

## 2018 Kansas Statutes

**21-2511. Collection of biological samples, fingerprints and other identifiers from certain persons; Kansas bureau of investigation, powers and duties; expungement of sample and profile record; failure to provide sample, penalties; other unlawful acts.** (a) On and after May 2, 1991, any person required to register as an offender pursuant to the Kansas offender registration act, any adult arrested or charged or juvenile placed in custody for or charged with the commission of any 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. 2018 Supp. 21-5504, and amendments thereto;
- (3) K.S.A. 21-3508, prior to its repeal, or K.S.A. 2018 Supp. 21-5513, and amendments thereto, when committed in the presence of a person 16 or more years of age;
- (4) K.S.A. 21-4310, prior to its repeal, or K.S.A. 2018 Supp. 21-6412, and amendments thereto;
- (5) K.S.A. 21-3424, prior to its repeal, or K.S.A. 2018 Supp. 21-5411, and amendments thereto, when the victim is less than 18 years of age;
- (6) K.S.A. 21-3507, prior to its repeal, or K.S.A. 2018 Supp. 21-5511, and amendments thereto, when one of the parties involved is less than 18 years of age;
- (7) subsection (b)(1) of K.S.A. 21-3513, prior to its repeal, when one of the parties involved is less than 18 years of age;
- (8) K.S.A. 21-3515, prior to its repeal, when one of the parties involved is less than 18 years of age, or K.S.A. 2018 Supp. 21-6421, and amendments thereto, when the offender is less than 18 years of age;
- (9) K.S.A. 21-3517, prior to its repeal, or subsection (a) of K.S.A. 2018 Supp. 21-5505, and amendments thereto; or
- (10) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2018 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of any such offenses provided in this subsection.

(b) Notwithstanding any other provision of law, the Kansas bureau of investigation is authorized to obtain fingerprints and other identifiers for all persons required to submit a sample under the provisions of this section.

(c) Any person required to submit a sample pursuant to subsection (a) shall be required to submit such sample at the same time such person is fingerprinted pursuant to the booking procedure, or as soon as practicable.

(d) Any person convicted as an adult and who was incarcerated on May 2, 1991, for a crime committed prior to May 2, 1991, shall be required to submit a sample prior to final discharge or conditional release at a collection site designated by the Kansas bureau of investigation. Collection of samples shall be conducted by qualified volunteers, contractual personnel or employees designated by the Kansas bureau of investigation.

(e) Prior to taking such samples, the arresting, charging or custodial law enforcement or juvenile justice agency shall search the Kansas criminal history files through the Kansas criminal justice information system to determine if such person's sample is currently on file with the Kansas bureau of investigation. In the event that it cannot reasonably be established that a sample for such person is on file at the Kansas bureau of investigation, the arresting, charging or custodial law enforcement or juvenile justice agency shall cause a sample to be collected. If such person's sample is on file with the Kansas bureau of investigation, the law enforcement or juvenile justice agency shall not be required to take the sample.

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

(2) If a conviction against a person who is required to submit such sample is overturned, expunged or a verdict of acquittal with regard to such person is returned, the Kansas bureau of investigation, upon petition by such person, shall expunge both the sample and the profile record of such person.

(g) The Kansas bureau of investigation shall provide all kits, supplies and instructions necessary for the collection of biological samples. The collection of samples shall be performed in a medically approved manner. No person assisting in the collection of samples pursuant to the provisions of this section shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices. Such samples shall be forwarded to the Kansas bureau of investigation and the bureau shall analyze such samples to the extent allowed by funding available for this purpose.

(h) (1) Samples and profile records shall be maintained by the Kansas bureau of investigation. The Kansas bureau of investigation shall establish, implement and maintain a statewide automated DNA databank and DNA database capable of, but not limited to, searching, matching and storing profile records. The DNA database established by this section shall be compatible with the procedures specified by the federal bureau of investigation's combined DNA index system. The Kansas bureau of investigation shall participate in the federal bureau of investigation's combined DNA index system program by sharing data and utilizing compatible test procedures, laboratory equipment, supplies and computer software.

(2) Profile records obtained pursuant to this section shall be confidential and shall be released only to authorized criminal justice agencies. Such records shall be used only for law enforcement identification purposes or to assist in the recovery or identification of human remains from disasters or for other humanitarian identification purposes, including, but not limited to, identification of missing persons.

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

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

- (A) The form and manner of the collection and maintenance of samples;
- (B) a procedure which allows defendants to petition to expunge and destroy the samples and profile record in the event of a dismissal of charges, expungement or acquittal at trial, expungement or overturned conviction; and
- (C) any other procedures for the operation of this section.

(2) Such rules and regulations also shall require compliance with national quality assurance standards to ensure that profile records satisfy standards of acceptance of such records into the national DNA index system.

(3) The provisions of the Kansas administrative procedure act shall apply to all actions taken pursuant to such rules and regulations.

(j) The Kansas bureau of investigation is authorized to contract with third parties for the purposes of implementing this section. Any other party contracting to carry out the functions of this section shall be subject to the same restrictions and requirements of this section, insofar as applicable, as the bureau, as well as any

additional restrictions or requirements imposed by the bureau.

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

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

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

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

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

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

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

(p) As used in this section:

(1) "DNA" means deoxyribonucleic acid;

(2) "profile record" means the identifying information of the laboratory and laboratory personnel performing the DNA analysis, the sample identification number and data related to the reliability and maintainability of a DNA profile;

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

(4) "biological sample" means a body tissue, fluid or other bodily sample, usually a blood or buccal sample, of an individual on which DNA analysis can be carried out.

**History:** L. 1991, ch. 92, § 1; L. 1992, ch. 143, § 1; L. 1995, ch. 218, § 1; L. 1996, ch. 224, § 1; L. 1997, ch. 156, § 36; L. 1999, ch. 164, § 3; L. 2001, ch. 208, § 2; L. 2002, ch. 128, § 1; L. 2004, ch. 11, § 1; L. 2006, ch. 171, § 2; L. 2007, ch. 145, § 2; L. 2010, ch. 119, § 15; L. 2014, ch. 102, § 1; July 1.