

SENATE BILL No. 246

By Committee on Judiciary

2-12

1 AN ACT concerning criminal procedure; relating to forensic evidence
2 collection; providing procedures and limitations thereon; clarifying
3 liability for unlawful conduct under the Kansas tort claims act;
4 amending K.S.A. 22-2520, 22-2523 and 22-2524 and repealing the
5 existing sections.
6

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

8 New Section 1. (a) A forensic evidence collection conducted by a
9 forensic scientist, evidence collection expert, law enforcement officer or
10 employee of a law enforcement agency or department shall be conducted
11 so that forensic evidence collection cannot be observed by any person
12 other than the persons conducting the forensic evidence collection, unless
13 the person who the evidence is being collected from waives the right to
14 privacy.

15 (b) A forensic scientist, evidence collection expert, law enforcement
16 officer or employee of a law enforcement agency or department
17 conducting a forensic evidence collection shall prepare a report of the
18 forensic evidence collection. The report shall include:

- 19 (1) The name and sex of the person the evidence is collected from;
20 (2) the name and sex of the persons conducting the forensic evidence
21 collection; and
22 (3) the time, date and place of the forensic evidence collection.

23 (c) A forensic evidence collection shall be conducted by or at the
24 direction of a forensic scientist or evidence collection expert. No person
25 authorized by this subsection to conduct a forensic evidence collection or
26 any person assisting in the performance of such collection shall be liable in
27 any civil or criminal action when such collection is performed in a
28 reasonable manner according to generally accepted forensic evidence
29 collection practices in the community where performed.

30 (d) Law enforcement officers may be present during a forensic
31 evidence collection, except nothing in this section shall be interpreted to
32 prohibit a readily available person from being present at the request and
33 consent of the person who is the subject of a forensic evidence collection.

34 (e) This section shall be a part of and supplemental to the code of
35 criminal procedure.

36 Sec. 2. K.S.A. 22-2520 is hereby amended to read as follows: 22-

1 2520. *As used in K.S.A. 22-2520 through 22-2524, and amendments*
 2 *thereto, and section 1, and amendments thereto:*

3 (a) "Strip search" means removing or rearranging some or all of a
 4 person's clothing, by or at the direction of a law enforcement officer, so as
 5 to permit a visual inspection of the genitals, buttocks, anus or female
 6 breasts of such person. *"Strip search" does not include forensic evidence*
 7 *collection.*

8 (b) "Body cavity search" means the touching or probing of a person's
 9 vaginal or rectal cavity by or at the direction of a law enforcement officer.
 10 *"Body cavity search" does not include forensic evidence collection.*

11 (c) *"Forensic evidence collection" means removing or rearranging*
 12 *some or all of a person's clothing, by or at the direction of a forensic*
 13 *scientist or evidence collection expert, so as to permit a visual inspection*
 14 *of and forensic evidence collection from the exterior of the genitals,*
 15 *buttocks, anus or female breasts of such person.*

16 Sec. 3. K.S.A. 22-2523 is hereby amended to read as follows: 22-
 17 2523. (a) If liability is established in any civil action brought under the
 18 Kansas tort claims act for violation of ~~subsections (a) or (b) of K.S.A. 22-~~
 19 ~~2521; (a) or (b) or K.S.A. 22-2522, and amendments thereto, or section 1,~~
 20 *and amendments thereto, the plaintiff shall be entitled to an amount equal*
 21 *to the sum of the following:*

22 (1) Actual damages sustained by the plaintiff;

23 (2) punitive damages, if the violation was willful, wanton or
 24 malicious;

25 (3) the costs of the action, at the discretion of the court; and

26 (4) a civil penalty in an amount set by the court of not more than
 27 \$2,000 for each violation.

28 (b) At the time of the assessment of the costs of any action to which
 29 this section applies, if upon motion, the court finds that plaintiff brought or
 30 maintained the action frivolously or in bad faith the court may in its
 31 discretion assess against the plaintiff or plaintiffs the costs of the action, to
 32 be paid to the defendant or defendants.

33 Sec. 4. K.S.A. 22-2524 is hereby amended to read as follows: 22-
 34 2524. (a) None of the provisions of ~~this act K.S.A. 22-2520 through 22-~~
 35 ~~2524, and amendments thereto, and section 1, and amendments thereto,~~
 36 ~~other than subsection (b) of K.S.A. 22-2521(b) and subsection (c) of~~
 37 ~~K.S.A. 22-2522(d), and amendments thereto, shall apply when a person is~~
 38 ~~convicted of a crime and committed to a jail or other institution.~~

39 (b) ~~The following provisions of this act relating to strip searches other~~
 40 ~~than subsection (b) of K.S.A. 22-2521 shall not apply when a person~~
 41 ~~accused of a crime is committed to a jail or other institution pursuant to a~~
 42 ~~court order, nor when a person accused of a crime is, of necessity, confined~~
 43 ~~with other prisoners in a jail while awaiting appearance before a~~

1 magistrate:

2 *(1) K.S.A. 22-2520 through 22-2524, and amendments thereto,*
3 *relating to strip searches other than K.S.A. 22-2521(b), and amendments*
4 *thereto; and*

5 *(2) section 1, and amendments thereto.*

6 Sec. 5. K.S.A. 22-2520, 22-2523 and 22-2524 are hereby repealed.

7 Sec. 6. This act shall take effect and be in force from and after its
8 publication in the statute book.