

Proposed Amendments for HB 2120  
Offered by: Senators Ostmeier and Emler  
March 8, 2013  
Prepared by: Mike Heim  
Office of Revisor of Statutes

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

sections  
and 21-6403

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

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

- (1) Any felony;
- (2) subsection (a)(1) of K.S.A. 21-3505, prior to its repeal, or subsection (a)(1) or (a)(2) of K.S.A. 2012 Supp. 21-5504, and amendments thereto;
- (3) a violation of K.S.A. 21-3508, prior to its repeal, or K.S.A. 2012 Supp. 21-5513, and amendments thereto, when committed in the presence of a person 16 or more years of age;
- (4) a violation of K.S.A. 21-4310, prior to its repeal, or K.S.A. 2012 Supp. 21-6412, and amendments thereto;
- (5) a violation of K.S.A. 21-3424, prior to its repeal, or K.S.A. 2012 Supp. 21-5411, and amendments thereto, when the victim is less than 18 years of age;
- (6) a violation of K.S.A. 21-3507, prior to its repeal, or K.S.A. 2012 Supp. 21-5511, and amendments thereto, when one of the parties involved is less than 18 years of age;
- (7) a violation of subsection (b)(1) of K.S.A. 21-3513, prior to its repeal, or subsection (b)(1)(A) of K.S.A. 2012 Supp. 21-6420, and amendments thereto, when one of the parties involved is less than 18 years of age;
- (8) a violation of K.S.A. 21-3515, prior to its repeal, or K.S.A. 2012 Supp. 21-6421, and amendments thereto, when one of the parties involved is less than 18 years of age; or

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

3 ~~(10) attempting 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 (c) 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 the*  
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)(4)~~ (g) The Kansas bureau of investigation shall provide all  
20 specimen vials, mixing 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 ~~internedite, 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)(1)~~ (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 ~~(1)(2)~~ The DNA records obtained pursuant to this act 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)~~ The Kansas bureau of investigation shall be the state central  
13 repository for all DNA records and DNA samples obtained pursuant to this  
14 act 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 ~~(1)~~ (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 act 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 ~~(1)~~ (I) 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 ~~(1)~~ (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 ~~(1)~~ (1) 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)(m)~~ (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 ~~(j)~~ (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.~~

Insert Attachment A

and 21-6403 are

And by redesignating sections accordingly

Attachment A

Sec. 2. K.S.A. 2012 Supp. 21-6403 is hereby amended to read as follows: 21-6403. As used in K.S.A. 2012 Supp. 21-6403 through 21-6409, and amendments thereto:

- (a) "Bet" means a bargain in which the parties agree that, dependent upon chance, one stands to win or lose something of value specified in the agreement. A bet does not include:
  - (1) Bona fide business transactions which are valid under the law of contracts including, but not limited to, contracts for the purchase or sale at a future date of securities or other commodities, and agreements to compensation for loss caused by the happening of the chance including, but not limited to, contracts of indemnity or guaranty and life or health and accident insurance;
  - (2) offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength or endurance or to the bona fide owners of animals or vehicles entered in such a contest;
  - (3) a lottery as defined in this section;
  - (4) any bingo game by or for participants managed, operated or conducted in accordance with the laws of the state of Kansas by an organization licensed by the state of Kansas to manage, operate or conduct games of bingo;
  - (5) a lottery operated by the state pursuant to the Kansas lottery act;
  - (6) any system of parimutuel wagering managed, operated and conducted in accordance with the Kansas parimutuel racing act; or
  - (7) tribal gaming; or
  - (8) a raffle as defined in this section.
- (b) "lottery" means an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance. A lottery does not include:
  - (1) A lottery operated by the state pursuant to the Kansas lottery act; or
  - (2) tribal gaming;
  - (c) "consideration" means anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant. Mere registration without purchase of goods or services; personal attendance at places or events; without payment of an admission price or fee; listening to or watching radio and television programs; answering the telephone or making a telephone call and acts of like nature are not consideration. "Consideration" shall not include sums of money paid by or for:
    - (1) Participants in any bingo game managed, operated or conducted in accordance with the laws of the state of Kansas by any bona fide nonprofit religious, charitable, fraternal, educational or veteran organization licensed to manage, operate or conduct bingo games under the laws of the state of Kansas and it shall be conclusively presumed that such sums paid by or for such participants were intended by such participants to be for the benefit of the sponsoring organizations for the use of such sponsoring organizations in furthering the purposes of such sponsoring organizations, as set forth in the appropriate paragraphs of subsection (c) or (d) of section 501 of the internal revenue code of 1986 and as set forth in K.S.A. 79-4701, and amendments thereto;
    - (2) participants in any lottery operated by the state pursuant to the Kansas lottery act;
    - (3) participants in any system of parimutuel wagering managed, operated and conducted in accordance with the Kansas parimutuel racing act; or
    - (4) a person to participate in tribal gaming;
  - (d) (1) "gambling device" means any:
    - (A) So-called "slot machine" or any other machine, mechanical device, electronic device or other contrivance an essential part of which is a drum or reel with insignia thereon, and:
      - (i) Which when operated may deliver, as the result of chance, any money or property; or
      - (ii) by the operation of which a person may become entitled to receive, as the result of chance, any money or property;
    - (B) other machine, mechanical device, electronic device or other contrivance including, but not limited to, roulette wheels and similar devices, which are equipped with or designed to accommodate the addition of a mechanism that enables accumulated credits to be removed, is equipped with or designed to accommodate a mechanism to record the number of credits removed or is otherwise designed, manufactured or altered primarily for use in connection with gambling, and:
      - (i) Which when operated may deliver, as the result of chance, any money or property; or
      - (ii) by the operation of which a person may become entitled to receive, as the result of chance, any money or property;
    - (C) subassembly or essential part intended to be used in connection with any such machine, mechanical device, electronic device or other contrivance, but which is not attached to any such machine, mechanical device, electronic device or other contrivance as a constituent part; or
    - (D) any token, chip, paper, receipt or other document which evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet.
- (2) "Gambling device" shall not include:

- (A) Any machine, mechanical device, electronic device or other contrivance used or for use by a licensee of the Kansas racing commission as authorized by law and rules and regulations adopted by the commission or by the Kansas lottery or Kansas lottery retailers as authorized by law and rules and regulations adopted by the Kansas lottery commission;
- (B) any machine, mechanical device, electronic device or other contrivance, such as a coin-operated bowling alley, shuffleboard, marble machine, a so-called pinball machine, or mechanical gun, which is not designed and manufactured primarily for use in connection with gambling, and:
- (i) Which when operated does not deliver, as a result of chance, any money; or
  - (ii) by the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money;
- (C) any so-called claw, crane or digger machine and similar devices which are designed and manufactured primarily for use at carnivals or county or state fairs; or
- (D) any machine, mechanical device, electronic device or other contrivance used in tribal gaming;
- (e) "gambling place" means any place, room, building, vehicle, tent or location which is used for any of the following: Making and settling bets; receiving, holding, recording or forwarding bets or offers to bet; conducting lotteries; or playing gambling devices. Evidence that the place has a general reputation as a gambling place or that, at or about the time in question, it was frequently visited by persons known to be commercial gamblers or known as frequenters of gambling places is admissible on the issue of whether it is a gambling place;
- (F) "raffle" means a fundraising event in which: (1) Participants donate or agree to donate something of value for an opportunity to win something of value; (2) winning opportunities are represented by tickets differentiated by sequential enumeration; (3) winners are picked by a random drawing of tickets or some other similar method of determining a winner or by a race utilizing inanimate objects floated along a river, stream, canal or other body of water; and (4) the raffle is conducted for the benefit of a nonprofit organization, an agency of the United States government, an agency of the state of Kansas or a political subdivision.
- (g) "tribal gaming" means the same as in K.S.A. 74-9802, and amendments thereto; and
- (h) "tribal gaming commission" means the same as in K.S.A. 74-9802, and amendments thereto.