

## HOUSE BILL No. 2057

By Committee on Judiciary

1-20

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to review and appeal of convictions resulting in a sentence of death;  
3 limitations and procedure for motions attacking sentence filed by  
4 prisoners; additional procedures for prisoners under sentence of death;  
5 amending K.S.A. 60-1507 and K.S.A. 2014 Supp. 21-6619 and  
6 repealing the existing sections.

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

9 Section 1. K.S.A. 2014 Supp. 21-6619 is hereby amended to read as  
10 follows: 21-6619. (a) A judgment of conviction resulting in a sentence of  
11 death shall be subject to automatic review by and appeal to the supreme  
12 court of Kansas in the manner provided by the applicable statutes and rules  
13 of the supreme court governing appellate procedure. The review and  
14 appeal shall be expedited in every manner consistent with the proper  
15 presentation thereof and given priority pursuant to the statutes and rules of  
16 the supreme court governing appellate procedure, *and in accordance with*  
17 *the following provisions:*

18 (1) *When a notice of appeal is filed in a criminal case in which a*  
19 *sentence of death has been imposed, the rules relating to appellate*  
20 *practice shall govern except where otherwise provided by this section.*

21 (2) *Upon the filing of a notice of appeal, the execution of a death*  
22 *sentence shall be stayed until the appellate proceedings are concluded.*

23 (3) *Within 30 days after notice from the clerk of the appellate courts*  
24 *that the appeal has been docketed, the clerk of the district court shall*  
25 *compile the record on appeal.*

26 (4) *A transcript shall be prepared of all proceedings reported by a*  
27 *court reporter or which have otherwise been recorded. The transcript*  
28 *shall be completed within 90 days after service of the request for the*  
29 *transcript. Extensions of time shall not be granted, except for exceptional*  
30 *circumstances.*

31 (5) *All documents filed in the trial court and all transcripts of the*  
32 *proceedings shall be included in the record on appeal.*

33 (6) *The appellant's brief shall be filed not later than 120 days after*  
34 *service of the certificate of filing of the transcript in accordance with*  
35 *supreme court rule 3.03. The appellee's brief shall be filed not later than*  
36 *120 days after service of the appellant's brief. A reply brief, if any, shall be*

1 filed not later than 60 days after service of the brief to which the reply is  
2 made. Extensions of time to file primary briefs shall not be granted, except  
3 for compelling reasons stated in a written order of the court, and for no  
4 more than 90 days. No party shall be granted more than two such  
5 extensions, except upon a showing of exceptional circumstances, and then  
6 only in 30-day increments. No request for additional time that will cause  
7 the brief filing date to extend beyond 270 days from the initial filing due  
8 date shall be granted without a hearing before a randomly selected three-  
9 justice panel of the supreme court in which counsel shall explain the  
10 exceptional circumstances justifying additional time to the panel's  
11 satisfaction. Extensions of time to file a reply brief shall not be granted,  
12 except upon a showing of exceptional circumstances, and then only in 30-  
13 day increments. No request for additional time that will cause the brief  
14 filing date to extend beyond 90 days from the initial filing due date shall  
15 be granted without a hearing before a randomly selected three-justice  
16 panel of the supreme court in which counsel shall explain the exceptional  
17 circumstances justifying additional time to the panel's satisfaction.

18 (7) The length of briefs, exclusive of cover, table of contents,  
19 appendix and certificate of service, shall not exceed the following: Brief of  
20 appellant, 100 pages; brief of appellee, 100 pages; reply brief, 30 pages.  
21 Exceptions to the page limit shall not be granted, except for compelling  
22 reasons stated in a written order of the court.

23 (8) Death penalty appeals shall take precedence over all other  
24 appeals. The fact that an attorney is engaged in drafting a brief in a  
25 pending death penalty appeal shall be considered by the appellate courts  
26 of Kansas as a circumstance warranting extensions of time to file briefs or  
27 other documents in all other non-capital appeals in which counsel is also  
28 engaged as lead counsel, upon the request of counsel.

29 (9) Oral arguments in death penalty appeals shall be heard by the  
30 supreme court no later than six months after the filing of the final reply  
31 brief of the appellant.

32 (10) The supreme court shall issue a written decision no later than  
33 six months after oral argument.

34 (b) The supreme court of Kansas shall consider the question of  
35 sentence as well as any errors asserted in the review and appeal and shall  
36 be authorized to notice unassigned errors appearing of record if the ends of  
37 justice would be served thereby in accordance with the rules of appellate  
38 procedure governing issue preservation and applicable standards of  
39 review. If the court determines that it will consider an unassigned  
40 sentencing error, it must notify the parties of the particular issue no later  
41 than 60 days prior to the scheduled oral argument, and shall allow the  
42 parties to submit supplemental briefs on the matter prior to oral argument.  
43 Such supplemental briefs shall be limited to no more than 20 pages, except

1 *for compelling reasons stated in a written order of the court. The court*  
2 *shall not consider any unassigned sentencing errors that are not identified*  
3 *and brought to the parties' attention prior to 60 days before oral argument.*

4 (c) With regard to the sentence, the court shall determine:

5 (1) Whether the sentence of death was imposed under the influence of  
6 passion, prejudice or any other arbitrary factor; and

7 (2) whether the evidence supports the findings that an aggravating  
8 circumstance or circumstances existed and that any mitigating  
9 circumstances were insufficient to outweigh the aggravating  
10 circumstances.

11 (d) *Issuance of the mandate in capital cases which affirm a death*  
12 *sentence shall be automatically stayed until the time for filing a petition*  
13 *for writ of certiorari to the United States supreme court has expired or, in*  
14 *a case in which a petition for writ of certiorari has been filed, until the*  
15 *clerk of the appellate courts is notified by the United States supreme court*  
16 *that the petition has been denied.*

17 (e) The court shall be authorized to enter such orders as are  
18 necessary to effect a proper and complete disposition of the review and  
19 appeal.

20 (f) *The amendments to this section by this act, being procedural in*  
21 *nature, shall apply to all pending and future appeals, except in pending*  
22 *appeals the requirements of subsections (a)(7), (a)(9) and (a)(10) shall be*  
23 *advisory rather than obligatory for those appeals that have been fully*  
24 *briefed on or before the effective date of this act.*

25 Sec. 2. K.S.A. 60-1507 is hereby amended to read as follows: 60-  
26 1507. (a) *Motion attacking sentence.* A prisoner in custody under sentence  
27 of a court of general jurisdiction claiming the right to be released upon the  
28 ground that the sentence was imposed in violation of the constitution or  
29 laws of the United States, or the constitution or laws of the state of Kansas,  
30 or that the court was without jurisdiction to impose such sentence, or that  
31 the sentence was in excess of the maximum authorized by law, or is  
32 otherwise subject to collateral attack, may, pursuant to the time limitations  
33 imposed by subsection (f), move the court which imposed the sentence to  
34 vacate, set aside or correct the sentence.

35 (b) *Hearing and judgment.* Unless the motion and the files and  
36 records of the case conclusively show that the prisoner is entitled to no  
37 relief, the court shall cause notice thereof to be served upon the county  
38 attorney, grant a prompt hearing thereon, determine the issues and make  
39 findings of fact and conclusions of law with respect thereto. The court  
40 may entertain and determine such motion without requiring the production  
41 of the prisoner at the hearing. If the court finds that the judgment was  
42 rendered without jurisdiction, or that the sentence imposed was not  
43 authorized by law or is otherwise open to collateral attack, or that there has

1 been such a denial or infringement of the constitutional rights of the  
2 prisoner as to render the judgment vulnerable to collateral attack, the court  
3 shall vacate and set the judgment aside and shall discharge the prisoner or  
4 resentence ~~said~~ the prisoner or grant a new trial or correct the sentence as  
5 may appear appropriate.

6 (c) *Successive motions.* The sentencing court shall not be required to  
7 entertain a second or successive motion ~~for similar~~ *based on the same or*  
8 *similar grounds for relief on behalf of the same prisoner.*

9 (1) *No second or successive motion under this section may be filed in*  
10 *the district court absent an order from the chief judge of the judicial*  
11 *district authorizing such motion.*

12 (A) *Before a second or successive motion under this section may be*  
13 *filed in the district court, the prisoner shall move for an order authorizing*  
14 *the district court to consider the second or successive motion.*

15 (B) *The chief judge of the judicial district may authorize the filing of*  
16 *a second or successive motion only if such chief judge determines that the*  
17 *motion makes a prima facie showing that it satisfies the requirements of*  
18 *either subsection (c)(3)(A) or (c)(3)(B).*

19 (C) *An order dismissing a motion under this subsection may be*  
20 *appealed to the Kansas court of appeals and shall be reviewed under an*  
21 *abuse of discretion standard. The final decision of the Kansas court of*  
22 *appeals shall not be the subject of a motion for rehearing or a petition for*  
23 *review to the Kansas supreme court.*

24 (2) *A claim presented in a second or successive motion that was*  
25 *presented in a prior motion shall be dismissed.*

26 (3) *A claim presented in a second or successive motion that was not*  
27 *presented in a prior motion shall be dismissed unless:*

28 (A) *The prisoner shows that the claim relies on a new rule of*  
29 *constitutional law, made retroactive to cases on collateral review by the*  
30 *United States supreme court that was previously unavailable; or*

31 (B) *the factual predicate for the claim could not have been discovered*  
32 *previously through the exercise of due diligence and the facts underlying*  
33 *the claim, including, but not limited to, advances in science and*  
34 *technology, if proven and viewed in light of the evidence as a whole, would*  
35 *be sufficient to establish by clear and convincing evidence that, but for*  
36 *constitutional error, no reasonable factfinder would have found the*  
37 *prisoner guilty of the underlying offense.*

38 (4) *The ineffectiveness or incompetence of counsel during a prior*  
39 *motion under this section or other collateral post-conviction proceedings*  
40 *shall not be a ground for relief in a second or successive motion.*

41 (d) *Appeal.* An appeal may be taken to the appellate court as provided  
42 by law from the order entered on the motion as from a final judgment on  
43 application for a writ of habeas corpus.

1 (e) *Exclusiveness of remedy.* An application for a writ of habeas  
2 corpus in behalf of a prisoner who is authorized to apply for relief by  
3 motion pursuant to this section, shall not be entertained if it appears that  
4 the applicant has failed to apply for relief, by motion, to the court which  
5 sentenced ~~said~~ the applicant, or that such court has denied ~~said~~ the  
6 applicant relief, unless it also appears that the remedy by motion is  
7 inadequate or ineffective to test the legality of ~~said~~ the applicant's  
8 detention.

9 (f) *Time limitations.* (1) Any action under this section must be  
10 brought within one year of:

11 (i) (A) The final order of the last appellate court in this state to  
12 exercise jurisdiction on a direct appeal or the termination of such appellate  
13 jurisdiction; or

14 (ii) (B) the denial of a petition for writ of certiorari to the United  
15 States supreme court or issuance of such court's final order following  
16 granting such petition.

17 (2) The time limitation herein may be extended by the court only to  
18 prevent a manifest injustice.

19 (A) *If the court makes a manifest injustice finding, it must state the*  
20 *factual and legal basis for such finding in writing with service to the*  
21 *parties.*

22 (B) *The court shall not make a manifest injustice finding unless the*  
23 *prisoner alleges circumstances that prevented filing the motion within the*  
24 *one-year time limitation.*

25 (g) *Additional procedures for prisoners under sentence of death. (1)*  
26 *Except as otherwise provided in this subsection, all general provisions of*  
27 *this section apply to motions filed by prisoners under a sentence of death.*

28 (2) *If a prisoner under a sentence of death files a motion for*  
29 *postconviction relief pursuant to this section and it is the first such motion,*  
30 *the district court shall appoint counsel unless the prisoner already has*  
31 *counsel, and shall cause notice thereof to be served upon the prosecuting*  
32 *attorney's office. The district court shall take up such motion and hold a*  
33 *status conference within 30 days of its filing. At the status conference, the*  
34 *court shall determine whether further briefing from the parties is required,*  
35 *whether to hold an evidentiary hearing, and may make any other*  
36 *determinations necessary for the resolution of the case. Production of the*  
37 *prisoner is not required at the status conference.*

38 (3) *As a general rule, motions and responses filed under this section*  
39 *should not exceed 1/2 of the page limit for briefs in direct appeals in death*  
40 *penalty cases as set forth in K.S.A. 2014 Supp. 21-6619, and amendments*  
41 *thereto.*

42 (4) *During the pendency of a first motion filed under this section, the*  
43 *execution of a death sentence shall be automatically stayed until the*

1 *proceedings, to include appeal, are concluded.*

2 (5) *The court may decide the motion without holding an evidentiary*  
3 *hearing. If the court determines the motion can be resolved without an*  
4 *evidentiary hearing, the court shall issue a written decision within 180*  
5 *days after the status conference.*

6 (6) *If the court determines an evidentiary hearing is necessary, it*  
7 *shall hold the hearing within 180 days after the status conference.*

8 (7) *If an evidentiary hearing is held, the court shall issue a written*  
9 *decision within 180 days after the evidentiary hearing.*

10 (8) *The court's written decision shall address all of the prisoner's*  
11 *properly presented claims, setting forth with particularity necessary*  
12 *findings of fact and conclusions of law.*

13 (9) *Any appeal from the granting or denial of a motion pursuant to*  
14 *this section in a death penalty case shall take precedence over other*  
15 *appeals and shall be expedited by the appellate courts in the same manner*  
16 *as a direct appeal as set forth in K.S.A. 2014 Supp. 21-6619, and*  
17 *amendments thereto.*

18 Sec. 3. K.S.A. 60-1507 and K.S.A. 2014 Supp. 21-6619 are hereby  
19 repealed.

20 Sec. 4. This act shall take effect and be in force from and after its  
21 publication in the Kansas register.