

SENATE BILL No. 40

By Committee on Judiciary

1-17

SB40-Balloon-Revisor
Prepared By: Jason Thompson,
Office of Revisor of Statutes
January 31, 2013

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

in the first degree

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 as defined by K.S.A. 21-
9 3401, and amendments thereto, or for rape as defined by K.S.A. 21-3502,
10 and amendments thereto, may petition the court that entered the judgment
11 for forensic DNA testing (deoxyribonucleic acid testing) of any biological
12 material that:

prior to its repeal, or
K.S.A. 2012 Supp. 21-5402,
prior to its repeal, or
K.S.A. 2012 Supp. 21-5503,

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

15 (2) Is in the actual or constructive possession of the state; and

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

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

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

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

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

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