

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2093** submits the following report:

The Senate recedes from all of its amendments to the bill, and your committee on conference further agrees to amend the bill, as introduced, as follows:

On page 1, following line 6, by inserting:

"Section 1. K.S.A. 21-2512 is hereby amended to read as follows: 21-2512. (a) Notwithstanding any other provision of law, a person in state custody, at any time after conviction for murder in the first degree as defined by K.S.A. 21-3401, prior to its repeal, or K.S.A. 2012 Supp. 21-5402, and amendments thereto, or for rape as defined by K.S.A. 21-3502, prior to its repeal, or K.S.A. 2012 Supp. 21-5503, and amendments thereto, may petition the court that entered the judgment for forensic DNA testing (deoxyribonucleic acid testing) of any biological material that:

- (1) Is related to the investigation or prosecution that resulted in the conviction;
- (2) is in the actual or constructive possession of the state; and
- (3) was not previously subjected to DNA testing, or can be subjected to retesting with new DNA techniques that provide a reasonable likelihood of more accurate and probative results.

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

(2) Upon receiving notice of a petition made under subsection (a), the prosecuting attorney shall take such steps as are necessary to ensure that any remaining

biological material that was secured in connection with the case is preserved pending the completion of proceedings under this section.

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

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

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

(f) (1) Except as provided in subsection (f)(3), if the results of DNA testing conducted under this section are unfavorable to the petitioner, the court:

- (A) Shall dismiss the petition; and
- (B) in the case of a petitioner who is not indigent, may assess the petitioner for the cost of such testing.

(2) If the results of DNA testing conducted under this section are favorable to the petitioner and are of such materiality that a reasonable probability exists that the new evidence would result in a different outcome at trial or sentencing, the court shall:

- (A) Order a hearing, notwithstanding any provision of law that would bar such a hearing; and
- (B) enter any order that serves the interests of justice, including, but not limited

to, an order:

- (i) Vacating and setting aside the judgment;
- (ii) discharging the petitioner if the petitioner is in custody;
- (iii) resentencing the petitioner; or
- (iv) granting a new trial.

(3) If the results of DNA testing conducted under this section are inconclusive, the court may order a hearing to determine whether there is a substantial question of innocence. If the petitioner proves by a preponderance of the evidence that there is a substantial question of innocence, the court shall proceed as provided in subsection (f)(2).

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

Sec. 2. K.S.A. 2012 Supp. 21-5402 is hereby amended to read as follows: 21-5402. (a) Murder in the first degree is the killing of a human being committed:

- (1) Intentionally, and with premeditation; or
- (2) in the commission of, attempt to commit, or flight from any inherently dangerous felony.

(b) Murder in the first degree is an off-grid person felony.

(c) As used in this section, an "inherently dangerous felony" means:

- (1) Any of the following felonies, whether such felony is so distinct from the homicide alleged to be a violation of subsection (a)(2) as not to be an ingredient of the homicide alleged to be a violation of subsection (a)(2):

(A) Kidnapping, as defined in subsection (a) of K.S.A. 2012 Supp. 21-5408, and amendments thereto;

(B) aggravated kidnapping, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5408, and amendments thereto;

(C) robbery, as defined in subsection (a) of K.S.A. 2012 Supp. 21-5420, and amendments thereto;

(D) aggravated robbery, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5420, and amendments thereto;

(E) rape, as defined in K.S.A. 2012 Supp. 21-5503, and amendments thereto;

(F) aggravated criminal sodomy, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5504, and amendments thereto;

(G) abuse of a child, as defined in K.S.A. 2012 Supp. 21-5602, and amendments thereto;

(H) felony theft of property, as defined in subsection (a)(1) or (a)(3) of K.S.A. 2012 Supp. 21-5801, and amendments thereto;

(I) burglary, as defined in subsection (a) of K.S.A. 2012 Supp. 21-5807, and amendments thereto;

(J) aggravated burglary, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5807, and amendments thereto;

(K) arson, as defined in subsection (a) of K.S.A. 2012 Supp. 21-5812, and amendments thereto;

(L) aggravated arson, as defined in subsection (b) of K.S.A. 2012 Supp. 21-

5812, and amendments thereto;

(M) treason, as defined in K.S.A. 2012 Supp. 21-5901, and amendments thereto;

(N) any felony offense as provided in K.S.A. 2012 Supp. 21-5703, 21-5705 or 21-5706, and amendments thereto;

(O) any felony offense as provided in subsection (a) or (b) of K.S.A. 2012 Supp. 21-6308, and amendments thereto;

(P) endangering the food supply, as defined in subsection (a) of K.S.A. 2012 Supp. 21-6317, and amendments thereto;

(Q) aggravated endangering the food supply, as defined in subsection (b) of K.S.A. 2012 Supp. 21-6317, and amendments thereto;

(R) fleeing or attempting to elude a police officer, as defined in subsection (b) of K.S.A. 8-1568, and amendments thereto;

(S) aggravated endangering a child, as defined in subsection (b)(1) of K.S.A. 2012 Supp. 21-5601, and amendments thereto;

(T) abandonment of a child, as defined in subsection (a) of K.S.A. 2012 Supp. 21-5605, and amendments thereto; or

(U) aggravated abandonment of a child, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5605, and amendments thereto; and

(2) any of the following felonies, only when such felony is so distinct from the homicide alleged to be a violation of subsection (a)(2) as to not be an ingredient of the homicide alleged to be a violation of subsection (a)(2):

(A) Murder in the first degree, as defined in subsection (a)(1);

(B) murder in the second degree, as defined in subsection (a)(1) of K.S.A. 2012 Supp. 21-5403, and amendments thereto;

(C) voluntary manslaughter, as defined in subsection (a)(1) of K.S.A. 2012 Supp. 21-5404, and amendments thereto;

(D) aggravated assault, as defined in subsection (b) of K.S.A. 2012 Supp. 21-5412, and amendments thereto;

(E) aggravated assault of a law enforcement officer, as defined in subsection (d) of K.S.A. 2012 Supp. 21-5412, and amendments thereto;

(F) aggravated battery, as defined in subsection (b)(1) of K.S.A. 2012 Supp. 21-5413, and amendments thereto; or

(G) aggravated battery against a law enforcement officer, as defined in subsection (d) of K.S.A. 2012 Supp. 21-5413, and amendments thereto.

(d) Murder in the first degree as defined in subsection (a)(2) is an alternative method of proving murder in the first degree and is not a separate crime from murder in the first degree as defined in subsection (a)(1). The provisions of K.S.A. 21-5109, and amendments thereto, are not applicable to murder in the first degree as defined in subsection (a)(2). Murder in the first degree as defined in subsection (a)(2) is not a lesser included offense of murder in the first degree as defined in subsection (a)(1), and is not a lesser included offense of capital murder as defined in K.S.A. 21-5401, and amendments thereto. As set forth in subsection (b) of K.S.A. 21-5109, and amendments thereto, there are no lesser included offenses of murder in the first degree under subsection (a)(2).

(e) The amendments to this section by this act establish a procedural rule for the

conduct of criminal prosecutions and shall be construed and applied retroactively to all cases currently pending.";

And by renumbering sections accordingly;

On page 4, in line 19, before "K.S.A." by inserting "K.S.A. 21-2512 and"; also in line 19, following "Supp." by inserting "21-5402,";

On page 1, in the title, in line 2, by striking "relating to"; also in line 2, following the last semicolon by inserting "DNA evidence; felony murder; capital murder;"; in line 3, following "amending" by inserting "K.S.A. 21-2512 and"; also in line 3, following "Supp." by inserting "21-5402,";

And your committee on conference recommends the adoption of this report.

Conferees on part of Senate

Conferees on part of House