

## HOUSE BILL No. 2381

By Committee on Judiciary

2-5

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9 AN ACT concerning criminal procedure; relating to the collection of  
10 DNA specimens; amending K.S.A. 2006 Supp. 21-2511 and repealing  
11 the existing section; also repealing K.S.A. 2006 Supp. 21-2511a.  
12

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

14 Section 1. K.S.A. 2006 Supp. 21-2511 is hereby amended to read as  
15 follows: 21-2511. (a) Any person convicted as an adult or adjudicated as  
16 a juvenile offender because of the commission of any felony; a violation  
17 of subsection (a)(1) of K.S.A. 21-3505; a violation of K.S.A. 21-3508; a  
18 violation of K.S.A. 21-4310; a violation of K.S.A. 21-3424, and amend-  
19 ments thereto, when the victim is less than 18 years of age; a violation of  
20 K.S.A. 21-3507, and amendments thereto, when one of the parties in-  
21 volved is less than 18 years of age; a violation of subsection (b)(1) of K.S.A.  
22 21-3513, and amendments thereto, when one of the parties involved is  
23 less than 18 years of age; a violation of K.S.A. 21-3515, and amendments  
24 thereto, when one of the parties involved is less than 18 years of age; or  
25 a violation of K.S.A. 21-3517, and amendments thereto; including an at-  
26 tempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301,  
27 21-3302 or 21-3303 and amendments thereto, of any such offenses pro-  
28 vided in this subsection regardless of the sentence imposed, shall be re-  
29 quired to submit specimens of blood or an oral or other biological sample  
30 authorized by the Kansas bureau of investigation to the Kansas bureau of  
31 investigation in accordance with the provisions of this act, if such person  
32 is:

33 (1) Convicted as an adult or adjudicated as a juvenile offender be-  
34 cause of the commission of a crime specified in subsection (a) on or after  
35 the effective date of this act;

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

39 (3) convicted as an adult or adjudicated as a juvenile offender because  
40 of the commission of a crime specified in this subsection before the ef-  
41 fective date of this act and is presently confined as a result of such con-  
42 viction or adjudication in any state correctional facility or county jail or is  
43 presently serving a sentence under K.S.A. 21-4603, 21-4603d, or 22-3717

1 or ~~38-1663~~ *K.S.A. 2006 Supp. 38-2361*, and amendments thereto.

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

5 (c) Any person required by paragraphs (a)(1) and (a)(2) to provide  
6 such specimen or sample shall be ordered by the court to have such  
7 specimen or sample collected within 10 days after sentencing or  
8 adjudication:

9 (1) If placed directly on probation, that person must provide such  
10 specimen or sample, at a collection site designated by the Kansas bureau  
11 of investigation. Collection of specimens shall be conducted by qualified  
12 volunteers, contractual personnel or employees designated by the Kansas  
13 bureau of investigation. Failure to cooperate with the collection of the  
14 specimens and any deliberate act by that person intended to impede,  
15 delay or stop the collection of the specimens shall be punishable as con-  
16 tempt of court and constitute grounds to revoke probation;

17 (2) if sentenced to the secretary of corrections, such specimen or  
18 sample will be obtained as soon as practical upon arrival at the correc-  
19 tional facility; or

20 (3) if a juvenile offender is placed in the custody of the commissioner  
21 of juvenile justice, in a youth residential facility or in a juvenile correc-  
22 tional facility, such specimen or sample will be obtained as soon as prac-  
23 tical upon arrival.

24 (d) Any person required by paragraph (a)(3) to provide such speci-  
25 men or sample shall be required to provide such samples prior to final  
26 discharge or conditional release at a collection site designated by the  
27 Kansas bureau of investigation. Collection of specimens shall be con-  
28 ducted by qualified volunteers, contractual personnel or employees des-  
29 ignated by the Kansas bureau of investigation.

30 (e) (1) On and after January 1, 2007 through June 30, 2008, any adult  
31 arrested or charged or juvenile placed in custody for or charged with the  
32 commission or attempted commission of any person felony or drug se-  
33 verity level 1 or 2 felony shall be required to submit such specimen or  
34 sample at the same time such person is fingerprinted pursuant to the  
35 booking procedure.

36 (2) On and after July 1, 2008, except as provided further, any adult  
37 arrested or charged or juvenile placed in custody for or charged with the  
38 commission or attempted commission of any felony shall be required to  
39 submit such specimen or sample at the same time such person is finger-  
40 printed pursuant to the booking procedure.

41 (3) Prior to taking such samples, the arresting, charging or custodial  
42 law enforcement agency shall search the Kansas criminal history files  
43 through the Kansas criminal justice information system to determine if

1 such person's sample is currently on file with the Kansas bureau of in-  
2 vestigation. In the event that it cannot reasonably be established that a  
3 DNA sample for such person is on file at the Kansas bureau of investi-  
4 gation, the arresting, charging or custodial law enforcement agency shall  
5 cause a sample to be collected. If such person's sample is on file with the  
6 Kansas bureau of investigation, the law enforcement agency is not re-  
7 quired to take the sample.

8 (4) ~~If a court later determines that there was not probable cause for~~  
9 ~~the arrest, charge or placement in custody, the court shall send a copy of~~  
10 ~~such determination to the Kansas bureau of investigation. The Kansas~~  
11 ~~bureau of investigation shall forthwith remove such specimen or sample~~  
12 ~~from the Kansas bureau of investigation database records. After a deter-~~  
13 ~~mination by a court that probable cause exists for the arrest, charge or~~  
14 ~~placement in custody, such specimen or sample shall be submitted to the~~  
15 ~~Kansas bureau of investigation. The court shall ensure, at the time of such~~  
16 ~~person's first appearance, that the person has submitted such specimen~~  
17 ~~or sample.~~

18 (5) If charges against a person, who is required to submit such spec-  
19 imen or sample, are dismissed, a conviction against such person is ex-  
20 punged or a verdict of acquittal with regard to such person is returned,  
21 the court shall send a copy of such order to the Kansas bureau of inves-  
22 tigation. The Kansas bureau of investigation shall forthwith destroy such  
23 specimen or sample, but retain the record in the Kansas bureau of in-  
24 vestigation database.

25 (6) If a person, who is required to submit such specimen or sample,  
26 has not been charged and the statute of limitations on the crime charged  
27 has expired the prosecutor shall send documentation of such expiration  
28 to the Kansas bureau of investigation. The Kansas bureau of investigation  
29 shall forthwith destroy such specimen or sample, but retain the record in  
30 the Kansas bureau of investigation database.

31 (f) The Kansas bureau of investigation shall provide all specimen vials,  
32 mailing tubes, labels and instructions necessary for the collection of oral  
33 or other biological samples. No person authorized by this section to collect  
34 oral or other biological samples, and no person assisting in the collection  
35 of these samples shall be liable in any civil or criminal action when the  
36 act is performed in a reasonable manner according to rules and regula-  
37 tions promulgated by the Kansas bureau of investigation. The samples  
38 shall thereafter be forwarded to the Kansas bureau of investigation. The  
39 bureau shall analyze the samples to the extent allowed by funding avail-  
40 able for this purpose.

41 (g) The Kansas bureau of investigation shall provide all specimen vi-  
42 als, mailing tubes, labels and instructions necessary for the collection of  
43 blood samples. The collection of samples shall be performed in a medi-

1 cally approved manner. No person authorized by this section to withdraw  
2 blood, and no person assisting in the collection of these samples shall be  
3 liable in any civil or criminal action when the act is performed in a rea-  
4 sonable manner according to generally accepted medical practices. The  
5 withdrawal of blood for purposes of this act may be performed only by:  
6 (1) A person licensed to practice medicine and surgery or a person acting  
7 under the supervision of any such licensed person; (2) a registered nurse  
8 or a licensed practical nurse; or (3) any qualified medical technician in-  
9 cluding, but not limited to, an emergency medical technician-interme-  
10 diate or mobile intensive care technician, as those terms are defined in  
11 K.S.A. 65-6112, and amendments thereto, or a phlebotomist. The samples  
12 shall thereafter be forwarded to the Kansas bureau of investigation. The  
13 bureau shall analyze the samples to the extent allowed by funding avail-  
14 able for this purpose.

15 (h) The DNA (deoxyribonucleic acid) records and DNA samples shall  
16 be maintained by the Kansas bureau of investigation. The Kansas bureau  
17 of investigation shall establish, implement and maintain a statewide au-  
18 tomated DNA databank and DNA database capable of, but not limited  
19 to, searching, matching and storing DNA records. The DNA database as  
20 established by this act shall be compatible with the procedures specified  
21 by the federal bureau of investigation's combined DNA index system  
22 (CODIS). The Kansas bureau of investigation shall participate in the  
23 CODIS program by sharing data and utilizing compatible test procedures,  
24 laboratory equipment, supplies and computer software.

25 (i) The DNA records obtained pursuant to this act shall be confiden-  
26 tial and shall be released only to authorized criminal justice agencies. The  
27 DNA records shall be used only for law enforcement identification pur-  
28 poses or to assist in the recovery or identification of human remains from  
29 disasters or for other humanitarian identification purposes, including  
30 identification of missing persons.

31 (j) (1) The Kansas bureau of investigation shall be the state central  
32 repository for all DNA records and DNA samples obtained pursuant to  
33 this act. The Kansas bureau of investigation shall promulgate rules and  
34 regulations for: (A) The form and manner of the collection and mainte-  
35 nance of DNA samples;

36 (B) a procedure which allows the defendant to request the DNA sam-  
37 ples be destroyed in the event of a dismissal of charges expungement,  
38 acquittal at trial or statute of limitations expiration; and

39 (C) other procedures for the operation of this act.

40 (2) These rules and regulations also shall require compliance with  
41 national quality assurance standards to ensure that the DNA records sat-  
42 isfy standards of acceptance of such records into the national DNA iden-  
43 tification index.

1 (3) The provisions of the Kansas administrative procedure act shall  
2 apply to all actions taken under the rules and regulations so promulgated.

3 (k) The Kansas bureau of investigation is authorized to contract with  
4 third parties for the purposes of implementing this section. Any other  
5 party contracting to carry out the functions of this section shall be subject  
6 to the same restrictions and requirements of this section, insofar as ap-  
7 plicable, as the bureau, as well as any additional restrictions imposed by  
8 the bureau.

9 (l) In the event that a person's DNA sample is lost or is not adequate  
10 for any reason, the person shall provide another sample for analysis.

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

15 Sec. 2. K.S.A. 2006 Supp. 21-2511 and 21-2511a are hereby  
16 repealed.

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