

HOUSE BILL No. 2388

By Committee on Federal and State Affairs

2-28

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to capital murder; appellate review; amending K.S.A. 2012 Supp. 21-
3 6619 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2012 Supp. 21-6619 is hereby amended to read as
7 follows: 21-6619. (a) A judgment of conviction resulting in a sentence of
8 death shall be subject to automatic review by and appeal to the supreme
9 court of Kansas in the manner provided by the applicable statutes and rules
10 of the supreme court governing appellate procedure. The review and
11 appeal shall be expedited in every manner consistent with the proper
12 presentation thereof and given priority pursuant to the statutes and rules of
13 the supreme court governing appellate procedure.

14 (b) The supreme court of Kansas shall consider the question of
15 sentence as well as any ~~errors asserted~~ *properly preserved and asserted*
16 *errors* in the review and appeal and shall be authorized to notice
17 unassigned *and unpreserved* errors appearing of record ~~if the ends of~~
18 ~~justice would be served thereby~~ *to correct manifest injustice. Manifest*
19 *injustice is established when: (1) The error more probably than not*
20 *resulted in the conviction of an innocent person; or (2) the error is so*
21 *shocking to the conscience and obviously unfair that it is more likely than*
22 *not that the defendant did not receive a fair trial.*

23 (c) With regard to the sentence, the court shall determine:

24 (1) Whether the sentence of death was imposed under the influence of
25 passion, prejudice or any other arbitrary factor; and

26 (2) whether the evidence supports the findings that an aggravating
27 circumstance or circumstances existed and that any mitigating
28 circumstances were insufficient to outweigh the aggravating
29 circumstances.

30 (d) The court shall be authorized to enter such orders as are necessary
31 to effect a proper and complete disposition of the review and appeal.

32 (e) *The amendments to this section by this act establish an appellate*
33 *procedure and shall be construed and applied retroactively to all cases*
34 *currently pending on appeal pursuant to this section.*

35 Sec. 2. K.S.A. 2012 Supp. 21-6619 is hereby repealed.

36 Sec. 3. This act shall take effect and be in force from and after its

- 1 publication in the statute book.