

HOUSE BILL No. 2446

By Committee on Appropriations

2-7

9 AN ACT concerning crimes and punishments; relating to DNA testing
10 of death row inmates.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) (1) An individual convicted of a capital murder in this
14 state awaiting execution of a sentence of death may apply, by making a
15 written motion to the sentencing court, for the performance of forensic
16 DNA testing on specific evidence that is related to the investigation or
17 prosecution that resulted in the judgment of conviction.

18 (2) The evidence may have been discovered either prior to or after
19 the applicant's conviction. The evidence shall be available for testing as
20 of the date of the motion. If the evidence was discovered prior to the
21 applicant's conviction, the evidence shall not have been subject to the
22 DNA testing requested because the technology for testing was not in
23 existence at the time of the trial, or the applicant's counsel did not seek
24 testing at the time of the trial in a case where a verdict was rendered or
25 the applicant's counsel sought funds from the court to pay for the testing
26 because the client was indigent and the court refused the request despite
27 the client's indigency.

28 (b) (1) Upon receipt of a motion under subsection (a), the court shall
29 notify the state and shall afford the state an opportunity to respond to the
30 motion.

31 (2) Upon receipt of a motion under subsection (a) or notice of the
32 motion, as applicable, the state and the court shall take the steps reason-
33 ably necessary to ensure that any remaining biological material in the
34 possession of the state or the court is preserved pending the completion
35 of the proceedings under this section.

36 (c) In any motion under subsection (a), under penalty of perjury, the
37 applicant shall:

38 (1) (A) Specify the evidence to be tested;

39 (B) state that the applicant consents to provide samples of bodily fluid
40 for use in the DNA testing; and

41 (C) acknowledge that the applicant understands that if the motion is
42 granted any data obtained from any DNA samples or test results may be
43 entered into law enforcement databases, may be used in the investigation

1 of other crimes and may be used as evidence against the applicant in
2 other cases.

3 (2) (A) Assert the applicant's actual innocence of the charged or un-
4 charged conduct constituting an aggravating circumstance under K.S.A.
5 21-4625, and amendments thereto, if the applicant's exoneration of the
6 conduct would result in vacating a sentence of death; or

7 (B) assert that the outcome of the DNA testing would establish a
8 mitigating circumstance under K.S.A. 21-4626, and amendments thereto,
9 if that mitigating circumstance was presented to the sentencing judge or
10 jury and facts as to that issue were in dispute at the sentencing hearing.

11 (3) Present a prima facie case demonstrating that:

12 (A) Identity of or the participation in the crime by the perpetrator
13 was at issue in the proceedings that resulted in the applicant's conviction
14 and sentencing; and

15 (B) DNA testing of the specific evidence, assuming exculpatory re-
16 sults, would establish the applicant's actual innocence of the charged or
17 uncharged conduct constituting an aggravating circumstance under
18 K.S.A. 21-4625, and amendments thereto, if the applicant's exoneration
19 of the conduct would result in vacating a sentence of death or a mitigating
20 circumstance in K.S.A. 21-4626, and amendments thereto.

21 (d) (1) The court shall order the testing requested in a motion under
22 subsection (a) under reasonable conditions designed to preserve the in-
23 tegrity of the evidence and the testing process, upon a determination,
24 after review of the record of the applicant's trial, that:

25 (A) Requirements of subsection (c) have been met;

26 (B) evidence to be tested has been subject to a chain of custody suf-
27 ficient to establish that it has not been altered in any material respect;
28 and

29 (C) motion is made in a timely manner and for the purpose of dem-
30 onstrating the applicant's actual innocence and not to delay the execution
31 of sentence or administration of justice.

32 (e) Any DNA testing ordered under this section shall be conducted
33 by the Kansas bureau of investigation.

34 Sec. 2. This act shall take effect and be in force from and after its
35 publication in the statute book.