

## 2012 Kansas Statutes

**21-2511. Collection of fingerprints, blood, saliva or other biological samples from certain persons; Kansas bureau of investigation, powers and duties; expungement of DNA sample and profile record; failure to provide DNA specimen, penalties.** (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 [subsection (a) (1) or (a)(2) of K.S.A. 2012 Supp. 21-5504]; a violation of K.S.A. 21-3508 [K.S.A. 2012 Supp. 21-5513]; a violation of K.S.A. 21-4310 [K.S.A. 2012 Supp. 21-6412]; a violation of K.S.A. 21-3424 [K.S.A. 2012 Supp. 21-5411], and amendments thereto, when the victim is less than 18 years of age; a violation of K.S.A. 21-3507 [K.S.A. 2012 Supp. 21-5511], 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 [subsection (b)(1)(A) of K.S.A. 2012 Supp. 21-6420], and amendments thereto, when one of the parties involved is less than 18 years of age; a violation of K.S.A. 21-3515 [K.S.A. 2012 Supp. 21-6421], 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 [subsection (a) of K.S.A. 2012 Supp. 21-5505], and amendments thereto; including an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 [K.S.A. 2012 Supp. 21-5301, 21-5302 or 21-5303], 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 [K.S.A. 2012 Supp. 21-6702], 21-4603d [K.S.A. 2012 Supp. 21-6604], 22-3717 or K.S.A. 2012 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 [subsection (a)(1) or (a)(2) of K.S.A. 2012 Supp. 21-5504]; a violation of K.S.A. 21-3508 [K.S.A. 2012 Supp. 21-5513]; a violation of K.S.A. 21-4310 [K.S.A. 2012 Supp. 21-6412]; a violation of K.S.A. 21-3424 [K.S.A. 2012 Supp. 21-5411], and amendments thereto, when the victim is less than 18 years of age; a violation of K.S.A. 21-3507 [K.S.A. 2012 Supp. 21-5511], 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 [subsection (b)(1)(A) of K.S.A. 2012 Supp. 21-6420], and amendments thereto, when one of the parties involved is less than 18 years of age; a violation of K.S.A. 21-3515 [K.S.A. 2012 Supp. 21-6421], 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 [subsection (a) of K.S.A. 2012 Supp. 21-5505], 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 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 a conviction against a person, who is required to submit such specimen or sample, is expunged or a verdict of acquittal with regard to such person is returned, the Kansas bureau of investigation shall, upon petition by such person, expunge both the DNA sample and the profile record of such person.

(f) 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, mobile intensive care technician, advanced emergency medical technician or a paramedic, 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 purposes 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 petition to expunge and destroy the DNA samples and profile record in the event of a dismissal of charges, expungement or acquittal at trial; 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.

**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; Jan. 15, 2011.

Certain statutes in chapter 21 were repealed effective July 1, 2011. The statutes bracketed herein refer to the statute in the Kansas criminal code in effect on July 1, 2011.