

# OFFICE OF DISTRICT ATTORNEY

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January 29, 2013

Honorable Jeff King, Chair  
Senate Judiciary Committee  
Kansas Statehouse  
Topeka, Kansas

Re: Senate Bill 40 (Amending Provisions Relating to Post-Trial DNA Testing)

Dear Chairman King & Members of the Senate Judiciary Committee:

The Kansas County & District Attorney Association (KCDAA) supports passage of SB 40. Under the current law, an inmate who is convicted of murder or rape may request forensic DNA testing of any biological material in State's possession that was either untested or can be subjected to retesting with newer and more accurate DNA techniques. This retest request may be made at any time after conviction. K.S.A. 21-2512(a). Once this testing is completed, the district court may grant the inmate a new trial if "the results of DNA testing ... are favorable." K.S.A. 21-2512(f)(2)(B)(iv).

Senate Bill 40 provides the clarification that is required before a murder or rape conviction is set aside and a new trial is ordered based on newly-discovered DNA evidence. The current state of the law is reflected Kansas Supreme Court's opinion in *Haddock v. State*, 295 Kan. \_\_\_, Syl. ¶ 3, 286 P.3d 837 (2012): "DNA test results need not be completely exonerating in order to be considered favorable under K.S.A. 21-2512(f)(2)." Haddock had argued for a new trial, claiming the new DNA evidence connecting his clothing to his wife's murder in 1992 was "favorable" because the forensic evidence that formed the basis for the State's case was significantly altered. While the denial of Haddock's request for a new trial was affirmed on appeal, his arguments should not reflect the intent of the DNA testing statute.

The Kansas Supreme Court has stated, "No matter what the legislature may have really intended to do, if it did not in fact do it, under any reasonable interpretation of the language used, the defect is one which the legislature alone can correct."<sup>1</sup> Senate Bill 40 clarifies the intent of K.S.A. 21-2512: that before a new trial in a cold-case murder or rape case is ordered, the new DNA evidence that forms the basis for it should exonerate. The KCDAA supports the amendment because it reduces the sophistry related to the adjective "favorable" and promotes the principle of finality, which is essential to the operation of our criminal justice system.

Sincerely,



Steven J. Obermeier

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<sup>1</sup> *State v. Horn*, 291 Kan. 1, 12, 238 P.3d 238 (2010).