

SESSION OF 2006

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2554**

As Agreed to March 31, 2006

Brief*

HB 2554 would amend current law regarding the State DNA database and who would be required to submit to DNA specimen collections. Under current law any adult or juvenile convicted of a felony or certain non-felony offenses would be required to submit a blood and saliva sample within ten days of conviction or adjudication. Individuals convicted before the effective date of the current law would be required to provide specimens prior to final discharge or conditional release.

Provisions of the bill are as follows:

- Requirements to provide DNA specimens would be expanded to include an oral or other biological sample authorized by the Kansas Bureau of Investigation (KBI).
- On and after January 1, 2007 through June 30, 2008, any adult arrested or charged or juvenile placed in custody for or charged with the commission or attempted commission of any person felony or drug grid severity level 1 or 2 felony would be required to submit such specimen or sample at the same time such person is fingerprinted pursuant to the booking procedure.
- On or after July 1, 2008 any arrested or charged adult or juvenile placed in custody for the commission or attempted commission of any felony would be required to submit a specimen or sample in addition to finger prints.
- Prior to taking a specimen or samples there would be a required search of the Kansas Criminal History Files through the Kansas Criminal Justice Information System to determine if such person's sample is on file with the KBI. If a sample is on file with

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. The conference committee summary report may be accessed on the Internet at <http://www.kslegislature.org>

the KBI, the sample would not be required to be taken.

- The prohibition against the requirement of providing an oral sample for violations of felony provisions of driving under the influence of drugs or alcohol would be deleted.
- The KBI would be required to supply all testing materials and supplies. Immunity would be provided for persons authorized to collect specimens or samples as well as to persons who assist in the collection when actions are done in a reasonable manner. The samples would be forwarded to the KBI for analysis to the extent allowed by available funding.
- If charges against a person are dismissed, a conviction against a person is expunged or a verdict of acquittal with regard to the person is returned, then upon the person's request the KBI shall forthwith destroy the specimen or sample, but retain the record in the database.
- If a person has not been charged and the statute of limitations on the crime has expired, then upon the person's request the KBI shall forthwith destroy the specimen or sample, but retain the record in the database.
- Any person required to submit a specimen, upon conviction, would be required to pay a separate court cost of \$100 as a KBI DNA Database Fee to be deposited in the DNA Database Fee Fund for use in providing DNA laboratory services; purchase and maintenance of equipment for use by the laboratory; and education, training, and scientific development of KBI personnel regarding DNA analysis.
- The KBI would be required to promulgate rules and regulations for the form and manner of collection, maintenance of DNA samples and expungement of specimens.
- The KBI would be authorized to contract with third parties for the implementation of the collection of DNA samples.
- Any person who is subject to the requirements of the Act and who, after receiving notification of the requirement to provide DNA specimen, knowingly refuses to provide such DNA specimen, would be guilty of a class A nonperson misdemeanor.
- The detention, arrest or conviction of a person based upon a

database match or database information would not be invalidated if it is determined that the specimen was obtained or placed in the database by mistake or not removed from the database as required.

In addition, the bill would prohibit the expungement of driving under the influence convictions and expand the entities which would have access to the arrest, convictions and drivers' records that have been expunged to include the Kansas Sentencing Commission, the Kansas Law Enforcement Training Center and law enforcement agencies in regard to employment. The bill also would allow for disclosure of a DUI arrest, conviction or diversion upon application for employment as a law enforcement officer.

Conference Committee Action

The House Conference Committee agreed to all Senate amendments. The full Conference Committee then agreed to the following:

- Prohibition of the expungement of DUI convictions;
- Expansion of entities that have access to DUI records; and
- Allowance of disclosure involving an application for employment as a law enforcement officer.

Background

The bill's main sponsor, Representative Pat Colloton, appeared in favor of the bill. Others who testified in support of the measure included Sheriff Frank Denning from Johnson County; Gary Howell with the Johnson County Crime Laboratory; Hamilton County Sheriff Mike Keating; Kyle Smith Deputy Director, KBI; and Randy Rogers with the Kansas Sheriff's Association. Written testimony in support of the bill was received on behalf of the Department of Justice.

The Senate Committee deleted a requirement that the clerk of the district court would be required to notify the Kansas Bureau of Investigation of final disposition of the criminal proceedings. The Senate Committee also added a clarifying provision dealing with expungement and added a requirement that a person provide another sample if the person's DNA sample is lost or not adequate.

The Senate Committee of the Whole added the amendments

dealing with a person's right to have the DNA specimen destroyed when charges are dismissed, an expungement occurs, an acquittal, charges are not brought or statute of limitations has run.

The corrected fiscal note on the original bill, indicates that the Kansas Bureau of Investigation estimates that passage of HB 2554 would have a significant long-term fiscal effect on the Bureau's expenses, which would increase for the forensic laboratory for the collection, analysis, and storage of the DNA samples, as well as for maintenance of the database. The bill would require that only oral swabs be used rather than the saliva samples and blood draws currently required. Thus, the laboratory would be required to make a number of changes in equipment and methodology. In addition, the Bureau would be dealing with significantly increased numbers of samples, since HB 2554 changes the requirement for those tested from individuals convicted to individuals arrested.

The Bureau breaks out the expenses to be incurred with the passage of this bill into two phases. Phase I would begin July 1, 2006, when the bill would cause an increase in the number of people tested, not the level of increase that would occur beginning in FY 2008, when testing would be required in arrests for all felonies, except for driving under the influence. The Bureau bases its estimates on actual arrest rates for FY 2005, and of that number (6,593) 2,720 persons were convicted. Because state law already requires DNA testing of convicted felons, the number of additional tests to be administered would be 3,873 (6,593 - 2,720). During Phase I, the Bureau expects to add one administrative assistant to track submitted samples, contact agencies about the accuracy of information on submitted samples, maintain the database, and perform other associated clerical duties at a cost of \$35,000. Computer and software for the administrative assistant is projected to cost \$2,600. The Bureau would also have expenses of \$19,365 for collection kits for oral swabbing (\$5.00 per kit X 3,873 samples), \$6,000 to provide training in sample collection and preservation for law enforcement personnel, \$50,000 for BSD paper punch, \$154,920 for supplies for analysis of the samples (consisting of consumables at a rate of \$40 per sample X 3,873 samples), and \$250,000 for computer programming to expand the existing database for tracking submitted samples. The total expenditures for Phase I are expected to be \$517,885 from the State General Fund.

For Phase II, which would begin July 1, 2008 (FY 2009), the Bureau bases its estimates on FY 2005 actual arrests for all felonies less those arrested for driving while intoxicated, and of that number,

19,366, 7,293 persons were convicted, with the number of additional tests to be conducted 12,073 (19,366 - 7,293). For this phase, the Bureau expects to add one DNA forensic scientist to perform quality assurance and quality control measures on collected samples and upload data to state and national data banks at a cost of \$75,000 per year. The Bureau would also add one laboratory technician who would prepare samples for analysis, assist forensic scientists, order, stock and dispense DNA kits to Kansas law enforcement agencies, receive kits, and perform data entry. This FTE position is expected to cost \$35,000 per year. The Bureau would also have expenses of \$60,365 for collection kits (\$5.00 per kit X 12,073 samples), \$190,000 for a model 3130xl genetic analyzer, \$489,920 for supplies for analysis of the samples (consumables at the rate of \$40 per sample X 12,073 samples), and \$28,000 for computers, software, and servers for tracking submitted samples, data entry, and creating reports. The total expenditures for FY 2009, including the cost of the administrative assistant added during Phase I (\$35,000), are expected to be \$906,985.

During Phase I, the number of persons convicted, who would be charged the \$100 court cost for a Kansas Bureau of Investigation DNA database fee, is expected to be approximately 2,720, for projected revenue of \$272,000 (\$100 X 2,720) for FY 2007. During Phase II, the number of persons convicted is expected to be approximately 7,293, for projected revenue of \$729,300 (\$100 X 7,293). This estimate assumes that all fees would be paid. However, it is not likely that all convicted felons will have the money or the ability to earn the money to pay this fee upon their release. The fiscal effect expected from passage of this bill would be in addition to the amounts included in *The FY 2007 Governor's Budget Report*.