

HOUSE BILL No. 2490

By Committee on Judiciary

1-23

1 AN ACT concerning *crimes, punishment and* criminal procedure; relating  
2 to *DNA evidence*; trials; conduct of jury after case is submitted;  
3 amending K.S.A. 22-3420 *and K.S.A. 2013 Supp. 21-2511* and  
4 repealing the existing ~~section~~ *sections*.

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

7 **Section 1.** *K.S.A. 2013 Supp. 21-2511 is hereby amended to read as*  
8 *follows: 21-2511. (a) On and after May 2, 1991, any person convicted as*  
9 *an required to register as an offender pursuant to K.S.A. 22-4901, and*  
10 *amendments thereto, any adult arrested or charged or adjudicated as a*  
11 *juvenile offender because of placed in custody for or charged with the*  
12 *commission of any felony; a violation of the following offenses,*  
13 *regardless of the sentence imposed, shall be required to submit biological*  
14 *samples authorized by and given to the Kansas bureau of investigation in*  
15 *accordance with the provisions of this section:*

16 (1) *Any felony;*

17 (2) *subsection (a)(1) of K.S.A. 21-3505, prior to its repeal, or*  
18 *subsection (a)(1) or (a)(2) of K.S.A. 2013 Supp. 21-5504, and amendments*  
19 *thereto;*

20 (3) *a violation of K.S.A. 21-3508, prior to its repeal, or K.S.A. 2013*  
21 *Supp. 21-5513, and amendments thereto, when committed in the presence*  
22 *of a person 16 or more years of age;*

23 (4) *a violation of K.S.A. 21-4310, prior to its repeal, or K.S.A. 2013*  
24 *Supp. 21-6412, and amendments thereto;*

25 (5) *a violation of K.S.A. 21-3424, prior to its repeal, or K.S.A. 2013*  
26 *Supp. 21-5411, and amendments thereto, when the victim is less than 18*  
27 *years of age;*

28 (6) *a violation of K.S.A. 21-3507, prior to its repeal, or K.S.A. 2013*  
29 *Supp. 21-5511, and amendments thereto, when one of the parties*  
30 *involved is less than 18 years of age;*

31 (7) *a violation of subsection (b)(1) of K.S.A. 21-3513, prior to its*  
32 *repeal, or subsection (b)(1)(A) of K.S.A. 2013 Supp. 21-6420, and*  
33 *amendments thereto, when one of the parties involved is less than 18*  
34 *years of age;*

1       (8) ~~a violation of K.S.A. 21-3515, prior to its repeal, or K.S.A. 2013~~  
2 ~~Supp. 21-6421, and amendments thereto, when one of the parties~~  
3 ~~involved is less than 18 years of age; or~~

4       (9) ~~a violation of K.S.A. 21-3517, prior to its repeal, or subsection~~  
5 ~~(a) of K.S.A. 2013 Supp. 21-5505, and amendments thereto; or~~

6       (10) ~~including an attempt, conspiracy or criminal solicitation, as~~  
7 ~~defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or~~  
8 ~~K.S.A. 2013 Supp. 21-5301, 21-5302 or 21-5303, and amendments~~  
9 ~~thereto, of any such offenses provided in this subsection. regardless of~~  
10 ~~the sentence imposed, shall be required to submit specimens of blood or an~~  
11 ~~oral or other biological sample authorized by the Kansas bureau of~~  
12 ~~investigation to the Kansas bureau of investigation in accordance with the~~  
13 ~~provisions of this act, if such person is:~~

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

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

20       (3) ~~convicted as an adult or adjudicated as a juvenile offender~~  
21 ~~because of the commission of a crime specified in this subsection before~~  
22 ~~the effective date of this act and is presently confined as a result of such~~  
23 ~~conviction or adjudication in any state correctional facility or county jail or~~  
24 ~~is presently serving a sentence under K.S.A. 21-4603, 21-4603d, 22-3717~~  
25 ~~or K.S.A. 2012 Supp. 38-2361, and amendments thereto.~~

26       **(b) Notwithstanding any other provision of law, the Kansas bureau**  
27 **of investigation is authorized to obtain fingerprints and other identifiers**  
28 **for all persons, whether juveniles or adults, covered by** ~~required to submit~~  
29 ~~a sample under the provisions of this act section.~~

30       (c) ~~Any person required by paragraphs (a)(1) and (a)(2) to provide~~  
31 ~~such specimen or sample shall be ordered by the court to have such~~  
32 ~~specimen or sample collected within 10 days after sentencing or~~  
33 ~~adjudication:~~

34       (1) ~~If placed directly on probation, that person must provide such~~  
35 ~~specimen or sample, at a collection site designated by the Kansas bureau~~  
36 ~~of investigation. Collection of specimens shall be conducted by qualified~~  
37 ~~volunteers, contractual personnel or employees designated by the Kansas~~  
38 ~~bureau of investigation. Failure to cooperate with the collection of the~~  
39 ~~specimens and any deliberate act by that person intended to impede, delay~~  
40 ~~or stop the collection of the specimens shall be punishable as contempt of~~  
41 ~~court and constitute grounds to revoke probation;~~

42       (2) ~~if sentenced to the secretary of corrections, such specimen or~~  
43 ~~sample will be obtained as soon as practical upon arrival at the~~

1 correctional facility; or

2 ~~(3) if a juvenile offender is placed in the custody of the commissioner~~  
3 ~~of juvenile justice, in a youth residential facility or in a juvenile~~  
4 ~~correctional facility, such specimen or sample will be obtained as soon as~~  
5 ~~practical upon arrival.~~

6 *Persons required to submit a sample pursuant to subsection (a) shall*  
7 *be required to submit such sample at the same time such person is*  
8 *fingerprinted pursuant to the booking procedure.*

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

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

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

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

1 *custodial law enforcement or juvenile justice agency shall cause a*  
2 *sample to be collected. If such person's sample is on file with the Kansas*  
3 *bureau of investigation, the law enforcement or juvenile justice agency is*  
4 *shall not be required to take the sample.*

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

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

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

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

39 (h) (1) *The DNA (deoxyribonucleic acid) records and DNA samples*  
40 *shall be maintained by the Kansas bureau of investigation. The Kansas*  
41 *bureau of investigation shall establish, implement and maintain a*  
42 *statewide automated DNA databank and DNA database capable of, but*  
43 *not limited to, searching, matching and storing DNA records. The DNA*

1 ~~database as established by this act~~ *shall be compatible with the*  
2 *procedures specified by the federal bureau of investigation's combined*  
3 *DNA index system (CODIS). The Kansas bureau of investigation shall*  
4 *participate in the CODIS federal bureau of investigation's combined DNA*  
5 *index system program by sharing data and utilizing compatible test*  
6 *procedures, laboratory equipment, supplies and computer software.*

7 ~~(1)(2)~~ *The DNA records obtained pursuant to this act shall*  
8 *be confidential and shall be released only to authorized criminal justice*  
9 *agencies. The Such DNA records shall be used only for law enforcement*  
10 *identification purposes or to assist in the recovery or identification of*  
11 *human remains from disasters or for other humanitarian identification*  
12 *purposes, including, but not limited to, identification of missing persons.*

13 ~~(1)(3)~~ *The Kansas bureau of investigation shall be the state*  
14 *central repository for all DNA records and DNA samples obtained*  
15 *pursuant to this act*. *No DNA records shall be accepted for*  
16 *admission or comparison unless obtained in substantial compliance with*  
17 *the provisions of this section by an accredited forensic laboratory meeting*  
18 *the national DNA index guidelines established by the federal bureau of*  
19 *investigation.*

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

22 *(A) The form and manner of the collection and maintenance of*  
23 *DNA 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*  
26 *a dismissal of charges, expungement or acquittal at trial; and*

27 *(C) any other procedures for the operation of this act*.

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

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

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

41 ~~(k)~~ *In the event that a person's DNA sample is lost, was not*  
42 *properly obtained pursuant to the provisions of this section or is not*  
43 *adequate for any reason, the person shall provide another sample for*

1 **analysis.**

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

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

11 (n) *As used in this section:*

12 (1) *"DNA" means deoxyribonucleic acid; and*

13 (2) *"profile record" means the identifying information of the*  
14 *laboratory performing the examination, case numbers, laboratory*  
15 *personnel and the specimen identification number related to a DNA*  
16 *profile.*

17 ~~Section 1.~~ **Sec. 2.** K.S.A. 22-3420 is hereby amended to read as  
18 follows: 22-3420. (†) (a) When the case is finally submitted to the jury,  
19 they shall retire for deliberation. They must be kept together in some  
20 convenient place under charge of a ~~duly sworn officer~~ *bailiff* until they  
21 agree upon a verdict, or be discharged by the court, subject to the  
22 discretion of the court to permit them to separate temporarily at night, and  
23 at their meals. The ~~officer~~ *bailiff* having them under ~~his such bailiff's~~  
24 charge shall not allow any communications to be made to them, or ~~make~~  
25 ~~any himself~~ *communicate with them*, unless by order of the court; ~~and~~  
26 ~~before their~~ *Before the jury's* verdict is rendered ~~he the bailiff~~ shall not  
27 communicate to any person the state of their deliberations, or the verdict  
28 agreed upon. No person other than members of the jury shall be present in  
29 the jury room during deliberations.

30 (2) (b) If the jury is permitted to separate, either during the trial or  
31 after the case is submitted to them, they shall be admonished by the court  
32 that: (1) It is their duty not to converse with, or allow themselves to be  
33 addressed by any other person on any subject of the trial, and ~~that any~~  
34 ~~attempt to do so should be immediately reported by them to the court;~~ (2)  
35 it is their duty not to ~~form or express an opinion thereon~~ *make any final*  
36 *determinations or express any opinion on any subject of the trial* until the  
37 case is finally submitted to them, ~~and that;~~ and (3) such admonition shall  
38 apply to every subsequent separation of the jury. ~~Jurors are permitted to~~  
39 ~~assimilate and evaluate the evidence as it accumulates during trial, but~~  
40 ~~shall not begin deliberating until the case is finally submitted to them.~~

41 (3) ~~After the jury has retired for deliberation, if they desire to be~~  
42 ~~informed as to any part of the law or evidence arising in the case, they may~~  
43 ~~request the officer to conduct them to the court, where the information on~~

1 the point of the law shall be given, or the evidence shall be read or  
2 exhibited to them in the presence of the defendant, unless he voluntarily  
3 absents himself, and his counsel and after notice to the prosecuting  
4 attorney.

5 (c) **In the court's discretion, upon the jury's retiring for**  
6 **deliberation, the jury may take**~~all~~ **any admitted exhibits into the jury**  
7 **room, where they may review them without further permission from the**  
8 **court. If necessary, the court may provide equipment to facilitate review.**

9 (d) *The jury shall be instructed that any question it wishes to ask the*  
10 *court about the instructions or evidence should be signed, dated and*  
11 *submitted in writing to the bailiff. The court shall notify the parties of the*  
12 *contents of the questions and provide them an opportunity to discuss an*  
13 *appropriate response. The defendant must be present during the discussion*  
14 *of such written questions, unless such presence is waived. The court shall*  
15 *respond to all questions from a deliberating jury in open court or in*  
16 *writing. In its discretion, the court may grant a jury's request to rehear*  
17 *testimony. The defendant must be present during any response if given in*  
18 *open court, unless such presence is waived. Written questions from the*  
19 *jury, the court's response and any objections thereto shall be made a part*  
20 *of the record.*

21 ~~(4)~~ (e) The jury may be discharged by the court on account of the  
22 sickness of a juror, or other accident or calamity, or other necessity to be  
23 found by the court requiring their discharge, or by consent of both parties,  
24 or after they have been kept together until it satisfactorily appears that  
25 there is no probability of their agreeing.

26 (f) *The amendments to this section by this act establish a procedural*  
27 *rule, and as such shall be construed and applied retroactively.*

28 ~~Sec. 2.~~ 3. K.S.A. 22-3420 ~~is~~ **and K.S.A. 2013 Supp. 21-2511 are**  
29 hereby repealed.

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