



Kansas Bureau of Investigation

Kirk Thompson
Director

Derek Schmidt
Attorney General

Before the Joint Committee on Corrections and Juvenile Justice Oversight:
Testimony regarding DNA Databank legislation

Kyle Smith, Deputy Director/Assistant Attorney General
Kansas Bureau of Investigation
November 7, 2013

Chairman Rubin and Members of the Committee,

In the 1990's the Kansas legislature authorized the collection of DNA profiles into a database to aide in criminal investigations, much like fingerprints are kept. In fact, the amendment was to K.S.A. 21-2511, the statute that sets up the fingerprint database at the KBI.

The database started out with just convicted sex offenders having samples taken and submitted but the investigative assistance the database provides quickly resulted in the expansion to other felonies and eventually to all felonies. Later amendments expanded the databank to cover arrestees, not just convictions. This last amendment created a statute with a lot of redundancies as the arrestees were simply given another paragraph.

The DNA databank has been an overwhelming success in improving criminal investigations. Investigators across Kansas are getting leads connecting cases and identifying suspects based on hits made between evidence collected at crime scenes and profiles in the database.

2011

Total hits 285
149 arrestees
136 convicted offenders

2012

Total hits 247
122 arrestees
123 convicted offenders
2 registered offenders

2013

so far 245 total hits
133 arrestees
112 convicted offenders

**Joint Committee on Corrections &
Juvenile Justice Oversight
November 7, 2013
Attachment 7**

Last year the KBI worked with the revisor's office to review that 20 year old statute and make technical changes to try and remove conflicts and recognize technological changes (like collecting DNA with mouth swabs rather than blood draws) that had occurred in this field. 2013 session HB 2110 was the result, and the revisor's office made some additional drafting changes to clean up the language and structure. However, during the legislative process, HB 2120 picked up a couple of unrelated amendments, including a proposal to redefine raffles, and Governor Brownback, citing the questionable constitutionality of the raffle amendment, vetoed the bill.

The technical changes are still needed so we will be requesting the legislation again next session. Changes include:

- referencing correctly misdemeanor offenses that are included in the act, such as promoting prostitution involving minors.
- providing authority for inclusion of samples submitted because a court has ordered it, but the actual crime of conviction is not covered (e.g., eavesdropping that was sexually motivated).
- providing that samples properly collected and processed, but bases on a mistake (such as the wrong statute was applied) can still be used for investigative purposes.
- clarify that all samples submitted and all searches must be done in accordance with recognizes scientific procedures.

I would note that we now have some important case law supporting the use of DNA databanks that was unavailable last session. In June of this year the United States Supreme Court ruled in *Maryland v King* that DNA collection at arrest, like fingerprinting and mug shots, a legitimate police booking procedure and reasonable under the Fourth Amendment.

We do have one addition to last year's bill, see attached amendment, which would enhance privacy protections by making it a criminal offense for a person to improperly obtain or disseminate DNA samples or profiles. If the person doing so was employed by the government, in addition to criminal prosecution it would be grounds for termination.

I have also included for your information the rules and regs the KBI has promulgated controlling the operations of the DNA databank, the form off of our website if you want your DNA information removed fter an acquittal and a sample of what a DNA profile really is – a series of numbers assigned to certain fields.

I have with me today Destiny Bryan, a forensic scientist in the DNA databank unit if you have any questions of a technical nature. Otherwise, I would be happy to stand for questions.

**DRAFT amendment to 2013 HB 2120 for introduction in 2014:
Adding two additional sections at the end of K.S.A. 21-2511 and creating criminal penalties for misuse of
DNA samples and profiles**

(o) A person who by virtue of employment or official position, has possession of, or access to, individually identifiable DNA samples and information indexed in a database created or maintained by the Kansas bureau of investigation may not disseminate such DNA records except in strict accordance with laws including applicable rules and regulations adopted pursuant to this act. A criminal justice agency may not request such information from the central repository or another criminal justice agency unless it has a legitimate need for the information. In addition to any other remedy or penalty authorized by law, any individual knowingly violating or causing a violation of the provisions of this section shall be deemed guilty of a class A nonperson misdemeanor. If the person is employed or licensed by a state or local government agency, a conviction shall constitute good cause to terminate employment or to revoke or suspend a license.

(p) A person who, without authorization, knowingly obtains DNA samples or individually identifiable DNA information indexed in a database created or maintained by the Kansas bureau of investigation shall be deemed guilty of a class A nonperson misdemeanor.

Comparable to Existing Federal law: 42 U.S.C. 4133(C)

(1) A person who—

(A) by virtue of employment or official position, has possession of, or access to, individually identifiable DNA information indexed in a database created or maintained by any Federal law enforcement agency; and

(B) knowingly discloses such information in any manner to any person or agency not authorized to receive it, shall be fined not more than \$100,000.

(2) A person who, without authorization, knowingly obtains DNA samples or individually identifiable DNA information indexed in a database created or maintained by any Federal law enforcement agency shall be fined not more than \$250,000, or imprisoned for a period of not more than one year, or both.

SDIS Specimen Details Report (Short)

Specimen Information

Laboratory: KSKBI0000
Specimen ID: 201309633
Specimen Category: Proficiency
Source ID: Yes
Partial Profile: No
Case ID:
NGIC Number:
VICAP Number:
Recon Code:

Marked By:
Marked Lab:
Marked Date:
mDNA Assigned To:
mDNA Assigned Lab:
mDNA Assigned Date:
mDNA Comments:

STRY-STR Assigned To: BRYAN
STRY-STR Assigned Lab: KSKBI0000
STRY-STR Assigned Date: 10/18/2013
STRY-STR Comments:

Locus Information (STR)												
Locus	Alleles	Front	Import File	Event	User	Lab	Date	Event	User	Lab	Date	Partial
D3S1358	14, 15	IMP	1246.XML	Read	BRYAN	KSKBI0000	10/16/2013	Marked (S) Submitted				No
TH01	7, 9	IMP	1246.XML	Verified	BRYAN	KSKBI0000	10/16/2013	Marked (S) Submitted				No
D21S11	34, 35	IMP	1246.XML	Read	BRYAN	KSKBI0000	10/16/2013	Marked (S) Submitted				No
D18S51	17, 18	IMP	1246.XML	Read	BRYAN	KSKBI0000	10/16/2013	Marked (S) Submitted				No
Penta E	12	IMP	1246.XML	Read	BRYAN	KSKBI0000	10/16/2013	Marked (S) Submitted				No
D5S818	11, 14	IMP	1246.XML	Read	BRYAN	KSKBI0000	10/16/2013	Marked (S) Submitted				No
D13S317	8, 12	IMP	1246.XML	Read	BRYAN	KSKBI0000	10/16/2013	Marked (S) Submitted				No
D7S820	8, 9	IMP	1246.XML	Read	BRYAN	KSKBI0000	10/16/2013	Marked (S) Submitted				No
D16S539	11	IMP	1246.XML	Read	BRYAN	KSKBI0000	10/16/2013	Marked (S) Submitted				No
CSF1PO	12	IMP	1246.XML	Read	BRYAN	KSKBI0000	10/16/2013	Marked (S) Submitted				No
Penta D	9, 12	IMP	1246.XML	Read	BRYAN	KSKBI0000	10/16/2013	Marked (S) Submitted				No
Amelogenin	X, Y	IMP	1246.XML	Read	BRYAN	KSKBI0000	10/16/2013	Marked (S) Submitted				No
VWA	18, 19	IMP	1246.XML	Read	BRYAN	KSKBI0000	10/16/2013	Marked (S) Submitted				No
D8S1179	13, 14	IMP	1246.XML	Read	BRYAN	KSKBI0000	10/16/2013	Marked (S) Submitted				No
TPOX	8, 10	IMP	1246.XML	Read	BRYAN	KSKBI0000	10/16/2013	Marked (S) Submitted				No
FGA	23, 25	IMP	1246.XML	Read	BRYAN	KSKBI0000	10/16/2013	Marked (S) Submitted				No

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SDIS Specimen Details Report (Short)

Laboratory: KSKBI0000
 Specimen ID: 201309633

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<i>Locus Information (STR) - continued</i>												
Locus	Alleles	Front	Import File	Event	User	Lab	Date	Event	User	Lab	Date	Partial
D19S433	12, 13	IMP	1246.XML	Read Verified	BRYAN	KSKBI0000	10/16/2013	Marked (S) Submitted				No
D2S1338	19, 22	IMP	1246.XML	Read Verified	BRYAN	KSKBI0000	10/16/2013	Marked (S) Submitted				No

(d) If the person identified in the missing person report remains missing after 30 days, the law enforcement agency shall contact family members of the missing person and attempt to obtain DNA samples for comparison purposes as prescribed by the "national missing persons program family reference sample collection kit," dated April 2005 by the U.S. department of justice and hereby adopted by reference.

(e) The law enforcement agency shall advise the reporting party to notify the law enforcement agency no later than 24 hours after the missing person returns or is located.

(f) Upon locating each missing person, the law enforcement agency shall remove the entry from NCIC.

(g) A law enforcement agency shall not remove a missing person's report from NCIC based solely on the person's age. (Authorized by and implementing K.S.A. 2006 Supp. 75-712b; effective May 1, 1986; amended July 7, 1997; amended May 4, 2007.)

10-20-2a. Procedures and forms for reporting any unidentified person. (a) All law enforcement agencies shall accept without delay any report of any unidentified person made by any individual.

(b) The law enforcement agency shall upon receipt of the report enter the information into NCIC as prescribed by the chapter titled "unidentified person file," which is contained in the "NCIC 2000 operating manual," as in effect on November 8, 2006 and hereby adopted by reference, to create an active record.

(c) After the initial NCIC entry report has been made and at the time of autopsy of any unidentified deceased person, the law enforcement agency shall obtain and immediately enter information into NCIC as prescribed by the "NCIC unidentified person file data collection entry guide," revised February 2006 and hereby adopted by reference. In the case of an unidentified living person, law enforcement shall obtain and enter information as prescribed in this subsection as promptly as possible and no longer than 30 days from the date of the initial report. (Authorized by and implementing K.S.A. 2006 Supp. 75-712b, K.S.A. 2006 Supp. 75-712c, and K.S.A. 2006 Supp. 75-712d; effective April 19, 2002; amended May 4, 2007.)

10-20-3. (Authorized by and implementing

K.S.A. 75-712b(d)(1); effective May 1, 1986; revoked July 7, 1997.)

10-20-4. Dissemination. (a) All information contained in the KBI missing and unidentified person system shall be available to all law enforcement officers and coroners in this state, other governmental entities in the state who have a need to know the information for criminal justice purposes, and the federal bureau of investigation.

(b) Any member of the public may request data from the KBI missing and unidentified person system at any time and receive information in accordance with Kansas law. (Authorized by and implementing K.S.A. 75-712b, as amended by L. 2006, ch. 37, sec. 1; effective May 1, 1986; amended July 7, 1997; amended May 4, 2007.)

Article 21.—KANSAS BUREAU OF INVESTIGATION DNA DATABANK

10-21-1. Definitions. As used in this article, the following terms shall have the meanings specified below:

(a) "CODIS" (Combined DNA index system) means the federal bureau of investigation's (FBI) national DNA identification index system that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories.

(b) "Convicted offender" means a person 18 years of age or older who commits an act that constitutes the commission of one of the crimes listed in K.S.A. 21-2511 or 22-4901 et seq., and amendments thereto, and is convicted by a court.

(c) "DNA" means deoxyribonucleic acid. DNA is located in the nucleus of cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.

(d) "DNA analysis" means the process through which DNA in a human biological specimen is analyzed and compared with DNA from another human biological specimen for identification purposes.

(e) "DNA databank" means the repository of DNA samples collected under the provisions of K.S.A. 21-2511 or 22-4901 et seq., and amendments thereto.

(f) "DNA database" means the Kansas bureau of investigation's (KBI) DNA identification record system. It is administered by the KBI and provides DNA records to the FBI for storage and maintenance.

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nance in CODIS. The KBI's DNA database system is computer software and procedures administered by the KBI, to store and maintain DNA records regarding forensic casework, certain convicted offenders, and juvenile offenders, and DNA records used for research or quality control.

(g) "DNA record" means DNA identification information stored in the state DNA database or CODIS. The DNA record is the result obtained from the DNA analysis tests. The DNA record is comprised of the characteristics of a DNA sample that are of value in establishing the identity of individuals. The DNA record shall not contain any of the personal information submitted to the KBI on any form prescribed by the director of the KBI. The results of all DNA identification tests on an individual's DNA sample are also collectively referred to as the DNA profile of an individual.

(h) "DNA samples" means one blood sample and one saliva sample provided by any convicted offender or juvenile offender, or submitted to the KBI laboratory for analysis pursuant to a criminal investigation.

(i) "FBI" means the federal bureau of investigation.

(j) "Juvenile offender" means a person who meets the following criteria:

- (1) Is 10 or more years of age, but less than 18 years of age;
- (2) performs an act while a juvenile that, if done by an adult, would constitute the commission of one of the crimes listed in K.S.A. 21-2511 or 22-4901 et seq., and amendments thereto; and
- (3) is adjudicated by a court.

(k) "KBI" means the Kansas bureau of investigation.

(l) "Law enforcement" means those law enforcement officers and agencies authorized to receive information under K.S.A. 21-2511(f) or 22-4901 et seq., and amendments thereto.

(m) "NDIS" (national DNA index system) means the federal bureau of investigation's (FBI) centralized system of DNA identification records contributed by state and local forensic DNA laboratories. (Authorized by and implementing K.S.A. 2001 Supp. 21-2511; effective Dec. 22, 1995; amended April 19, 2002.)

10-21-2. Purpose of DNA identification. The DNA databank shall be utilized only for the following purposes:

(a) For identifying investigative leads in criminal investigations;

- (b) for locating missing persons;
- (c) for identifying unknown human remains;
- (d) for a population statistic database, after personal identifiable information is removed; or
- (e) for research, protocol development, and quality control, after personal identifiable information is removed. (Authorized by and implementing K.S.A. 2001 Supp. 21-2511; effective Dec. 22, 1995; amended April 19, 2002.)

10-21-3. Procedural compatibility with the FBI. (a) The DNA database as established by the KBI shall be compatible with the following documents, all of which are hereby adopted by reference:

- (1) "National DNA index system (NDIS): NDIS standards for acceptance of DNA data," dated January 2000;
- (2) "quality assurance standards for forensic DNA testing laboratories," effective October 1998; and
- (3) "quality assurance standards for convicted offender DNA databasing laboratories," effective April 1999.

(b) DNA samples shall be received by the KBI for storage and analysis. The DNA analysis may be conducted under contract with the KBI by a qualified DNA laboratory that meets KBI procedural guidelines.

(1) Each DNA record submitted pursuant to K.S.A. 21-2511 or 22-4901 et seq., and amendments thereto, shall be classified and filed by the KBI for the purposes specified in K.A.R. 10-21-2.

(2) The DNA profile of individuals in the state database shall be made available to local, state, and federal law enforcement agencies, approved CODIS crime laboratories that serve these agencies, and the county or district attorney's office in furtherance of an official investigation of a criminal offense.

(3) If the laboratory is a non-CODIS crime laboratory, the laboratory request shall be submitted in compliance with the procedures specified in the documents adopted in subsection (a).

(c) A separate population database comprised of blood samples obtained pursuant to K.S.A. 21-2511 or 22-4901 et seq., and amendments thereto, shall be created by the KBI after all personal identification is removed.

(1) The KBI's population databases may be shared with or disseminated to other law enforcement agencies, crime laboratories that serve them, and other third parties that the KBI deems

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necessary to assist the KBI with statistical analysis of the KBI's population database.

(2) The population database may be made available to and searched by other agencies participating in the CODIS system. (Authorized by and implementing K.S.A. 2000 Supp. 21-2511, as amended by L. 2001, ch. 208, sec. 2; effective Dec. 22, 1995; amended April 19, 2002.)

10-21-4. Expungement. (a) Any person whose DNA record or profile has been included in the DNA database and whose DNA samples are stored in the databank may apply for expungement on any of the following grounds:

(1) The felony conviction that resulted in the inclusion of the person's DNA record or profile in the database or the inclusion of the person's DNA sample in the databank has been reversed or dismissed.

(2) The person has been acquitted on retrial.

(3) The person has been pardoned by the governor of the state of Kansas pursuant to article 1, section 7 of the constitution of the state of Kansas and any implementing legislation.

(b) The person, either individually or through an attorney, may make application to the KBI for expungement of the record. The written application for expungement shall be on a form approved by the KBI and shall include the following information about the person:

- (1) Name;
- (2) date of birth;
- (3) sex;
- (4) race;
- (5) place of birth, including city and state;
- (6) district court case number and county; and
- (7) offense or offenses.

(c) The application shall be forwarded to the KBI along with a certified copy of the final order of reversal, dismissal, acquittal, or pardon, which shall be attached to the application for expungement.

(d) When an application for expungement is submitted, the record contained in the state's DNA databank and database shall be reviewed by the KBI to confirm the existence of the record and the identity of the contributor. The DNA record and all other identifiable information shall be purged from the DNA database, and the DNA sample stored in the DNA databank shall be purged after the contributor no longer meets the requirements to submit blood and saliva pursuant

to K.S.A. 21-2511 or 22-4901 et seq., and amendments thereto.

(e) If the individual has more than one offense that requires submission of blood and saliva samples to the state DNA database, DNA databank, and CODIS, if applicable, then only the offense covered by the expungement shall be expunged. The samples submitted shall be retained if additional offenses require retention pursuant to K.S.A. 21-2511 or 22-4901 et seq., and amendments thereto.

(f) If an individual has a record expunged, that individual shall be treated as not having had a DNA record in the DNA database, DNA databank, or CODIS for that offense.

(g) Upon receiving information regarding a contributor, a record may be expunged by the KBI on its own initiative according to this article.

(h) The Kansas department of corrections shall be notified by the KBI when the record of any inmate who has contributed DNA while housed with the department of corrections is expunged. (Authorized by and implementing K.S.A. 2001 Supp. 21-2511; effective Dec. 22, 1995; amended April 19, 2002.)

10-21-5. Maintenance. (a) DNA records maintained at the KBI shall be treated as confidential as provided in K.S.A. 21-2511 and 22-4901 et seq., and amendments thereto.

(b) A criminal defendant's rights to access DNA testing information during the course of a criminal case shall be governed by existing rules of discovery of scientific evidence in criminal cases.

(c) Access to blood and saliva samples shall be limited only to forensic DNA analysis for profiles to be included in the DNA databank.

(d) All DNA records obtained by the KBI shall be maintained, preserved, and securely stored at the KBI for not less than 10 years. (Authorized by and implementing K.S.A. 2000 Supp. 21-2511, as amended by L. 2001, ch. 208, sec. 2; effective Dec. 22, 1995; amended April 19, 2002.)

10-21-6. Collection of samples for DNA databank procedures. (a) The collection, labeling, storage, handling, preservation, and shipment of blood and saliva samples obtained from convicted felons pursuant to K.S.A. 21-2511 or 22-4901 et seq., and amendments thereto, for the DNA databank shall be in conformance with a form prescribed by the director of the KBI. Cop-

ies of the applicable protocol may be obtained from the KBI DNA laboratory.

(b) Each offender shall be positively identified using photo identification before taking the blood and saliva samples.

(c) When the offender is positively identified, one blood sample and one saliva sample shall be taken from the offender in a reasonable manner according to generally accepted medical practices.

(d) These samples shall be taken using only the DNA sample collection kit provided by the KBI.

(e)(1) The DNA information sheet provided in the collection kit shall be completed, providing all relevant information requested on the form.

(2) The offender's left and right thumbs shall be imprinted by means of an inked impression in the spaces indicated on the form.

(3) The person taking the blood and saliva samples and one other witness shall complete and sign, as indicated on the form, a verification that the blood sample and saliva sample were taken from the positively identified offender. Additional supplies may be obtained from the KBI DNA laboratory.

(f) All samples so collected shall be transmitted within 72 hours of collection to the KBI in the manner prescribed in the instructions.

(g) Results from the DNA analysis made from blood or saliva samples, or both, obtained from convicted felons under K.S.A. 21-2511 or 22-4901 et seq. and amendments thereto, shall be entered into the DNA database and CODIS.

(h) Each convicted offender or juvenile offender placed on probation and required to provide blood and saliva samples shall provide the samples within 10 days after sentencing or disposition.

(1) Court services officers or community corrections officers shall facilitate the collection of DNA samples.

(2) The offender may have the DNA sample collection kit completed at any public health agency, clinic, hospital, or any other facility with persons qualified to draw blood as provided in K.S.A. 21-2511 or 22-4901 et seq., and amendments thereto.

(i) Each convicted offender sentenced to the custody of the secretary of corrections and each juvenile offender placed in a youth residential facility or in a state youth center shall provide these samples upon arrival. The collection of DNA samples shall be facilitated by the department of corrections and SRS, as appropriate.

(j) Each convicted offender or juvenile offender currently incarcerated and required to provide blood and saliva samples shall provide these samples before release, discharge, or parole.

(k) Each convicted offender or juvenile offender paroled and required to provide blood and saliva samples shall provide the samples within 10 days of being paroled.

(1) Parole officers shall facilitate the collection of DNA samples.

(2) The offender may have the DNA sample collection kit completed at any public health agency, clinic, hospital, or any other facility with persons qualified to draw blood as provided in K.S.A. 21-2511 or 22-4901 et seq., and amendments thereto.

(l) Any convicted offender or juvenile offender placed on probation, parole, or community corrections or in SRS custody may have the blood sample collection kit completed at any public health agency, clinic, hospital, or any other facility with persons qualified to draw blood as provided in K.S.A. 21-2511 or 22-4901 et seq., and amendments thereto.

(m) Each convicted offender or juvenile offender sentenced or receiving a disposition to a term of incarceration in the county jail and required to provide blood and saliva samples shall provide these samples upon arrival.

(n) When any convicted offender or juvenile offender is placed on probation, parole, or community corrections or in SRS custody, the cost or fee associated with collection of the DNA sample shall be paid by the offender. (Authorized by and implementing K.S.A. 2001 Supp. 21-2511; effective Dec. 22, 1995; amended April 19, 2002.)

Article 22.—FIELD TESTING FOR CONTROLLED SUBSTANCES

10-22-1. Approved field tests. (a) Law enforcement officers shall use only the field tests specified in this regulation on suspected controlled substances for admission of the field test results at any preliminary examination pursuant to K.S.A. 22-2902, and amendments thereto.

(b) The following field tests shall be the only field tests approved by the director of the Kansas bureau of investigation (KBI):

- (1) Chen's reagent;
- (2) cobalt thiocyanate reagent;
- (3) Dille-Koppanyi reagent;
- (4) Duquenois-Levine reagent;



Kansas Bureau of Investigation

Forensic Laboratory

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APPLICATION FOR EXPUNGEMENT OF OFFENDER SAMPLE AND/OR PROFILE FROM DNA DATABASE

Please complete the required information in the top section. All information must be provided for the expungement process to be completed. The expungement process will cease if all the information is not provided.

Attach confirmation documents and submit to the Kansas Bureau of Investigation.

The information in this box is required for expungement			
Individual to be Expunged			
Name: _____			
Date of Birth: _____	Social Security #: _____	Male: <input type="checkbox"/>	Female: <input type="checkbox"/>
Race: _____	Place of Birth: _____		
County of Conviction: _____	District Court Case #: _____		
Offenses: _____			
Contact Information:			
Name: _____			
Address: _____			
	City	State	Zip
Telephone #: () _____	-	Fax #: () _____	-
For KBI Legal Use Only			
Continue expungement process: _____		Cease expungement process: _____	
Signed: _____		Date: _____	

Submit Application To:
Kansas Bureau of Investigation
Legal Department
1620 S.W. Tyler
Topeka, Kansas 66612