

As Amended by House Committee

Session of 2014

HOUSE BILL No. 2426

By Joint Committee on Corrections and Juvenile Justice Oversight

1-9

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to DNA evidence; amending K.S.A. 2013 Supp. 21-2511 and repealing  
3 the existing section.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2013 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 offender required to register as an offender pursuant to the Kansas offender*  
9 *registration act, any adult arrested or charged or adjudicated as a juvenile*  
10 *offender because of placed in custody for or charged with the commission*  
11 *of any felony, a violation of the following offenses, regardless of the*  
12 *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 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. 2013 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. 2013*  
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. 2013*  
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. 2013*  
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. 2013*  
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, and*  
31 *amendments thereto prior to its repeal, when one of the parties involved is*  
32 *less than 18 years of age;*

33 (8) *a violation of K.S.A. 21-3515, and amendments thereto prior to*  
34 *its repeal, when one of the parties involved is less than 18 years of age, or*  
35 *K.S.A. 2013 Supp. 21-6421, and amendments thereto, when the offender is*  
36 *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. 2013 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. 2013 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. 2013 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 *Any person required to submit a sample pursuant to subsection (a)*  
4 *shall be required to submit such sample at the same time such person is*  
5 *fingerprinted pursuant to the booking procedure, or as soon as*  
6 *practicable.*

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

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

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

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

1 investigation, the law enforcement *or juvenile justice* agency ~~is shall~~ not  
2 *be* required to take the sample.

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

8 ~~(5)~~ *(2)* If a conviction against a person; who is required to submit  
9 such ~~specimen or~~ sample; is **overturned**, expunged or a verdict of  
10 acquittal with regard to such person is returned, the Kansas bureau of  
11 investigation ~~shall~~, upon petition by such person, *shall* expunge both the  
12 DNA sample and the profile record of such person.

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

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

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

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

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

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

20 (i) (1) The Kansas bureau of investigation shall promulgate rules and  
21 regulations for:

22 (A) The form and manner of the collection and maintenance of ~~DNA~~  
23 samples;

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

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

29 (2) ~~These~~ ~~Such~~ rules and regulations also shall require compliance  
30 with national quality assurance standards to ensure that ~~the DNA profile~~  
31 records satisfy standards of acceptance of such records into the national  
32 DNA ~~identification~~ *index system*.

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

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

42 ~~(+)~~ (k) In the event that a person's ~~DNA~~ sample is lost, *was not*  
43 *properly obtained pursuant to the provisions of this section* or is not

1 adequate for any reason, the person shall provide another sample for  
2 analysis.

3 (l) *A sample, or any evidence based upon or derived from such*  
4 *sample, collected by a law enforcement agency or a juvenile justice*  
5 *agency in substantial compliance with the provisions of this section, shall*  
6 *not be excluded as evidence in any criminal proceeding on the basis that*  
7 *such sample was not validly obtained.*

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

12 (n) (1) *Any person who, by virtue of employment or official position,*  
13 *has possession of, or access to, samples maintained by the Kansas bureau*  
14 *of investigation or profile records maintained by the Kansas bureau of*  
15 *investigation shall not disseminate such samples or records except in strict*  
16 *accordance with applicable laws.*

17 (2) *A criminal justice agency shall not request profile records from*  
18 *the Kansas bureau of investigation or another criminal justice agency*  
19 *unless such agency has a legitimate need for such records in accordance*  
20 *with subsection (h)(2).*

21 (3) *In addition to any other remedy or penalty authorized by law, any*  
22 *person who knowingly violates or causes a violation of this subsection*  
23 *shall be guilty of a class A nonperson misdemeanor. If such person is*  
24 *employed or licensed by a state or local government agency, a conviction*  
25 *for violation of this subsection shall constitute good cause to terminate*  
26 *such person's employment or to revoke or suspend such person's license.*

27 (o) *Any person who, without authorization, knowingly obtains*  
28 *samples maintained by the Kansas bureau of investigation or profile*  
29 *records maintained by the Kansas bureau of investigation shall be guilty*  
30 *of a class A nonperson misdemeanor.*

31 (p) *As used in this section:*

32 (1) *"DNA" means deoxyribonucleic acid; ~~and~~*

33 (2) *"profile record" means the identifying information of the*  
34 *laboratory ~~performing the examination, laboratory personnel and the~~*  
35 *sample identification number related to a DNA profile ~~and laboratory~~*  
36 **personnel performing the DNA analysis, the sample identification**  
37 **number and data related to the reliability and maintainability of a**  
38 **DNA profile;**

39 (3) **"DNA profile" means a set of DNA identification**  
40 **characteristics that permit the DNA of one person to be**  
41 **distinguishable from the DNA of another person; and**

42 (4) **"biological sample" means a body tissue, fluid or other bodily**  
43 **sample, usually a blood or buccal sample, of an individual on which**

1 **DNA analysis can be carried out.**

2       Sec. 2. K.S.A. 2013 Supp. 21-2511 is hereby repealed.

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

5