

DNA Collection, Interference with Judicial Process; Justice Reinvestment Act Amendments; DUI and Test Refusal Expungement; and Jury Conduct; Senate Sub. for HB 2448

Senate Sub. for HB 2448 amends portions of the law concerning DNA collection; interference with judicial process; provisions related to 2013 HB 2170, known as the Justice Reinvestment Act; driving under the influence (DUI) and test refusal expungement; and jury conduct.

DNA Collection—Katie’s Law

The bill amends the criminal code concerning the Kansas Bureau of Investigation’s (KBI’s) collection of DNA samples. This section is to be known as Katie’s Law.

The bill removes references to drawing blood and requires the specified persons to submit biological samples to the KBI when a person is fingerprinted as part of the booking procedure, or as soon as practicable. The KBI will provide the necessary kits and supplies for collection, and no profile records will be accepted for admission or comparison unless obtained in substantial compliance with the provisions of the bill by an accredited forensic laboratory meeting the national DNA index guidelines established by the Federal Bureau of Investigation. If the person’s DNA sample is not properly obtained, the person must provide another sample. Additionally, a sample collected by a law enforcement agency or juvenile justice agency in substantial compliance with the provisions of the bill, or any evidence based upon or derived from such sample, will not be excluded as evidence in any criminal proceeding on the basis that the sample was not validly obtained.

The bill also amends provisions outlining who is required to submit such a sample. Any person required to register as an offender pursuant to the Kansas Offender Registration Act must submit a sample. The bill clarifies that a person is required to submit a sample when arrested for or charged with lewd and lascivious behavior only if the crime was committed in the presence of a person 16 or more years of age. A person arrested for or charged with buying sexual relations must submit a sample only if such person is less than 18 years of age. Further, the bill specifies that persons who were incarcerated on May 2, 1991, for a crime committed prior to that date must submit a sample prior to final discharge or conditional release.

The bill makes it a class A nonperson misdemeanor for a person who has possession of or access to samples or profile records maintained by the KBI due to such person’s employment or official position to disseminate such samples or records except in strict accordance with applicable laws, or for a criminal justice agency to request profile records without a legitimate need for such records. A conviction under these provisions constituted good cause for termination or licensure revocation or suspension.

The bill also strikes provisions that are outdated, makes other technical amendments, and defines key terms.

Interference with the Judicial Process

The bill provides it would be a class A misdemeanor for a person to knowingly make available personal information about a judge or the judge's immediate family member, if dissemination of such information poses an imminent and serious threat to the judge's safety or the safety of such judge's immediate family member, and the person making the information available knows or reasonably should know of the imminent and serious threat. Upon a second or subsequent conviction, this crime is a severity level 9, person felony. "Personal information" is defined as a judge's home address or telephone number; personal mobile telephone or pager number; personal e-mail address; a photo of the judge, an immediate family member, or the judge's home or motor vehicle; or an immediate family member's motor vehicle, place of employment, child care or day care facility, or public or private K-12 school. The bill also defines "immediate family member" and "judge."

Justice Reinvestment Act

The bill modifies several provisions created or amended by or otherwise related to the Justice Reinvestment Act, which made numerous changes to sentencing, probation, and postrelease supervision statutes. Specifically, the bill:

- Moves the provision allowing a judge in most felony cases to impose up to 60 days in a county jail upon revocation of a probation sentence or community corrections placement from the authorized dispositions for sentencing statute to the statute governing probation, community corrections, suspended sentence, and nonprison sanction violations, and clarifies that this provision is separate and distinct from other sanctions provided for violation of release conditions, shall not be imposed at the same time as the other sanctions, and shall be served concurrently if the offender is serving concurrent probation terms;
- Adds a similar "up to 60 day" sanction provision for misdemeanor violators, and specifies that such sanctions shall be served concurrently if the offender is serving concurrent probation terms;
- Clarifies that the intermediate sanctions that may be imposed by a court services officer or community corrections officer are applicable only if the original crime of conviction was a felony, with the exception of felony DUI, test refusal, domestic battery, forgery, and cruelty to animals convictions;
- Provides that for felony DUI, test refusal, domestic battery, forgery, and cruelty to animals convictions, the sanctions for misdemeanor violators will be imposed;
- Adds a two- to three-day confinement provision for misdemeanor violators, similar to that allowed for felony violators;
- Clarifies that the 120-day and 180-day incarceration intermediate sanctions will not be served by prior confinement credit;
- Specifies that intermediate sanctions are to be imposed concurrently if the offender is serving multiple probation terms concurrently;

- Adds a retroactivity provision to clarify that the violation sanctions apply to any violation occurring on or after July 1, 2013, regardless of the date the underlying crime was committed or the offender was sentenced for the underlying crime;
- Amends a provision allowing early discharge of low-risk offenders from supervision to change the standard for denial by the court of such discharge from “substantial and compelling reasons for denial” to “clear and convincing evidence that denial will serve community safety interests”; and
- Makes non-substantive amendments and adds statutory references to provide clarity and ensure consistency.

DUI and Test Refusal Expungement

The bill reduces the period from ten years to seven years, before which a person with a conviction of or diversion for DUI may petition for expungement of the conviction or diversion. The bill also raises the expungement period for a conviction of or diversion for refusal to submit to a test to determine the presence of alcohol or drugs (test refusal) from three years to seven years.

Jury Conduct

If the jury is permitted to separate either during the trial or after the case is submitted to them, the bill requires the court to admonish them to immediately report any attempt by another person to converse with them on any subject of the trial. The bill strikes language requiring the court to admonish the jury of its duty not to “form or express an opinion” on any subject of the trial until it is finally submitted to them. Instead, the bill requires the court to admonish the jury of its duty not to make any final determinations or express any opinion on any subject of the trial until the case is finally submitted to them.

The bill strikes language allowing the jury to request the officer to conduct them to the court to receive information on a point of law or to have the evidence read or exhibited to them in the presence of the defendant, unless the defendant voluntarily absents himself, and his counsel and after notice to the prosecuting attorney. In lieu of this procedure, subject to the court’s discretion, the bill allows the jury, upon retiring for deliberation, to take any admitted exhibits into the jury room to review them without further permission from the court. The court can provide equipment to facilitate review. Further, the bill provides that the jury will be instructed that any question it wishes to ask the court about the instructions or evidence should be signed, dated, and submitted in writing to the bailiff. The court must notify the parties of the contents of the questions and provide them an opportunity to discuss an appropriate response. The bill requires the court to respond to all questions from a deliberating jury in open court or in writing and allows the court to grant a jury’s request to rehear testimony. The bill also requires the defendant to be present during the discussion of such written questions and during response given in open court, unless such presence is waived. Written questions from the jury, the court’s response, and any objections thereto will be made a part of the record.

Finally, the bill provides that the amendments establish a procedural rule and, as such, will be construed and applied retroactively.