



Kansas Bureau of Investigation

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Expungement, Wrongful Conviction and the Destruction of Biological Samples
Testimony before the Joint Committee on Corrections and Juvenile Justice Oversight
Robert Jacobs, Executive Officer
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Chairwoman Baumgardner and Members of the Committee:

My name is Robert Jacobs and I serve as the Executive Officer at the Kansas Bureau of Investigation (KBI). Thank you for the opportunity to discuss with the committee the procedure utilized by the KBI to remove criminal history records upon the receipt of either a court-ordered expungement or a court-ordered certificate of innocence. Additionally, this testimony will include an explanation of the process used to remove and destroy biological samples from the KBI Forensic Science Laboratory, when authorized to do so.

In 2018, the Kansas Legislature passed House Bill (HB) 2579, which in part aimed to create a civil remedy for persons wrongfully convicted and imprisoned. HB 2579 eventually became K.S.A. 60-5004. Prior to explaining the provisions outlined in K.S.A. 60-5004, a clear explanation of the difference between an *expunged conviction* and a *certificate of innocence* related to a *wrongful conviction* should be provided.

A legal distinction exists when a petitioner applies for and receives an expungement of his or her conviction, versus when the court finds an individual was wrongfully convicted. This testimony will summarize the practice utilized by the KBI in each of these circumstances with regard specifically to criminal history records, biological samples, and DNA profile records within the Combined DNA Index System (CODIS).

Expungement:

When an individual petitions the court to have his or her conviction expunged, there are certain requirements that must be met before the expungement request will be considered. K.S.A. 21-6614 outlines the prerequisites necessary for a court to grant an expungement.¹ Once a court grants a motion for expungement, a certified copy of the court-ordered expungement is sent to the KBI. Upon receipt, KBI personnel will locate the individual's criminal history record.

Information related to the criminal arrest, conviction and/or supervision associated with the expungement will **not** be permanently removed from the criminal record, but rather will be sealed from public view within the record. Expunged criminal records in Kansas are sealed rather than removed to allow certain authorized entities access to the expunged information when necessary.

¹ [Statute | Kansas State Legislature \(kslegislature.org\)](https://kslegislature.org)

The petitioner must complete a separate application to the KBI for the removal of his or her DNA profile record from the state CODIS and the destruction of any biological samples associated with the expungement, per K.S.A. 21-2511². The application process is necessary to allow for a review of the individual's criminal history record. This review is done to determine whether any other qualifying crime would require the KBI to retain an individual's DNA profile record and biological sample.

If deemed appropriate, personnel from the KBI Forensic Science Laboratory's DNA Databank section removes the individual's DNA profile record from the state CODIS and destroy the biological sample associated with the expungement. Once the profile has been removed from the state CODIS, it is automatically removed from the national CODIS.

Certificate of Innocence and Wrongful Conviction:

According to K.S.A. 60-5004, when a court finds a claimant is entitled to a judgment, it shall enter a certificate of innocence, finding the claimant innocent of all crimes for which he or she was mistakenly convicted. In these instances, the court sends a certified copy of the judgment and a certificate of innocence to the KBI, instructing the KBI to purge the conviction and arrest information from the Kansas criminal justice information system central repository and all applicable state and federal databases.

Per statute, the KBI is required to notify the Federal Bureau of Investigation (FBI), the secretary of corrections, and any other criminal justice agency that may have a record of the conviction and arrest. Furthermore the KBI is required to provide confirmation of these actions back to the court³.

Additionally, K.S.A. 60-5004 requires that upon entry of the certificate of innocence, the court shall order the expungement and destruction of the associated biological samples, authorized by and given to the KBI in accordance with K.S.A. 21-2511⁴.

The following procedure outlines the removal of criminal history records and destruction of biological samples:

1. The KBI receives the certified copy of the court order with the certificate of innocence for the petitioner. The individual's criminal history record is identified and the information related to arrest, conviction, and/or supervision is **permanently** removed from the criminal record.

The KBI then reviews the certificate of innocence and the individual's criminal history record to determine if there is another qualifying crime for which the individual's DNA would have been collected under K.S.A. 21-2511. *Per K.S.A. 60-5004, "Nothing in this subsection shall require the Kansas bureau of investigation to expunge and destroy any samples or profile record associated with the claimant that was submitted pursuant to K.S.A. 21-2511(a), and amendments thereto, related to any offense other than the offense*

² [Statute | Kansas State Legislature \(kslegislature.org\)](https://kslegislature.org)

³ Ibid

⁴ Ibid

*for which the court has entered a certificate of innocence*⁵. If there is no other qualifying crime on the individual's criminal history record, the individual's DNA profile record is removed from CODIS.

2. The DNA Databank identifies the individual's DNA profile record and removes the profile record from the state CODIS. At 9:00p.m. each evening profile records are both uploaded to and removed from the state CODIS. When a profile record is removed from the state CODIS, it automatically initiates the removal of the profile record from the national CODIS as well. The national CODIS is maintained and operated by the FBI.
3. If the KBI retained the biological sample associated with the crime for which the individual received the certificate of innocence, the biological sample is destroyed. DNA Databank personnel will locate the physical sample of the DNA, remove the DNA sample from storage and place it in a biological hazardous waste container. Once a month, a hazardous waste materials vendor collects all hazardous waste materials from the KBI's Forensic Science Laboratory and removes the materials off-site. The vendor subsequently disposes of the hazardous waste material by placing it inside an incinerator and burning the hazardous waste material.

Following the purge of the conviction and arrest information from the Criminal Justice Information System and the destruction of the biological sample, notification of such action is provided to the court.

Since 2018, when K.S.A. 60-5004 went in to effect, there have been eight instances when a court granted a petition for certificate of innocence. A review of each individual's criminal history, in the eight circumstances where a petition for certificate of innocence was granted, indicated four individuals qualified to have their DNA profile record removed from CODIS. The remaining four individuals' DNA profile records remained in CODIS due to other qualifying events in each of their respective criminal history records.

Thank you again for this opportunity to discuss the process and procedure for which the KBI seals or removes criminal history records, removes DNA profile records from CODIS and destroys biological samples per K.S.A. 60-5004 and K.S.A. 21-2511.

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⁵ Ibid