

HOUSE BILL No. 2880

AN ACT concerning crimes, punishment and criminal procedure; relating to specimen collection; examination of victims of sexual assault; amending K.S.A. 2001 Supp. 21-2511 and 65-448 and repealing the existing sections.

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

Section 1. K.S.A. 2001 Supp. 21-2511 is hereby amended to read as follows: 21-2511. (a) Any person convicted as an adult or adjudicated as a juvenile offender because of the commission of any offense which requires such person to register as an offender pursuant to the Kansas offender registration act, K.S.A. 22-4901 *et seq.*, any off-grid felony, any nondrug severity level 1 through 6 felony; or a violation of subsection (a)(1) of K.S.A. 21-3505; a violation of K.S.A. 21-3508, 21-3602, 21-3715; a violation of K.S.A. 21-4310, subsections (c)(2), (c)(3) and (c)(4) of K.S.A. 65-4142 or K.S.A. 65-4159, and amendments thereto; a violation of K.S.A. 21-3424, and amendments thereto when the victim is less than 18 years of age; a violation of K.S.A. 21-3507, and amendments thereto, when one of the parties involved is less than 18 years of age; a violation of subsection (b)(1) of K.S.A. 21-3513, and amendments thereto, when one of the parties involved is less than 18 years of age; a violation of K.S.A. 21-3515, and amendments thereto, when one of the parties involved is less than 18 years of age; or a violation of K.S.A. 21-3517, and amendments thereto; including an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of any such offenses provided in this subsection regardless of the sentence imposed, shall be required to submit specimens of blood and saliva to the Kansas bureau of investigation in accordance with the provisions of this act, if such person is:

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

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

(3) convicted as an adult or adjudicated as a juvenile offender because of the commission of a crime specified in this subsection before the effective date of this act and is presently confined as a result of such conviction or adjudication in any state correctional facility or county jail or is presently serving a sentence under K.S.A. 21-4603, 22-3717 or 38-1663, and amendments thereto.

(b) Notwithstanding any other provision of law, the Kansas bureau of investigation is authorized to obtain fingerprints and other identifiers for all persons, whether juveniles or adults, covered by this act.

(c) Any person required by paragraphs (a)(1) and (a)(2) to provide specimens of blood and saliva shall be ordered by the court to have specimens of blood and saliva collected within 10 days after sentencing or adjudication:

(1) If placed directly on probation, that person must provide specimens of blood and saliva, at a collection site designated by the Kansas bureau of investigation. *Collection of specimens shall be conducted by qualified volunteers, contractual personnel or employees designated by the Kansas bureau of investigation.* Failure to cooperate with the collection of the specimens and any deliberate act by that person intended to impede, delay or stop the collection of the specimens shall be punishable as contempt of court and constitute grounds to revoke probation;

(2) if sentenced to the secretary of corrections, the specimens of blood and saliva will be obtained ~~immediately~~ *as soon as practical* upon arrival at the ~~Topka~~ correctional facility; or

(3) if a juvenile offender is placed in the custody of the commissioner of juvenile justice, in a youth residential facility or in a juvenile correctional facility, the specimens of blood and saliva will be obtained ~~immediately~~ *as soon as practical* upon arrival.

(d) Any person required by paragraph (a)(3) to provide specimens of blood and saliva shall be required to provide such samples prior to final discharge or conditional release at a collection site designated by the Kansas bureau of investigation. *Collection of specimens shall be conducted by qualified volunteers, contractual personnel or employees designated by the Kansas bureau of investigation.*

(e) The Kansas bureau of investigation shall provide all specimen vials, mailing tubes, labels and instructions necessary for the collection of

blood and saliva samples. The collection of samples shall be performed in a medically approved manner. No person authorized by this section to withdraw blood and collect saliva, and no person assisting in the collection of these samples shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices. The withdrawal of blood for purposes of this act may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) any qualified medical technician including, but not limited to, an emergency medical technician-intermediate or mobile intensive care technician, as those terms are defined in K.S.A. 65-6112, and amendments thereto, or a phlebotomist. The samples shall thereafter be forwarded to the Kansas bureau of investigation ~~for analysis and categorizing. The bureau shall analyze the samples into genetic marker groupings to the extent allowed by funding available for this purpose.~~

(f) ~~The genetic marker groupings~~ *DNA (deoxyribonucleic acid) records and DNA samples* shall be maintained by the Kansas bureau of investigation. The Kansas bureau of investigation shall establish, implement and maintain a statewide automated ~~personal identification system~~ *DNA databank and DNA database* capable of, but not limited to, ~~classifying searching, matching and storing analysis of DNA (deoxyribonucleic acid) and other biological molecules records.~~ *The genetic marker grouping analysis information and identification system DNA database* as established by this act shall be compatible with the procedures specified by the federal bureau of investigation's combined DNA index system (CODIS). The Kansas bureau of investigation ~~may~~ *shall* participate in the CODIS program by sharing data and utilizing compatible test procedures, laboratory equipment, supplies and computer software.

(g) ~~The genetic marker grouping analysis information~~ *DNA records* obtained pursuant to this act shall be confidential and shall be released only to ~~law enforcement officers of the United States, of other states or territories, of the insular possessions of the United States, or foreign countries duly authorized to receive the same, to all law enforcement officers of the state of Kansas and to all prosecutor's agencies~~ *authorized criminal justice agencies.*

(h) The Kansas bureau of investigation shall be the state central repository for all ~~genetic marker grouping analysis information~~ *DNA records and DNA samples* obtained pursuant to this act. The Kansas bureau of investigation ~~may~~ *shall* promulgate rules and regulations for the form and manner of the collection of ~~blood and saliva samples, maintenance and expungement of DNA samples~~ and other procedures for the operation of this act. *These rules and regulations also shall require compliance with national quality assurance standards to ensure that the DNA records satisfy standards of acceptance of such records into the national DNA identification index.* The provisions of the Kansas administrative procedure act shall apply to all actions taken under the rules and regulations so promulgated.

Sec. 2. K.S.A. 2001 Supp. 65-448 is hereby amended to read as follows: 65-448. (a) Upon the request of any law enforcement officer and with the written consent of the reported victim, any physician, *a licensed physician assistant, who has been specially trained in performing sexual assault evidence collection, or a registered professional nurse, who has been specially trained in performing sexual assault evidence collection,* on call or on duty at a medical care facility of this state, as defined by subsection (h) of K.S.A. 65-425, and amendments thereto, shall examine persons who may be victims of sexual offenses cognizable as violations of K.S.A. 21-3502, 21-3503, 21-3504, 21-3505, 21-3506, 21-3602 or 21-3603, and amendments thereto, using Kansas bureau of investigation sexual assault evidence collection kits or similar kits approved by the Kansas bureau of investigation, for the purposes of gathering evidence of any such crime. If the physician, *licensed physician assistant or registered professional nurse* refuses to perform such physical examination the prosecuting attorney is hereby empowered to seek a mandatory injunction against such physician, *licensed physician assistant or registered professional nurse* to enforce the provisions of this act. Any refusal by a physician, *licensed physician assistant or registered professional nurse* to per-

form an examination which has been requested pursuant to this section shall be reported by the county or district attorney to the state board of healing arts or the board of nursing, whichever is applicable, for appropriate disciplinary action. The department of health and environment, in cooperation with the Kansas bureau of investigation, shall establish procedures for gathering evidence pursuant to this section. A minor may consent to examination under this section. Such consent is not subject to disaffirmance because of minority, and consent of parent or guardian of the minor is not required for such examination. The hospital or medical facility shall give written notice to the parent or guardian of a minor that such an examination has taken place.

(b) Costs of conducting an examination of a victim as herein provided including the costs of the sexual assault evidence collection kits shall be charged to and paid by the county where the alleged offense was committed. Such county may charge the defendant for the costs paid herein as court costs assessed pursuant to K.S.A. 28-172a or 28-172c, and amendments thereto.

Sec. 3. K.S.A. 2001 Supp. 21-2511 and 65-448 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.