

SENATE BILL No. 413

By Special Committee on Judiciary

1-10

9 AN ACT concerning crimes, criminal procedure and punishment; con-
10 cerning collection of certain specimens; amending K.S.A. 21-2511 and
11 repealing the existing section.
12

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

14 Section 1. K.S.A. 21-2511 is hereby amended to read as follows: 21-
15 2511. (a) Any person convicted as an adult or adjudicated as a juvenile
16 offender because of the commission of any felony; a violation of subsec-
17 tion (a)(1) of K.S.A. 21-3505; a violation of K.S.A. 21-3508; a violation of
18 K.S.A. 21-4310; a violation of K.S.A. 21-3424, and amendments thereto
19 when the victim is less than 18 years of age; a violation of K.S.A. 21-3507,
20 and amendments thereto, when one of the parties involved is less than
21 18 years of age; a violation of subsection (b)(1) of K.S.A. 21-3513, and
22 amendments thereto, when one of the parties involved is less than 18
23 years of age; a violation of K.S.A. 21-3515, and amendments thereto,
24 when one of the parties involved is less than 18 years of age; or a violation
25 of K.S.A. 21-3517, and amendments thereto; including an attempt, con-
26 spiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or
27 21-3303 and amendments thereto, of any such offenses provided in this
28 subsection regardless of the sentence imposed, shall be required to sub-
29 mit specimens of blood or an oral or other biological sample authorized
30 by the Kansas bureau of investigation to the Kansas bureau of investiga-
31 tion in accordance with the provisions of this act, if such person is:

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

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

38 (3) convicted as an adult or adjudicated as a juvenile offender because
39 of the commission of a crime specified in this subsection before the ef-
40 fective date of this act and is presently confined as a result of such con-
41 viction or adjudication in any state correctional facility or county jail or is
42 presently serving a sentence under K.S.A. 21-4603, 21-4603d, 22-3717 or
43 K.S.A. 2007 Supp. 38-2361, and amendments thereto.

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

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

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

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

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

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

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

35 ~~(2)~~ On and after July 1, 2008, except as provided further, any adult
36 arrested or charged or juvenile placed in custody for or charged with the
37 commission or attempted commission of any felony; a violation of sub-
38 section (a)(1) of K.S.A. 21-3505; a violation of K.S.A. 21-3508; a violation
39 of K.S.A. 21-4310; a violation of K.S.A. 21-3424, and amendments
40 thereto, when the victim is less than 18 years of age; a violation of K.S.A.
41 21-3507, and amendments thereto, when one of the parties involved is
42 less than 18 years of age; a violation of subsection (b)(1) of K.S.A. 21-
43 3513, and amendments thereto, when one of the parties involved is less

1 than 18 years of age; a violation of K.S.A. 21-3515, and amendments
2 thereto, when one of the parties involved is less than 18 years of age; or
3 a violation of K.S.A. 21-3517, and amendments thereto; shall be required
4 to submit such specimen or sample at ~~the same time such person is fin-~~
5 ~~gerprinted pursuant to the booking procedure~~ *any time after a magistrate,*
6 *as defined by K.S.A. 22-2202 and amendments thereto, has made a de-*
7 *termination of probable cause to support such arrest, charge or placement*
8 *in custody. If the magistrate makes a probable cause determination, the*
9 *magistrate shall, as a condition of bond, require such person to submit a*
10 *specimen or sample.*

11 ~~(2)~~ (2) Prior to taking such samples, the arresting, charging or cus-
12 todial law enforcement agency shall search the Kansas criminal history
13 files through the Kansas criminal justice information system to determine
14 if such person's sample is currently on file with the Kansas bureau of
15 investigation. In the event that it cannot reasonably be established that a
16 DNA sample for such person is on file at the Kansas bureau of investi-
17 gation, the arresting, charging or custodial law enforcement agency shall
18 cause a sample to be collected. If such person's sample is on file with the
19 Kansas bureau of investigation, the law enforcement agency is not re-
20 quired to take the sample.

21 ~~(3)~~ (3) If a court later determines that there was not probable cause
22 for the arrest, charge or placement in custody or the charges are otherwise
23 dismissed, and the case is not appealed, the Kansas bureau of investiga-
24 tion, upon petition by such person, shall expunge both the DNA sample
25 and the profile record of such person.

26 ~~(4)~~ (4) If a conviction against a person, who is required to submit
27 such specimen or sample, is expunged or a verdict of acquittal with regard
28 to such person is returned, the Kansas bureau of investigation shall, upon
29 petition by such person, expunge both the DNA sample and the profile
30 record of such person.

31 (f) All persons required to register as offenders pursuant to K.S.A.
32 22-4901 et seq., and amendments thereto, shall be required to submit
33 specimens of blood or an oral or other biological sample authorized by
34 the Kansas bureau of investigation to the Kansas bureau of investigation
35 in accordance with the provisions of this act.

36 (g) The Kansas bureau of investigation shall provide all specimen vi-
37 als, mailing tubes, labels and instructions necessary for the collection of
38 blood, oral or other biological samples. The collection of samples shall be
39 performed in a medically approved manner. No person authorized by this
40 section to withdraw blood, and no person assisting in the collection of
41 these samples shall be liable in any civil or criminal action when the act
42 is performed in a reasonable manner according to generally accepted
43 medical practices. The withdrawal of blood for purposes of this act may

1 be performed only by: (1) A person licensed to practice medicine and
2 surgery or a person acting under the supervision of any such licensed
3 person; (2) a registered nurse or a licensed practical nurse; or (3) any
4 qualified medical technician including, but not limited to, an emergency
5 medical technician-intermediate or mobile intensive care technician, as
6 those terms are defined in K.S.A. 65-6112, and amendments thereto, or
7 a phlebotomist. The samples shall thereafter be forwarded to the Kansas
8 bureau of investigation. The bureau shall analyze the samples to the ex-
9 tent allowed by funding available for this purpose.

10 (h) The DNA (deoxyribonucleic acid) records and DNA samples shall
11 be maintained by the Kansas bureau of investigation. The Kansas bureau
12 of investigation shall establish, implement and maintain a statewide au-
13 tomated DNA databank and DNA database capable of, but not limited
14 to, searching, matching and storing DNA records. The DNA database as
15 established by this act shall be compatible with the procedures specified
16 by the federal bureau of investigation's combined DNA index system
17 (CODIS). The Kansas bureau of investigation shall participate in the
18 CODIS program by sharing data and utilizing compatible test procedures,
19 laboratory equipment, supplies and computer software.

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

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

31 (B) a procedure which allows the defendant to petition to expunge
32 and destroy the DNA samples and profile record in the event of a dis-
33 missal of charges, expungement or acquittal at trial; and

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

35 (2) These rules and regulations also shall require compliance with
36 national quality assurance standards to ensure that the DNA records sat-
37 isfy standards of acceptance of such records into the national DNA iden-
38 tification index.

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

41 (k) The Kansas bureau of investigation is authorized to contract with
42 third parties for the purposes of implementing this section. Any other
43 party contracting to carry out the functions of this section shall be subject

1 to the same restrictions and requirements of this section, insofar as ap-
2 plicable, as the bureau, as well as any additional restrictions imposed by
3 the bureau.

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

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

10 Sec. 2. K.S.A. 21-2511 is hereby repealed.

11 Sec. 3. This act shall take effect and be in force from and after its
12 publication in the statute book.