

## HOUSE BILL No. 2198

By Committee on Judiciary

1-30

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to identification and detection of crimes and criminals; collection of  
3 biological samples, fingerprints and other identifiers; amending K.S.A.  
4 2016 Supp. 21-2511 and repealing the existing section.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2016 Supp. 21-2511 is hereby amended to read as  
8 follows: 21-2511. (a) On and after May 2, 1991, any person required to  
9 register as an offender pursuant to the Kansas offender registration act, any  
10 adult arrested or charged or juvenile placed in custody for or charged with  
11 the commission of any of the following offenses, regardless of the  
12 sentence imposed, shall be required to submit biological samples  
13 authorized by and given to the Kansas bureau of investigation in  
14 accordance with the provisions of this section:

15 (1) Any felony;

16 (2) ~~subsection (a)(1) of K.S.A. 21-3505(a)(1), prior to its repeal, or~~  
17 ~~subsection (a)(1) or (a)(2) of K.S.A. 2016 Supp. 21-5504(a)(1) or (a)(2),~~  
18 and amendments thereto;

19 (3) K.S.A. 21-3508, prior to its repeal, or K.S.A. 2016 Supp. 21-  
20 5513, and amendments thereto, when committed in the presence of a  
21 person 16 or more years of age;

22 (4) K.S.A. 21-4310, prior to its repeal, or K.S.A. 2016 Supp. 21-  
23 6412, and amendments thereto;

24 (5) K.S.A. 21-3424, prior to its repeal, or K.S.A. 2016 Supp. 21-5411,  
25 and amendments thereto, when the victim is less than 18 years of age;

26 (6) K.S.A. 21-3507, prior to its repeal, or K.S.A. 2016 Supp. 21-5511,  
27 and amendments thereto, when one of the parties involved is less than 18  
28 years of age;

29 (7) ~~subsection (b)(1) of K.S.A. 21-3513, prior to its repeal, when one~~  
30 ~~of the parties involved is less than 18 years of age or K.S.A. 21-6420, and~~  
31 ~~amendments thereto;~~

32 (8) K.S.A. 21-3515, prior to its repeal, when one of the parties  
33 involved is less than 18 years of age, or K.S.A. 2016 Supp. 21-6421, and  
34 amendments thereto, ~~when the offender is less than 18 years of age;~~

35 (9) K.S.A. 21-3517, prior to its repeal, or ~~subsection (a) of K.S.A.~~  
36 2016 Supp. 21-5505(a), and amendments thereto; ~~or~~

1 (10) *K.S.A. 21-3412a, prior to its repeal, or K.S.A. 21-5414, and*  
2 *amendments thereto;*

3 (11) *K.S.A. 21-3438, prior to its repeal, or K.S.A. 21-5427, and*  
4 *amendments thereto; or*

5 (12) an attempt, conspiracy or criminal solicitation, as defined in  
6 K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2016  
7 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of any such  
8 offenses provided in this subsection.

9 (b) Notwithstanding any other provision of law, the Kansas bureau of  
10 investigation is authorized to obtain fingerprints and other identifiers for  
11 all persons required to submit a sample under the provisions of this  
12 section.

13 (c) Any person required to submit a sample pursuant to subsection (a)  
14 shall be required to submit such sample at the same time such person is  
15 fingerprinted pursuant to the booking procedure, or as soon as practicable.

16 (d) Any person convicted as an adult and who was incarcerated on  
17 May 2, 1991, for a crime committed prior to May 2, 1991, shall be  
18 required to submit a sample prior to final discharge or conditional release  
19 at a collection site designated by the Kansas bureau of investigation.  
20 Collection of samples shall be conducted by qualified volunteers,  
21 contractual personnel or employees designated by the Kansas bureau of  
22 investigation.

23 (e) Prior to taking such samples, the arresting, charging or custodial  
24 law enforcement or juvenile justice agency shall search the Kansas  
25 criminal history files through the Kansas criminal justice information  
26 system to determine if such person's sample is currently on file with the  
27 Kansas bureau of investigation. In the event that it cannot reasonably be  
28 established that a sample for such person is on file at the Kansas bureau of  
29 investigation, the arresting, charging or custodial law enforcement or  
30 juvenile justice agency shall cause a sample to be collected. If such  
31 person's sample is on file with the Kansas bureau of investigation, the law  
32 enforcement or juvenile justice agency shall not be required to take the  
33 sample.

34 (f) (1) If a court later determines that there was not probable cause for  
35 the arrest, charge or placement in custody or the charges are otherwise  
36 dismissed, and the case is not appealed, the Kansas bureau of  
37 investigation, upon petition by such person, shall expunge both the sample  
38 and the profile record of such person.

39 (2) If a conviction against a person who is required to submit such  
40 sample is overturned, expunged or a verdict of acquittal with regard to  
41 such person is returned, the Kansas bureau of investigation, upon petition  
42 by such person, shall expunge both the sample and the profile record of  
43 such person.

1 (g) The Kansas bureau of investigation shall provide all kits, supplies  
2 and instructions necessary for the collection of biological samples. The  
3 collection of samples shall be performed in a medically approved manner.  
4 No person assisting in the collection of samples pursuant to the provisions  
5 of this section shall be liable in any civil or criminal action when the act is  
6 performed in a reasonable manner according to generally accepted medical  
7 practices. Such samples shall be forwarded to the Kansas bureau of  
8 investigation and the bureau shall analyze such samples to the extent  
9 allowed by funding available for this purpose.

10 (h) (1) Samples and profile records shall be maintained by the Kansas  
11 bureau of investigation. The Kansas bureau of investigation shall establish,  
12 implement and maintain a statewide automated DNA databank and DNA  
13 database capable of, but not limited to, searching, matching and storing  
14 profile records. The DNA database established by this section shall be  
15 compatible with the procedures specified by the federal bureau of  
16 investigation's combined DNA index system. The Kansas bureau of  
17 investigation shall participate in the federal bureau of investigation's  
18 combined DNA index system program by sharing data and utilizing  
19 compatible test procedures, laboratory equipment, supplies and computer  
20 software.

21 (2) Profile records obtained pursuant to this section shall be  
22 confidential and shall be released only to authorized criminal justice  
23 agencies. Such records shall be used only for law enforcement  
24 identification purposes or to assist in the recovery or identification of  
25 human remains from disasters or for other humanitarian identification  
26 purposes, including, but not limited to, identification of missing persons.

27 (3) The Kansas bureau of investigation shall be the state central  
28 repository for all profile records and samples obtained pursuant to this  
29 section. No profile records shall be accepted for admission or comparison  
30 unless obtained in substantial compliance with the provisions of this  
31 section by an accredited forensic laboratory meeting the national DNA  
32 index system guidelines established by the federal bureau of investigation.

33 (i) (1) The Kansas bureau of investigation shall promulgate rules and  
34 regulations for:

35 (A) The form and manner of the collection and maintenance of  
36 samples;

37 (B) a procedure which allows defendants to petition to expunge and  
38 destroy the samples and profile record in the event of a dismissal of  
39 charges, expungement or acquittal at trial, expungement or overturned  
40 conviction; and

41 (C) any other procedures for the operation of this section.

42 (2) Such rules and regulations also shall require compliance with  
43 national quality assurance standards to ensure that profile records satisfy

1 standards of acceptance of such records into the national DNA index  
2 system.

3 (3) The provisions of the Kansas administrative procedure act shall  
4 apply to all actions taken pursuant to such rules and regulations.

5 (j) The Kansas bureau of investigation is authorized to contract with  
6 third parties for the purposes of implementing this section. Any other party  
7 contracting to carry out the functions of this section shall be subject to the  
8 same restrictions and requirements of this section, insofar as applicable, as  
9 the bureau, as well as any additional restrictions or requirements imposed  
10 by the bureau.

11 (k) In the event that a person's sample is lost, was not properly  
12 obtained pursuant to the provisions of this section or is not adequate for  
13 any reason, the person shall provide another sample for analysis.

14 (l) A sample, or any evidence based upon or derived from such  
15 sample, collected by a law enforcement agency or a juvenile justice  
16 agency in substantial compliance with the provisions of this section, shall  
17 not be excluded as evidence in any criminal proceeding on the basis that  
18 such sample was not validly obtained.

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

23 (n) (1) Any person who, by virtue of employment or official position,  
24 has possession of, or access to, samples maintained by the Kansas bureau  
25 of investigation or profile records maintained by the Kansas bureau of  
26 investigation shall not disseminate such samples or records except in strict  
27 accordance with applicable laws.

28 (2) A criminal justice agency shall not request profile records from  
29 the Kansas bureau of investigation or another criminal justice agency  
30 unless such agency has a legitimate need for such records in accordance  
31 with subsection (h)(2).

32 (3) In addition to any other remedy or penalty authorized by law, any  
33 person who knowingly violates or causes a violation of this subsection  
34 shall be guilty of a class A nonperson misdemeanor. If such person is  
35 employed or licensed by a state or local government agency, a conviction  
36 for violation of this subsection shall constitute good cause to terminate  
37 such person's employment or to revoke or suspend such person's license.

38 (o) Any person who, without authorization, knowingly obtains  
39 samples maintained by the Kansas bureau of investigation or profile  
40 records maintained by the Kansas bureau of investigation shall be guilty of  
41 a class A nonperson misdemeanor.

42 (p) As used in this section:

43 (1) "DNA" means deoxyribonucleic acid;

1 (2) "profile record" means the identifying information of the  
2 laboratory and laboratory personnel performing the DNA analysis, the  
3 sample identification number and data related to the reliability and  
4 maintainability of a DNA profile;

5 (3) "DNA profile" means a set of DNA identification characteristics  
6 that permit the DNA of one person to be distinguishable from the DNA of  
7 another person; and

8 (4) "biological sample" means a body tissue, fluid or other bodily  
9 sample, usually a blood or buccal sample, of an individual on which DNA  
10 analysis can be carried out.

11 Sec. 2. K.S.A. 2016 Supp. 21-2511 is hereby repealed.

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