

HOUSE BILL No. 2389

By Committee on Federal and State Affairs

2-28

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to capital murder; notice of intent to seek the death penalty; amending
3 K.S.A. 2012 Supp. 21-6617 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. 21-6617 is hereby amended to read as
7 follows: 21-6617. (a) If a defendant is charged with capital murder, the
8 county or district attorney shall file written notice if such attorney intends,
9 upon conviction of the defendant, to request a separate sentencing
10 proceeding to determine whether the defendant should be sentenced to
11 death. *In cases where the county or district attorney or a court determines*
12 *that a conflict exists, such notice may be filed by the attorney general.*
13 Such notice shall be filed with the court and served on the defendant or the
14 defendant's attorney not later than seven days after the time of
15 arraignment. If such notice is not filed and served as required by this
16 subsection, the ~~county or district~~ prosecuting attorney may not request
17 such a sentencing proceeding and the defendant, if convicted of capital
18 murder, shall be sentenced to life without the possibility of parole, and no
19 sentence of death shall be imposed hereunder.

20 (b) Except as provided in K.S.A. 2012 Supp. 21-6618 and 21-6622,
21 and amendments thereto, upon conviction of a defendant of capital murder,
22 the court, upon motion of the ~~county or district~~ prosecuting attorney, shall
23 conduct a separate sentencing proceeding to determine whether the
24 defendant shall be sentenced to death. The proceeding shall be conducted
25 by the trial judge before the trial jury as soon as practicable. If any person
26 who served on the trial jury is unable to serve on the jury for the
27 sentencing proceeding, the court shall substitute an alternate juror who has
28 been impaneled for the trial jury. If there are insufficient alternate jurors to
29 replace trial jurors who are unable to serve at the sentencing proceeding,
30 the trial judge may summon a special jury of 12 persons which shall
31 determine the question of whether a sentence of death shall be imposed.
32 Jury selection procedures, qualifications of jurors and grounds for
33 exemption or challenge of prospective jurors in criminal trials shall be
34 applicable to the selection of such special jury. The jury at the sentencing
35 proceeding may be waived in the manner provided by K.S.A. 22-3403, and
36 amendments thereto, for waiver of a trial jury. If the jury at the sentencing

1 proceeding has been waived or the trial jury has been waived, the
2 sentencing proceeding shall be conducted by the court.

3 (c) In the sentencing proceeding, evidence may be presented
4 concerning any matter that the court deems relevant to the question of
5 sentence and shall include matters relating to any of the aggravating
6 circumstances enumerated in K.S.A. 2012 Supp. 21-6624, and
7 amendments thereto, and any mitigating circumstances. Any such evidence
8 which the court deems to have probative value may be received regardless
9 of its admissibility under the rules of evidence, provided that the defendant
10 is accorded a fair opportunity to rebut any hearsay statements. Only such
11 evidence of aggravating circumstances as the state has made known to the
12 defendant prior to the sentencing proceeding shall be admissible, and no
13 evidence secured in violation of the constitution of the United States or of
14 the state of Kansas shall be admissible. No testimony by the defendant at
15 the sentencing proceeding shall be admissible against the defendant at any
16 subsequent criminal proceeding. At the conclusion of the evidentiary
17 presentation, the court shall allow the parties a reasonable period of time in
18 which to present oral argument.

19 (d) At the conclusion of the evidentiary portion of the sentencing
20 proceeding, the court shall provide oral and written instructions to the jury
21 to guide its deliberations.

22 (e) If, by unanimous vote, the jury finds beyond a reasonable doubt
23 that one or more of the aggravating circumstances enumerated in K.S.A.
24 2012 Supp. 21-6624, and amendments thereto, exist and, further, that the
25 existence of such aggravating circumstances is not outweighed by any
26 mitigating circumstances which are found to exist, the defendant shall be
27 sentenced to death; otherwise, the defendant shall be sentenced to life
28 without the possibility of parole. The jury, if its verdict is a unanimous
29 recommendation of a sentence of death, shall designate in writing, signed
30 by the foreman of the jury, the statutory aggravating circumstances which
31 it found beyond a reasonable doubt. If, after a reasonable time for
32 deliberation, the jury is unable to reach a verdict, the judge shall dismiss
33 the jury and impose a sentence of life without the possibility of parole and
34 shall commit the defendant to the custody of the secretary of corrections.
35 In nonjury cases, the court shall follow the requirements of this subsection
36 in determining the sentence to be imposed.

37 (f) Notwithstanding the verdict of the jury, the trial court shall review
38 any jury verdict imposing a sentence of death hereunder to ascertain
39 whether the imposition of such sentence is supported by the evidence. If
40 the court determines that the imposition of such a sentence is not
41 supported by the evidence, the court shall modify the sentence and
42 sentence the defendant to life without the possibility of parole, and no
43 sentence of death shall be imposed hereunder. Whenever the court enters a

1 judgment modifying the sentencing verdict of the jury, the court shall set
2 forth its reasons for so doing in a written memorandum which shall
3 become part of the record.

4 (g) A defendant who is sentenced to imprisonment for life without the
5 possibility of parole shall spend the remainder of the defendant's natural
6 life incarcerated and in the custody of the secretary of corrections. A
7 defendant who is sentenced to imprisonment for life without the possibility
8 of parole shall not be eligible for parole, probation, assignment to a
9 community correctional services program, conditional release, postrelease
10 supervision, or suspension, modification or reduction of sentence. Upon
11 sentencing a defendant to imprisonment for life without the possibility of
12 parole, the court shall commit the defendant to the custody of the secretary
13 of corrections and the court shall state in the sentencing order of the
14 judgment form or journal entry, whichever is delivered with the defendant
15 to the correctional institution, that the defendant has been sentenced to
16 imprisonment for life without the possibility of parole.

17 Sec. 2. K.S.A. 2012 Supp. 21-6617 is hereby repealed.

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