

## HOUSE BILL No. 2129

By Committee on Judiciary

1-23

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to identification and detection of crimes and criminals; petitions for  
3 forensic DNA testing; requiring defendants to notify the court and  
4 request a hearing when such testing is complete; amending K.S.A.  
5 2022 Supp. 21-2512 and repealing the existing section.  
6

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

8 Section 1. K.S.A. 2022 Supp. 21-2512 is hereby amended to read as  
9 follows: 21-2512. (a) Notwithstanding any other provision of law, a person  
10 in state custody, at any time after ~~conviction~~ *sentencing* for murder in the  
11 first degree as defined by K.S.A. 21-3401, prior to its repeal, or K.S.A.  
12 2022 Supp. 21-5402, and amendments thereto, ~~or for~~ rape as defined by  
13 K.S.A. 21-3502, prior to its repeal, or K.S.A. 2022 Supp. 21-5503, and  
14 amendments thereto, *or aggravated criminal sodomy as defined by K.S.A.*  
15 *21-3506, prior to its repeal, or K.S.A. 2022 Supp. 21-5504(b), and*  
16 *amendments thereto*, may petition the court that entered the judgment for  
17 forensic DNA testing (deoxyribonucleic acid testing) of any biological  
18 material that:

19 (1) Is related to the investigation ~~of~~ *and material to the* prosecution  
20 that resulted in the conviction;

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

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

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

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

33 (c) The court shall order DNA testing pursuant to a petition made  
34 under subsection (a) ~~upon~~ *if a review of the totality of the available*  
35 *evidence leads to a determination that testing may produce noncumulative;*  
36 *and exculpatory evidence relevant to the claim of the petitioner that the*

1 petitioner was wrongfully convicted or sentenced.

2 (d) The cost of DNA testing ordered ~~under subsection (e)~~ *by the court*  
3 *pursuant to this section* shall be borne by the state or the petitioner, as the  
4 court may order in the interests of justice, if it is shown that the petitioner  
5 is not indigent and possesses the means to pay.

6 (e) The court may at any time appoint counsel for an indigent  
7 applicant under this section.

8 (f) (1) *Within 180 days after the conclusion of all DNA testing*  
9 *ordered by the court pursuant to this section, the petitioner shall notify the*  
10 *court that DNA testing is complete and shall claim whether the results are*  
11 *inconclusive, favorable to the petitioner or unfavorable to the petitioner.*

12 (2) ~~Except as provided in subsection (f)(3),~~ *If the petitioner claims*  
13 *that the results of DNA testing conducted under this section are*  
14 *unfavorable to the petitioner, the court:*

15 (A) Shall dismiss the petition; and

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

18 ~~(2)(3)~~ *If the petitioner claims that the results of DNA testing*  
19 *conducted under this section are inconclusive or favorable to the petitioner*  
20 *and are of such materiality that a reasonable probability exists that the new*  
21 *evidence would result in a different outcome at a trial or sentencing or*  
22 *there is a substantial question of innocence, the court shall:*

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

25 (B) *if the petitioner proves such claim by a preponderance of the*  
26 *evidence, enter any order that serves the interests of justice, including, but*  
27 *not limited to, an order:*

28 (i) Vacating and setting aside the judgment;

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

30 (iii) resentencing the petitioner; or

31 (iv) granting a new trial.

32 ~~(3)(4)~~ *If the results of DNA testing conducted under this section are*  
33 *inconclusive, the court may order a hearing to determine whether there is a*  
34 *substantial question of innocence. If the petitioner proves by a*  
35 *preponderance of the evidence that there is a substantial question of*  
36 *innocence, the court shall proceed as provided in subsection (f)(2)*  
37 *petitioner fails to notify the court within 180 days after the conclusion of*  
38 *all DNA testing ordered by the court pursuant to this section, the court*  
39 *shall dismiss the petition.*

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

43 (h) *The amendments made to this section by this act are procedural*

1 *in nature and shall be construed and applied retroactively to any pending*  
2 *petition.*

3 Sec. 2. K.S.A. 2022 Supp. 21-2512 is hereby repealed.

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