

## HOUSE BILL No. 2384

By Committee on Judiciary

2-5

---

9 AN ACT concerning criminal procedure; relating to identifiers for al-  
10 leged offenders; amending K.S.A. 21-2501 and K.S.A. 2006 Supp. 21-  
11 2511 and 75-724 and repealing the existing sections; also repealing  
12 K.S.A. 2006 Supp. 21-2511a.  
13

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

15 Sec. 1. K.S.A. 21-2501 is hereby amended to read as follows: 21-  
16 2501. (a) It is hereby made the duty of every sheriff, police department  
17 or countywide law enforcement agency in the state, immediately to cause  
18 two sets of fingerprint impressions *and one set of palm print impressions*  
19 to be made of a person who is arrested if the person:

20 (1) Is wanted for the commission of a felony. On or after July 1, 1993,  
21 fingerprints *and palm prints* shall be taken if the person is wanted for the  
22 commission of a felony or a class A or B misdemeanor or assault as defined  
23 in K.S.A. 21-3408 and amendments thereto or a violation of a county  
24 resolution which would be the equivalent of a class A or B misdemeanor  
25 or assault as defined in K.S.A. 21-3408 and amendments thereto under  
26 state law;

27 (2) is believed to be a fugitive from justice;

28 (3) may be in the possession at the time of arrest of any goods or  
29 property reasonably believed to have been stolen by the person;

30 (4) is in possession of firearms or other concealed weapons, burglary  
31 tools, high explosives or other appliances believed to be used solely for  
32 criminal purposes;

33 (5) is wanted for any offense which involves sexual conduct prohibited  
34 by law or for violation of the uniform controlled substances act; or

35 (6) is suspected of being or known to be a habitual criminal or violator  
36 of the intoxicating liquor law.

37 (b) The court shall ensure, upon the offender's first appearance, or  
38 in any event before final disposition of a felony or an A or B misdemeanor  
39 or a violation of a county resolution which prohibits an act which is pro-  
40 hibited by a class A or B misdemeanor, that the offender has been pro-  
41 cessed ~~and~~ fingerprinted *and palm printed*.

42 (c) ~~Fingerprint~~ Impressions taken pursuant to this section shall be  
43 made on the forms provided by the department of justice of the United

1 States or the Kansas bureau of investigation. The sheriff, police depart-  
2 ment or countywide law enforcement agency shall cause the impressions  
3 to be forwarded to the Kansas bureau of investigation at Topeka, Kansas,  
4 which shall forward one set of the impressions to the federal bureau of  
5 investigation, department of justice, at Washington, D.C. A comprehen-  
6 sive description of the person arrested and such other data and infor-  
7 mation as to the identification of such person as the department of justice  
8 and bureau of investigation require shall accompany the impressions.

9 (d) A sheriff, police department or countywide law enforcement  
10 agency may take and retain for its own use copies of fingerprint ~~such~~  
11 impressions of a person specified in subsection (a), together with a com-  
12 prehensive description and such other data and information as necessary  
13 to properly identify such person.

14 (e) Except as provided in subsection (a)(1), this section shall not be  
15 construed to include violators of any county resolution or municipal  
16 ordinance.

17 Sec. 2. K.S.A. 2006 Supp. 21-2511 is hereby amended to read as  
18 follows: 21-2511. (a) Any person convicted as an adult or adjudicated as  
19 a juvenile offender because of the commission of any felony; a violation  
20 of subsection (a)(1) of K.S.A. 21-3505; a violation of K.S.A. 21-3508; a  
21 violation of K.S.A. 21-4310; a violation of K.S.A. 21-3424, and amend-  
22 ments thereto when the victim is less than 18 years of age; a violation of  
23 K.S.A. 21-3507, and amendments thereto, when one of the parties in-  
24 volved is less than 18 years of age; a violation of subsection (b)(1) of K.S.A.  
25 21-3513, and amendments thereto, when one of the parties involved is  
26 less than 18 years of age; a violation of K.S.A. 21-3515, and amendments  
27 thereto, when one of the parties involved is less than 18 years of age; or  
28 a violation of K.S.A. 21-3517, and amendments thereto; including an at-  
29 tempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301,  
30 21-3302 or 21-3303 and amendments thereto, of any such offenses pro-  
31 vided in this subsection regardless of the sentence imposed, shall be re-  
32 quired to submit specimens of blood or an oral or other biological sample  
33 authorized by the Kansas bureau of investigation to the Kansas bureau of  
34 investigation in accordance with the provisions of this act, if such person  
35 is:

36 (1) Convicted as an adult or adjudicated as a juvenile offender be-  
37 cause of the commission of a crime specified in subsection (a) on or after  
38 the effective date of this act;

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

42 (3) convicted as an adult or adjudicated as a juvenile offender because  
43 of the commission of a crime specified in this subsection before the ef-

1 fective date of this act and is presently confined as a result of such con-  
2 viction or adjudication in any state correctional facility or county jail or is  
3 presently serving a sentence under K.S.A. 21-4603, 21-4603d, or 22-3717  
4 or ~~38-1663~~ K.S.A. 2006 Supp. 38-2361, and amendments thereto.

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

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

12 (1) If placed directly on probation, that person must provide such  
13 specimen or sample, at a collection site designated by the Kansas bureau  
14 of investigation. Collection of specimens shall be conducted by qualified  
15 volunteers, contractual personnel or employees designated by the Kansas  
16 bureau of investigation. Failure to cooperate with the collection of the  
17 specimens and any deliberate act by that person intended to impede,  
18 delay or stop the collection of the specimens shall be punishable as con-  
19 tempt of court and constitute grounds to revoke probation;

20 (2) if sentenced to the secretary of corrections, such specimen or  
21 sample will be obtained as soon as practical upon arrival at the correc-  
22 tional facility; or

23 (3) if a juvenile offender is placed in the custody of the commissioner  
24 of juvenile justice, in a youth residential facility or in a juvenile correc-  
25 tional facility, such specimen or sample will be obtained as soon as prac-  
26 tical upon arrival.

27 (d) Any person required by paragraph (a)(3) to provide such speci-  
28 men or sample shall be required to provide such samples prior to final  
29 discharge or conditional release at a collection site designated by the  
30 Kansas bureau of investigation. Collection of specimens shall be con-  
31 ducted by qualified volunteers, contractual personnel or employees des-  
32 igned by the Kansas bureau of investigation.

33 (e) (1) On and after January 1, 2007 through June 30, 2008, any adult  
34 arrested or charged or juvenile placed in custody for or charged with the  
35 commission or attempted commission of any person felony or drug se-  
36 verity level 1 or 2 felony shall be required to submit such specimen or  
37 sample at the same time such person is fingerprinted pursuant to the  
38 booking procedure.

39 (2) On and after July 1, 2008, except as provided further, any adult  
40 arrested or charged or juvenile placed in custody for or charged with the  
41 commission or attempted commission of any felony; *a violation of sub-*  
42 *section (a)(1) of K.S.A. 21-3505; a violation of K.S.A. 21-3508; a violation*  
43 *of K.S.A. 21-4310; a violation of K.S.A. 21-3424, and amendments thereto,*

1 *when the victim is less than 18 years of age; a violation of K.S.A. 21-3507,*  
2 *and amendments thereto, when one of the parties involved is less than 18*  
3 *years of age; a violation of subsection (b)(1) of K.S.A. 21-3513, and amend-*  
4 *ments thereto, when one of the parties involved is less than 18 years of*  
5 *age; a violation of K.S.A. 21-3515, and amendments thereto, when one of*  
6 *the parties involved is less than 18 years of age; or a violation of K.S.A.*  
7 *21-3517, and amendments thereto; shall be required to submit such spec-*  
8 *imen or sample at the same time such person is fingerprinted pursuant*  
9 *to the booking procedure.*

10 (3) Prior to taking such samples, the arresting, charging or custodial  
11 law enforcement agency shall search the Kansas criminal history files  
12 through the Kansas criminal justice information system to determine if  
13 such person's sample is currently on file with the Kansas bureau of in-  
14 vestigation. In the event that it cannot reasonably be established that a  
15 DNA sample for such person is on file at the Kansas bureau of investi-  
16 gation, the arresting, charging or custodial law enforcement agency shall  
17 cause a sample to be collected. If such person's sample is on file with the  
18 Kansas bureau of investigation, the law enforcement agency is not re-  
19 quired to take the sample.

20 ~~(4) If a court later determines that there was not probable cause for~~  
21 ~~the arrest, charge or placement in custody, the court shall send a copy of~~  
22 ~~such determination to the Kansas bureau of investigation. The Kansas~~  
23 ~~bureau of investigation shall forthwith remove such specimen or sample~~  
24 ~~from the Kansas bureau of investigation database records.~~

25 ~~(5) If charges against a person, who is required to submit such spec-~~  
26 ~~imen or sample, are dismissed, a conviction against such person is ex-~~  
27 ~~punged or a verdict of acquittal with regard to such person is returned,~~  
28 ~~the court shall send a copy of such order to such person may petition the~~  
29 ~~Kansas bureau of investigation to expunge both the DNA sample and the~~  
30 ~~profile record. The Kansas bureau of investigation shall forthwith destroy~~  
31 ~~such specimen or sample, but retain the record in the Kansas bureau of~~  
32 ~~investigation database.~~

33 ~~(6) If a person, who is required to submit such specimen or sample,~~  
34 ~~has not been charged and the statute of limitations on the crime charged~~  
35 ~~has expired the prosecutor shall send documentation of such expiration~~  
36 ~~to the Kansas bureau of investigation. The Kansas bureau of investigation~~  
37 ~~shall forthwith destroy such specimen or sample, but retain the record in~~  
38 ~~the Kansas bureau of investigation database.~~

39 (f) The Kansas bureau of investigation shall provide all specimen vials,  
40 mailing tubes, labels and instructions necessary for the collection of oral  
41 or other biological samples. No person authorized by this section to collect  
42 oral or other biological samples, and no person assisting in the collection  
43 of these samples shall be liable in any civil or criminal action when the

1 ~~act is performed in a reasonable manner according to rules and regula-~~  
2 ~~tions promulgated by the Kansas bureau of investigation. The samples~~  
3 ~~shall thereafter be forwarded to the Kansas bureau of investigation. The~~  
4 ~~bureau shall analyze the samples to the extent allowed by funding avail-~~  
5 ~~able for this purpose. All persons required to register as offenders pur-~~  
6 ~~suant to K.S.A. 22-4901, et seq., and amendments thereto, shall be re-~~  
7 ~~quired to submit specimens of blood or an oral or other biological sample~~  
8 ~~authorized by the Kansas bureau of investigation to the Kansas bureau of~~  
9 ~~investigation in accordance with the provisions of this act.~~

10 (g) The Kansas bureau of investigation shall provide all specimen vi-  
11 als, mailing tubes, labels and instructions necessary for the collection of  
12 blood, *oral or other biological* samples. The collection of samples shall be  
13 performed in a medically approved manner. No person authorized by this  
14 section to withdraw blood, and no person assisting in the collection of  
15 these samples shall be liable in any civil or criminal action when the act  
16 is performed in a reasonable manner according to generally accepted  
17 medical practices. The withdrawal of blood for purposes of this act may  
18 be performed only by: (1) A person licensed to practice medicine and  
19 surgery or a person acting under the supervision of any such licensed  
20 person; (2) a registered nurse or a licensed practical nurse; or (3) any  
21 qualified medical technician including, but not limited to, an emergency  
22 medical technician-intermediate or mobile intensive care technician, as  
23 those terms are defined in K.S.A. 65-6112, and amendments thereto, or  
24 a phlebotomist. The samples shall thereafter be forwarded to the Kansas  
25 bureau of investigation. The bureau shall analyze the samples to the ex-  
26 tent allowed by funding available for this purpose.

27 (h) The DNA (deoxyribonucleic acid) records and DNA samples shall  
28 be maintained by the Kansas bureau of investigation. The Kansas bureau  
29 of investigation shall establish, implement and maintain a statewide au-  
30 tomated DNA databank and DNA database capable of, but not limited  
31 to, searching, matching and storing DNA records. The DNA database as  
32 established by this act shall be compatible with the procedures specified  
33 by the federal bureau of investigation's combined DNA index system  
34 (CODIS). The Kansas bureau of investigation shall participate in the  
35 CODIS program by sharing data and utilizing compatible test procedures,  
36 laboratory equipment, supplies and computer software.

37 (i) The DNA records obtained pursuant to this act shall be confiden-  
38 tial and shall be released only to authorized criminal justice agencies. The  
39 DNA records shall be used only for law enforcement identification pur-  
40 poses or to assist in the recovery or identification of human remains from  
41 disasters or for other humanitarian identification purposes, including  
42 identification of missing persons.

43 (j) (1) The Kansas bureau of investigation shall be the state central

- 1 repository for all DNA records and DNA samples obtained pursuant to  
2 this act. The Kansas bureau of investigation shall promulgate rules and  
3 regulations for: (A) The form and manner of the collection and mainte-  
4 nance of DNA samples;
- 5 (B) a procedure which allows the defendant to ~~request petition to~~  
6 ~~expunge and destroy~~ the DNA samples ~~be destroyed and profile record~~  
7 in the event of a dismissal of charges expungement, acquittal at trial or  
8 statute of limitations expiration; and
- 9 (C) other procedures for the operation of this act.
- 10 (2) These rules and regulations also shall require compliance with  
11 national quality assurance standards to ensure that the DNA records sat-  
12 isfy standards of acceptance of such records into the national DNA iden-  
13 tification index.
- 14 (3) The provisions of the Kansas administrative procedure act shall  
15 apply to all actions taken under the rules and regulations so promulgated.
- 16 (k) The Kansas bureau of investigation is authorized to contract with  
17 third parties for the purposes of implementing this section. Any other  
18 party contracting to carry out the functions of this section shall be subject  
19 to the same restrictions and requirements of this section, insofar as ap-  
20 plicable, as the bureau, as well as any additional restrictions imposed by  
21 the bureau.
- 22 (l) In the event that a person's DNA sample is lost or is not adequate  
23 for any reason, the person shall provide another sample for analysis.
- 24 (m) Any person who is subject to the requirements of this section,  
25 and who, after receiving notification of the requirement to provide a DNA  
26 specimen, knowingly refuses to provide such DNA specimen, shall be  
27 guilty of a class A nonperson misdemeanor.
- 28 Sec. 3. K.S.A. 2006 Supp. 75-724 is hereby amended to read as fol-  
29 lows: 75-724. (a) Any person required to submit a sample pursuant to  
30 subsection (e) of K.S.A. 21-2511, and amendments thereto, upon convic-  
31 tion *or adjudication* shall pay a separate court cost of \$100 as a Kansas  
32 bureau of investigation DNA database fee.
- 33 (b) Such fees shall be in addition to and not in substitution for any  
34 and all fines and penalties otherwise provided for by law for such offense.
- 35 (c) Disbursements from the Kansas bureau of investigation DNA da-  
36 tabase fee deposited into the DNA database fee fund of the Kansas bu-  
37 reau of investigation shall be made for the following:
- 38 (1) Providing DNA laboratory services;
- 39 (2) the purchase and maintenance of equipment for use by the lab-  
40 oratory in performing DNA analysis; and
- 41 (3) education, training and scientific development of Kansas bureau  
42 of investigation personnel regarding DNA analysis.
- 43 (d) Expenditures from the DNA database fund shall be made upon

1 warrants of the director of accounts and reports issued pursuant to vouch-  
2 ers approved by the attorney general or by a person or persons designated  
3 by the attorney general.

4 (e) All fees shall be remitted to the state treasurer in accordance with  
5 the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt  
6 of each such remittance, the state treasurer shall deposit the entire  
7 amount in the state treasury to the credit of the DNA database fund,  
8 which is hereby established in the state treasury.

9 (f) Fees received into this fund shall be supplemental to regular ap-  
10 propriations to the Kansas bureau of investigation.

11 Sec. 4. K.S.A. 21-2501 and K.S.A. 2006 Supp. 21-2511 and 21-2511a  
12 and 75-724 are hereby repealed.

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