

## SENATE BILL No. 303

By Committee on Judiciary

2-9

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AN ACT concerning crimes, criminal procedure and punishment; relating to collection of DNA specimens; limitation of actions; testing; amending K.S.A. 2000 Supp. 21-2511 and 21-3106 and repealing the existing sections.

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

Section 1. K.S.A. 2000 Supp. 21-2511 is hereby amended to read as follows: 21-2511. (a) Any person convicted as an adult or adjudicated as a juvenile offender because of the commission of any offense which requires such person to register as an offender pursuant to the Kansas offender registration act, K.S.A. 22-4901 *et seq.*, or a violation of subsection (a)(1) of K.S.A. 21-3505, 21-3508, 21-3602 ~~or~~, 21-3609, 21-3715 or 21-3716 and amendments thereto, including an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of any such offenses provided in this subsection regardless of the sentence imposed, shall be required to submit specimens of blood and saliva to the Kansas bureau of investigation in accordance with the provisions of this act, if such person is:

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

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

(3) convicted as an adult or adjudicated as a juvenile offender because of the commission of a crime specified in this subsection before the effective date of this act and is presently confined as a result of such conviction or adjudication in any state correctional facility or county jail or is presently serving a sentence under K.S.A. 21-4603, 22-3717 or 38-1663, and amendments thereto.

(b) Notwithstanding any other provision of law, the Kansas bureau of investigation is authorized to obtain fingerprints and other identifiers for all persons, whether juveniles or adults, covered by this act.

(c) Any person required by paragraphs (a)(1) and (a)(2) to provide specimens of blood and saliva shall be ordered by the court to have spec-

1 imens of blood and saliva collected within 10 days after sentencing or  
2 adjudication:

3 (1) If placed directly on probation, that person must provide speci-  
4 mens of blood and saliva, at a collection site designated by the Kansas  
5 bureau of investigation. Failure to cooperate with the collection of the  
6 specimens and any deliberate act by that person intended to impede,  
7 delay or stop the collection of the specimens shall be punishable as con-  
8 tempt of court and constitute grounds to revoke probation;

9 (2) if sentenced to the secretary of corrections, the specimens of  
10 blood and saliva will be obtained immediately upon arrival at the Topeka  
11 correctional facility; or

12 (3) if a juvenile offender is placed in the custody of the commissioner  
13 of juvenile justice, in a youth residential facility or in a juvenile correc-  
14 tional facility, the specimens of blood and saliva will be obtained imme-  
15 diately upon arrival.

16 (d) Any person required by paragraph (a)(3) to provide specimens of  
17 blood and saliva shall be required to provide such samples prior to final  
18 discharge or conditional release at a collection site designated by the  
19 Kansas bureau of investigation.

20 (e) The Kansas bureau of investigation shall provide all specimen vi-  
21 als, mailing tubes, labels and instructions necessary for the collection of  
22 blood and saliva samples. The collection of samples shall be performed  
23 in a medically approved manner. No person authorized by this section to  
24 withdraw blood and collect saliva, and no person assisting in the collection  
25 of these samples shall be liable in any civil or criminal action when the  
26 act is performed in a reasonable manner according to generally accepted  
27 medical practices. The withdrawal of blood for purposes of this act may  
28 be performed only by: (1) A person licensed to practice medicine and  
29 surgery or a person acting under the supervision of any such licensed  
30 person; (2) a registered nurse or a licensed practical nurse; or (3) any  
31 qualified medical technician including, but not limited to, an emergency  
32 medical technician-intermediate or mobile intensive care technician, as  
33 those terms are defined in K.S.A. 65-6112, and amendments thereto, or  
34 a phlebotomist. The samples shall thereafter be forwarded to the Kansas  
35 bureau of investigation for analysis and categorizing into genetic marker  
36 groupings.

37 (f) The genetic marker groupings shall be maintained by the Kansas  
38 bureau of investigation. The Kansas bureau of investigation shall establish,  
39 implement and maintain a statewide automated personal identification  
40 system capable of, but not limited to, classifying, matching and storing  
41 analysis of DNA (deoxyribonucleic acid) and other biological molecules.  
42 The genetic marker grouping analysis information and identification sys-  
43 tem as established by this act shall be compatible with the procedures

1 specified by the federal bureau of investigation's combined DNA index  
2 system (CODIS). The Kansas bureau of investigation may participate in  
3 the CODIS program by sharing data and utilizing compatible test pro-  
4 cedures, laboratory equipment, supplies and computer software.

5 (g) The genetic marker grouping analysis information obtained pur-  
6 suant to this act shall be confidential and shall be released only to law  
7 enforcement officers of the United States, of other states or territories,  
8 of the insular possessions of the United States, or foreign countries duly  
9 authorized to receive the same, to all law enforcement officers of the state  
10 of Kansas and to all prosecutor's agencies.

11 (h) The Kansas bureau of investigation shall be the state central re-  
12 pository for all genetic marker grouping analysis information obtained  
13 pursuant to this act. The Kansas bureau of investigation may promulgate  
14 rules and regulations for the form and manner of the collection of blood  
15 and saliva samples and other procedures for the operation of this act. The  
16 provisions of the Kansas administrative procedure act shall apply to all  
17 actions taken under the rules and regulations so promulgated.

18 Sec. 2. K.S.A. 2000 Supp. 21-3106 is hereby amended to read as  
19 follows: 21-3106. (1) A prosecution for murder may be commenced at  
20 any time.

21 (2) Except as provided by ~~subsection~~ *subsections (7) and (8)*, a pros-  
22 ecution for any of the following crimes must be commenced within five  
23 years after its commission if the victim is less than 16 years of age: (a)  
24 Indecent liberties with a child as defined in K.S.A. 21-3503 and amend-  
25 ments thereto; (b) aggravated indecent liberties with a child as defined  
26 in K.S.A. 21-3504 and amendments thereto; (c) enticement of a child as  
27 defined in K.S.A. 21-3509 and amendments thereto; (d) indecent solici-  
28 tation of a child as defined in K.S.A. 21-3510 and amendments thereto;  
29 (e) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511  
30 and amendments thereto; (f) sexual exploitation of a child as defined in  
31 K.S.A. 21-3516 and amendments thereto; or (g) aggravated incest as de-  
32 fined in K.S.A. 21-3603 and amendments thereto.

33 (3) Except as provided in subsection (8), a prosecution for any crime  
34 must be commenced within 10 years after its commission if the victim is  
35 the Kansas public employees retirement system.

36 (4) Except as provided by subsection (8), a prosecution for rape, as  
37 defined in K.S.A. 21-3502 and amendments thereto, or aggravated crim-  
38 inal sodomy, as defined in K.S.A. 21-3506 and amendments thereto, must  
39 be commenced within five years after its commission.

40 (5) Except as provided in subsection (8), a prosecution for any crime  
41 found in the Kansas medicaid fraud control act must be commenced  
42 within five years after its commission.

43 (6) Except as provided by subsection (8), a prosecution for the crime

1 of arson, as defined in K.S.A. 21-3718 and amendments thereto, or ag-  
2 gravated arson, as defined in K.S.A. 21-3719 and amendments thereto,  
3 must be commenced within five years after its commission.

4 (7) (a) *Except as provided in subsection (8), and notwithstanding any*  
5 *other limitation of time provided by law, a prosecution for any offense*  
6 *provided in subsection (2) or a sexually violent offense as defined in K.S.A.*  
7 *22-3717, and amendments thereto, where the limitations period has not*  
8 *expired as of July 1, 2001, or the offense is committed on or after July 1,*  
9 *2001, shall be 10 years from the commission of the offense, or one year*  
10 *from the date on which the identity of the suspect is conclusively estab-*  
11 *lished by DNA testing, whichever is later. The one-year period from the*  
12 *establishment of the identity of the suspect shall only apply when either*  
13 *of the following conditions is met:*

14 (i) *For an offense committed prior to January 1, 2001, biological ev-*  
15 *idence collected in connection with the offense is analyzed for DNA type*  
16 *no later than January 1, 2004; and*

17 (ii) *for an offense committed on or after January 1, 2001, biological*  
18 *evidence collected in connection with the offense is analyzed for DNA*  
19 *type no later than two years from the date of the offense.*

20 (b) *In the event the conditions set forth in subsection (7)(a)(i) or*  
21 *(7)(a)(ii) are not met, a prosecution for any offense provided in subsection*  
22 *(2) or a sexually violent offense as defined in K.S.A. 22-3717, and amend-*  
23 *ments thereto, where the limitations period provided in this section has*  
24 *not expired as of January 1, 2001, or the offense is committed on or after*  
25 *January 1, 2001, shall be 10 years from the commission of the offense.*

26 (c) *For purposes of this section, "DNA" means deoxyribonucleic acid.*

27 (8) *Except as provided by subsection (8), a prosecution for any crime*  
28 *not governed by subsections (1), (2), (3), (4), (5) and (6) and (7) must be*  
29 *commenced within two years after it is committed.*

30 ~~(9)~~ (9) *The period within which a prosecution must be commenced*  
31 *shall not include any period in which:*

32 (a) *The accused is absent from the state;*

33 (b) *the accused is concealed within the state so that process cannot*  
34 *be served upon the accused;*

35 (c) *the fact of the crime is concealed;*

36 (d) *a prosecution is pending against the defendant for the same con-*  
37 *duct, even if the indictment or information which commences the pros-*  
38 *ecution is quashed or the proceedings thereon are set aside, or are re-*  
39 *versed on appeal;*

40 (e) *an administrative agency is restrained by court order from inves-*  
41 *tigating or otherwise proceeding on a matter before it as to any criminal*  
42 *conduct defined as a violation of any of the provisions of article 41 of*  
43 *chapter 25 and article 2 of chapter 46 of the Kansas Statutes Annotated*

1 which may be discovered as a result thereof regardless of who obtains  
2 the order of restraint; or

3 (f) whether or not the fact of the crime is concealed by the active act  
4 or conduct of the accused, there is substantially competent evidence to  
5 believe two or more of the following factors are present: (i) The victim  
6 was a child under 15 years of age at the time of the crime; (ii) the victim  
7 was of such age or intelligence that the victim was unable to determine  
8 that the acts constituted a crime; (iii) the victim was prevented by a parent  
9 or other legal authority from making known to law enforcement author-  
10 ities the fact of the crime whether or not the parent or other legal au-  
11 thority is the accused; and (iv) there is substantially competent expert  
12 testimony indicating the victim psychologically repressed such witness'  
13 memory of the fact of the crime, and in the expert's professional opinion  
14 the recall of such memory is accurate and free of undue manipulation,  
15 and substantial corroborating evidence can be produced in support of the  
16 allegations contained in the complaint or information but in no event may  
17 a prosecution be commenced as provided in this section later than the  
18 date the victim turns 28 years of age. Corroborating evidence may in-  
19 clude, but is not limited to, evidence the defendant committed similar  
20 acts against other persons or evidence of contemporaneous physical man-  
21 ifestations of the crime. "Parent or other legal authority" shall include  
22 but not be limited to natural and stepparents, grandparents, aunts, uncles  
23 or siblings.

24 ~~(9)~~ (10) An offense is committed either when every element occurs,  
25 or, if a legislative purpose to prohibit a continuing offense plainly appears,  
26 at the time when the course of conduct or the defendant's complicity  
27 therein is terminated. Time starts to run on the day after the offense is  
28 committed.

29 ~~(10)~~ (11) A prosecution is commenced when a complaint or infor-  
30 mation is filed, or an indictment returned, and a warrant thereon is de-  
31 livered to the sheriff or other officer for execution. No such prosecution  
32 shall be deemed to have been commenced if the warrant so issued is not  
33 executed without unreasonable delay.

34 New Sec. 3. (a) Notwithstanding any other provision of law, a person  
35 in state custody, at any time after conviction, may petition the court that  
36 entered the judgment for forensic DNA testing (deoxyribonucleic acid  
37 testing) of any biological material that:

38 (1) Is related to the investigation or prosecution that resulted in the  
39 conviction;

40 (2) is in the actual or constructive possession of the state; and

41 (3) was not previously subjected to DNA testing, or can be subjected  
42 to retesting with new DNA techniques that provide a reasonable likeli-  
43 hood of more accurate and probative results.

1 (b) (1) The court shall notify the prosecuting attorney of a petition  
2 made under subsection (a) and shall afford the prosecuting attorney an  
3 opportunity to respond.

4 (2) Upon receiving notice of a petition made under subsection (a),  
5 the prosecuting attorney shall take such steps as are necessary to ensure  
6 that any remaining biological material that was secured in connection with  
7 the case is preserved pending the completion of proceedings under this  
8 section.

9 (c) The court shall order DNA testing pursuant to a petition made  
10 under subsection (a) upon a determination that testing may produce non-  
11 cumulative, exculpatory evidence relevant to the claim of the petitioner  
12 that the petitioner was wrongfully convicted or sentenced.

13 (d) The cost of DNA testing ordered under subsection (c) shall be  
14 borne by the state or the petitioner, as the court may order in the interests  
15 of justice, if it is shown that the petitioner is not indigent and possesses  
16 the means to pay.

17 (e) The court may at any time appoint counsel for an indigent appli-  
18 cant under this section.

19 (f) (1) If the results of DNA testing conducted under this section are  
20 unfavorable to the petitioner, the court:

21 (A) Shall dismiss the petition; and

22 (B) in the case of a petitioner who is not indigent, may assess the  
23 petitioner for the cost of such testing.

24 (2) If the results of DNA testing conducted under this section are  
25 favorable to the petitioner, the court shall:

26 (A) order a hearing, notwithstanding any provision of law that would  
27 bar such a hearing; and

28 (B) enter any order that serves the interests of justice, including, but  
29 not limited to, an order:

30 (i) Vacating and setting aside the judgment;

31 (ii) discharging the petitioner if the petitioner is in custody;

32 (iii) resentencing the petitioner; or

33 (iv) granting a new trial.

34 (g) Nothing in this section shall be construed to limit the circum-  
35 stances under which a person may obtain DNA testing or other postcon-  
36 viction relief under any other provision of law.

37 Sec. 4. K.S.A. 2000 Supp. 21-2511 and 21-3106 are hereby repealed.

38 Sec. 5. This act shall take effect and be in force from and after its  
39 publication in the statute book.

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