*
40 *properly obtained pursuant to the provisions of this act* or is not adequate
41 for any reason, the person shall provide another sample for analysis.

42 ~~(m)~~ **(l)** *The failure of any court or law enforcement or juvenile justice*
43 *agency to strictly comply with this act shall not constitute grounds for*

1 *challenging the validity of the collection and use of the sample as provided*
2 *in this act or for the exclusion of evidence based upon, or derived from*
3 *any sample so taken* **A sample, or any evidence based upon or derived**
4 **from such sample, collected by a law enforcement agency or a juvenile**
5 **justice agency in substantial compliance with the provisions of this**
6 **section, shall not be excluded as evidence in any criminal proceeding**
7 **on the basis that such sample was not validly obtained.**

8 ~~(m)(n)~~ **(m)** Any person who is subject to the requirements of this
9 section, and who, after receiving notification of the requirement to provide
10 a DNA specimen, knowingly refuses to provide such DNA specimen, shall
11 be guilty of a class A nonperson misdemeanor.

12 ~~(o)~~ **(n)** *As used in this section:*

13 ~~(1) "This act" means this section and K.S.A. 21-2512, and~~
14 ~~amendments thereto;~~

15 ~~(2) (1) "DNA" means deoxyribonucleic acid; and~~

16 ~~(3) (2) "profile record" means the identifying information of the~~
17 ~~laboratory performing the examination, case numbers, laboratory~~
18 ~~personnel and the specimen identification number related to a DNA~~
19 ~~profile.~~

20 Sec. 2. K.S.A. 2012 Supp. 21-2511 is hereby repealed.

21 Sec. 3. This act shall take effect and be in force from and after its
22 publication in the statute book.