

HOUSE Substitute for SENATE BILL No. 103

AN ACT concerning criminal procedure; amending K.S.A. 21-2501 and 22-2803 and K.S.A. 2006 Supp. 21-2511, 22-2802, 22-2807 and 75-724 and repealing the existing sections; also repealing K.S.A. 2006 Supp. 21-2511a.

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

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

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

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

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

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

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

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

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

(c) ~~Fingerprint~~ Impressions taken pursuant to this section shall be made on the forms provided by the department of justice of the United States or the Kansas bureau of investigation. The sheriff, police department or countywide law enforcement agency shall cause the impressions to be forwarded to the Kansas bureau of investigation at Topeka, Kansas, which shall forward one set of the impressions to the federal bureau of investigation, department of justice, at Washington, D.C. A comprehensive description of the person arrested and such other data and information as to the identification of such person as the department of justice and bureau of investigation require shall accompany the impressions.

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

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

Sec. 2. K.S.A. 2006 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 felony; a violation of subsection (a)(1) of K.S.A. 21-3505; a violation of K.S.A. 21-3508; a violation of K.S.A. 21-4310; a violation of K.S.A. 21-3424, and amendments thereto when the victim is less than 18 years of age; a violation of K.S.A. 21-3507, and amendments thereto, when one of the parties involved is less than 18 years of age; a violation of subsection (b)(1) of K.S.A. 21-3513, and amendments thereto, when one of the parties involved is less than 18 years of age; a violation of K.S.A. 21-3515, and amendments thereto, when one of the parties involved is less than 18 years of age; or a violation of K.S.A. 21-3517, 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 or an oral or other biological sample authorized by the Kansas bureau of investigation 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, 21-4603d, 22-3717 or ~~38-1663~~ K.S.A. 2006 Supp. 38-2361, 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 such specimen or sample shall be ordered by the court to have such specimen or sample collected within 10 days after sentencing or adjudication:

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

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

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

(d) Any person required by paragraph (a)(3) to provide such specimen or sample shall be required to provide such samples prior to final discharge or conditional release at a collection site designated by the Kansas bureau of investigation. Collection of specimens shall be conducted by qualified volunteers, contractual personnel or employees designated by the Kansas bureau of investigation.

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

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

(3) Prior to taking such samples, the arresting, charging or custodial law enforcement 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 DNA sample for such person is on file at the Kansas bureau of investigation, the arresting, charging or custodial law enforcement 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 agency is not required to take the sample.

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

(5) If ~~charges a conviction~~ against a person, who is required to submit such specimen or sample, ~~are dismissed, a conviction against such person is expunged or a verdict of acquittal with regard to such person is returned, the court shall send a copy of such order to the Kansas bureau of investigation shall, upon petition by such person, expunge both the DNA sample and the profile record of such person. The Kansas bureau of investigation shall forthwith destroy such specimen or sample, but retain the record in the Kansas bureau of investigation database.~~

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

(f) ~~The Kansas bureau of investigation shall provide all specimen vials, mailing tubes, labels and instructions necessary for the collection of oral or other biological samples. No person authorized by this section to collect oral or other biological samples, and no person assisting in the collection of these samples shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to rules and regulations promulgated by the Kansas bureau of investigation. The samples shall thereafter be forwarded to the Kansas bureau of investigation. The bureau shall analyze the samples to the extent allowed by funding available for this purpose. All persons required to register as offenders pursuant to K.S.A. 22-4901 et seq., and amendments thereto, shall be required to submit specimens of blood or an oral or other biological sample authorized by the Kansas bureau of investigation to the Kansas bureau of investigation in accordance with the provisions of this act.~~

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

(h) The DNA (deoxyribonucleic acid) records and DNA samples 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 DNA records. The DNA database as established by this act shall be compatible with the procedures specified by the federal bureau of investigation's combined DNA index system (CODIS). The Kansas bureau of investigation shall participate in the CODIS program by sharing data and utilizing compatible test procedures, laboratory equipment, supplies and computer software.

(i) The DNA records obtained pursuant to this act shall be confidential and shall be released only to authorized criminal justice agencies. The DNA records shall be used only for law enforcement identification pur-

poses or to assist in the recovery or identification of human remains from disasters or for other humanitarian identification purposes, including identification of missing persons.

(j) (1) The Kansas bureau of investigation shall be the state central repository for all DNA records and DNA samples obtained pursuant to this act. The Kansas bureau of investigation shall promulgate rules and regulations for: (A) The form and manner of the collection and maintenance of DNA samples;

(B) a procedure which allows the defendant to ~~request~~ *petition to expunge and destroy* the DNA samples ~~be destroyed and profile record~~ in the event of a dismissal of charges, expungement; ~~or acquittal at trial or statute of limitations expiration~~; and

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

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

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

(k) 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 imposed by the bureau.

(l) In the event that a person's DNA sample is lost or is not adequate for any reason, the person shall provide another sample for analysis.

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

Sec. 3. K.S.A. 2006 Supp. 22-2802 is hereby amended to read as follows: 22-2802. (1) Any person charged with a crime shall, at the person's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and to assure the public safety. If the person is being bound over for a felony, the bond shall also be conditioned on the person's appearance in the district court or by way of a two-way electronic audio-video communication as provided in subsection ~~(11)~~ (14) at the time required by the court to answer the charge against such person and at any time thereafter that the court requires. Unless the magistrate makes a specific finding otherwise, if the person is being bonded out for a person felony or a person misdemeanor, the bond shall be conditioned on the person being prohibited from having any contact with the alleged victim of such offense for a period of at least 72 hours. The magistrate may impose such of the following additional conditions of release as will reasonably assure the appearance of the person for preliminary examination or trial:

(a) Place the person in the custody of a designated person or organization agreeing to supervise such person;

(b) place restrictions on the travel, association or place of abode of the person during the period of release;

(c) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody during specified hours;

(d) place the person under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto; or

(e) place the person under the supervision of a court services officer responsible for monitoring the person's compliance with any conditions of release ordered by the magistrate.

(2) In addition to any conditions of release provided in subsection (1), for any person charged with a felony, the magistrate may order such person to submit to a drug abuse examination and evaluation in a public or private treatment facility or state institution and, if determined by the head of such facility or institution that such person is a drug abuser or

incapacitated by drugs, to submit to treatment for such drug abuse, as a condition of release.

(3) The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered.

(4) A deposit of cash in the amount of the bond may be made in lieu of the execution of the bond by sureties pursuant to paragraph (3). *Except as provided in paragraph (5), such deposit shall be in the full amount of the bond and in no event shall a deposit of cash in less than the full amount of bond be permitted. Any person charged with a crime who is released on a cash bond shall be entitled to a refund of all moneys paid for the cash bond, after deduction of any outstanding restitution, costs, fines and fees, after the final disposition of the criminal case if the person complies with all requirements to appear in court. The court may not exclude the option of posting bond pursuant to paragraph (3).*

(5) *Except as provided further, the amount of the appearance bond shall be the same whether executed as described in subsection (3) or posted with a deposit of cash as described in subsection (4). When the appearance bond has been set at \$2,500 or less and the most serious charge against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson felony, a drug severity level 4 felony or a violation of K.S.A. 8-1567, and amendments thereto, the magistrate may allow the person to deposit cash with the clerk in the amount of 10% of the bond, provided the person meets at least the following qualifications:*

- (A) *Is a resident of the state of Kansas;*
- (B) *has a criminal history score category of G, H or I;*
- (C) *has no prior history of failure to appear for any court appearances;*
- (D) *has no detainer or hold from any other jurisdiction;*
- (E) *has not been extradited from, and is not awaiting extradition to, another state; and*
- (F) *has not been detained for an alleged violation of probation.*

(6) *In the discretion of the court, a person charged with a crime may be released upon the person's own recognizance by guaranteeing payment of the amount of the bond for the person's failure to comply with all requirements to appear in court. The release of a person charged with a crime upon the person's own recognizance shall not require the deposit of any cash by the person.*

(7) *The court shall not impose any administrative fee.*

~~(5)~~ (8) In determining which conditions of release will reasonably assure appearance and the public safety, the magistrate shall, on the basis of available information, take into account the nature and circumstances of the crime charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, record of convictions, record of appearance or failure to appear at court proceedings or of flight to avoid prosecution; the likelihood or propensity of the defendant to commit crimes while on release, including whether the defendant will be likely to threaten, harass or cause injury to the victim of the crime or any witnesses thereto; and whether the defendant is on probation or parole from a previous offense at the time of the alleged commission of the subsequent offense.

~~(6)~~ (9) The appearance bond shall set forth all of the conditions of release.

~~(7)~~ (10) A person for whom conditions of release are imposed and who continues to be detained as a result of the person's inability to meet the conditions of release shall be entitled, upon application, to have the conditions reviewed without unnecessary delay by the magistrate who imposed them. If the magistrate who imposed conditions of release is not available, any other magistrate in the county may review such conditions.

~~(8)~~ (11) A magistrate ordering the release of a person on any conditions specified in this section may at any time amend the order to impose additional or different conditions of release. If the imposition of additional or different conditions results in the detention of the person, the provisions of subsection ~~(7)~~ (10) shall apply.

~~(9)~~ (12) Statements or information offered in determining the con-

ditions of release need not conform to the rules of evidence. No statement or admission of the defendant made at such a proceeding shall be received as evidence in any subsequent proceeding against the defendant.

~~(10)~~ (13) The appearance bond and any security required as a condition of the defendant's release shall be deposited in the office of the magistrate or the clerk of the court where the release is ordered. If the defendant is bound to appear before a magistrate or court other than the one ordering the release, the order of release, together with the bond and security shall be transmitted to the magistrate or clerk of the court before whom the defendant is bound to appear.

~~(11)~~ (14) Proceedings before a magistrate as provided in this section to determine the release conditions of a person charged with a crime including release upon execution of an appearance bond may be conducted by two-way electronic audio-video communication between the defendant and the judge in lieu of personal presence of the defendant or defendant's counsel in the courtroom in the discretion of the court. The defendant may be accompanied by the defendant's counsel. The defendant shall be informed of the defendant's right to be personally present in the courtroom during such proceeding if the defendant so requests. Exercising the right to be present shall in no way prejudice the defendant.

~~(12)~~ (15) The magistrate may order the person to pay for any costs associated with the supervision of the conditions of release of the appearance bond in an amount not to exceed \$10 per week of such supervision.

Sec. 4. K.S.A. 22-2803 is hereby amended to read as follows: 22-2803. A person who remains in custody after review of such person's application pursuant to subsection ~~(6) or (7)~~ (9) or (10) of K.S.A. 22-2802 and amendments thereto by a district magistrate judge may apply to a district judge of the judicial district in which the charge is pending to modify the order fixing conditions of release. Such motion shall be determined promptly.

Sec. 5. K.S.A. 2006 Supp. 22-2807 is hereby amended to read as follows: 22-2807. (1) ~~If there is a breach of condition of a defendant fails to appear as directed by the court and guaranteed by an appearance bond,~~ the court in which the bond is deposited shall declare a forfeiture of the bail.

(2) *An appearance bond may only be forfeited by the court upon a failure to appear. If a defendant violates any other condition of bond, the bond may be revoked and the defendant remanded to custody. The magistrate shall forthwith set a new bond pursuant to requirements of K.S.A. 22-2802, and amendments thereto.*

(3) The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture. *If the surety can prove that the defendant is incarcerated somewhere within the United States prior to judgment of default then the court shall set aside the forfeiture. Upon the defendant's return, the surety may be ordered to pay the costs of that return.*

~~(3)~~ (4) When a forfeiture has not been set aside, the court shall on motion enter a judgment of default and execution may issue thereon. If the forfeiture has been decreed by a district magistrate judge and the amount of the bond exceeds the limits of the civil jurisdiction prescribed by law for a district magistrate judge, the judge shall notify the chief judge in writing of the forfeiture and the matter shall be assigned to a district judge who, on motion, shall enter a judgment of default. By entering into a bond the obligors submit to the jurisdiction of any court having power to enter judgment upon default and irrevocably appoint the clerk of that court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and notice thereof may be served on the clerk of the court, who shall forthwith mail copies to the obligors to their last known addresses. No default judgment shall be entered against the obligor in an appearance bond until more than 10 days after notice is served as provided herein.

~~(4)~~ (5) After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in subsection ~~(2)~~ (3).

Sec. 6. K.S.A. 2006 Supp. 75-724 is hereby amended to read as follows: 75-724. (a) Any person required to submit a sample pursuant to subsection (e) of K.S.A. 21-2511, and amendments thereto, upon conviction *or adjudication* shall pay a separate court cost of \$100 as a Kansas bureau of investigation DNA database fee.

(b) Such fees shall be in addition to and not in substitution for any and all fines and penalties otherwise provided for by law for such offense.

(c) Disbursements from the Kansas bureau of investigation DNA database fee deposited into the DNA database fee fund of the Kansas bureau of investigation shall be made for the following:

(1) Providing DNA laboratory services;

(2) the purchase and maintenance of equipment for use by the laboratory in performing DNA analysis; and

(3) education, training and scientific development of Kansas bureau of investigation personnel regarding DNA analysis.

(d) Expenditures from the DNA database *fee* fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or by a person or persons designated by the attorney general.

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

(f) Fees received into this fund shall be supplemental to regular appropriations to the Kansas bureau of investigation.

Sec. 7. K.S.A. 21-2501 and 22-2803 and K.S.A. 2006 Supp. 21-2511, 21-2511a, 22-2802, 22-2807 and 75-724 are hereby repealed.

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted

Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE

as amended _____

HOUSE adopted

Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.