

SENATE BILL No. 40

By Committee on Judiciary

1-17

1 AN ACT concerning crimes, criminal procedure and punishment; relating
2 to DNA evidence; amending K.S.A. 21-2512 and repealing the existing
3 section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 21-2512 is hereby amended to read as follows: 21-
7 2512. (a) Notwithstanding any other provision of law, a person in state
8 custody, at any time after conviction for murder *in the first degree* as
9 defined by K.S.A. 21-3401, *prior to its repeal, or K.S.A. 2012 Supp. 21-*
10 *5402*, and amendments thereto, or for rape as defined by K.S.A. 21-3502,
11 *prior to its repeal, or K.S.A. 2012 Supp. 21-5503*, and amendments
12 thereto, may petition the court that entered the judgment for forensic DNA
13 testing (deoxyribonucleic acid testing) of any biological material that:

14 (1) Is related to the investigation or prosecution that resulted in the
15 conviction;

16 (2) is in the actual or constructive possession of the state; and

17 (3) was not previously subjected to DNA testing, or can be subjected
18 to retesting with new DNA techniques that provide a reasonable likelihood
19 of more accurate and probative results.

20 (b) (1) The court shall notify the prosecuting attorney of a petition
21 made under subsection (a) and shall afford the prosecuting attorney an
22 opportunity to respond.

23 (2) Upon receiving notice of a petition made under subsection (a), the
24 prosecuting attorney shall take such steps as are necessary to ensure that
25 any remaining biological material that was secured in connection with the
26 case is preserved pending the completion of proceedings under this
27 section.

28 (c) The court shall order DNA testing pursuant to a petition made
29 under subsection (a) upon a determination that testing may produce
30 noncumulative, exculpatory evidence relevant to the claim of the petitioner
31 that the petitioner was wrongfully convicted or sentenced.

32 (d) The cost of DNA testing ordered under subsection (c) shall be
33 borne by the state or the petitioner, as the court may order in the interests
34 of justice, if it is shown that the petitioner is not indigent and possesses the
35 means to pay.

36 (e) The court may at any time appoint counsel for an indigent

1 applicant under this section.

2 (f) (1) *Except as provided in subsection (f)(3), if the results of DNA*
3 *testing conducted under this section ~~are unfavorable to~~ do not exonerate*
4 *the petitioner, the court:*

5 (A) Shall dismiss the petition; and

6 (B) in the case of a petitioner who is not indigent, may assess the
7 petitioner for the cost of such testing.

8 (2) If the results of DNA testing conducted under this section ~~are~~
9 ~~favorable to~~ *exonerate* the petitioner, the court shall:

10 (A) Order a hearing, notwithstanding any provision of law that would
11 bar such a hearing; and

12 (B) enter any order that serves the interests of justice, including, but
13 not limited to, an order:

14 (i) Vacating and setting aside the judgment;

15 (ii) discharging the petitioner if the petitioner is in custody;

16 (iii) resentencing the petitioner; or

17 (iv) granting a new trial.

18 (3) If the results of DNA testing conducted under this section are
19 inconclusive, the court may order a hearing to determine whether there is a
20 substantial question of innocence. If the petitioner proves by a
21 preponderance of the evidence that there is a substantial question of
22 innocence, the court shall proceed as provided in subsection (f)(2).

23 (g) Nothing in this section shall be construed to limit the
24 circumstances under which a person may obtain DNA testing or other
25 postconviction relief under any other provision of law.

26 (h) *As used in this section, "exonerate" means to conclusively*
27 *establish that the petitioner did not engage in the conduct that is the*
28 *subject of the petitioner's conviction.*

29 Sec. 2. K.S.A. 21-2512 is hereby repealed.

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

32