

SENATE BILL No. 28

By Committee on Judiciary

1-11

9 AN ACT concerning crimes, punishment and criminal procedure; relat-
10 ing to the sentence of death; amending K.S.A. 2004 Supp. 21-4624
11 and repealing the existing section.
12

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

14 Section 1. K.S.A. 2004 Supp. 21-4624 is hereby amended to read as
15 follows: 21-4624. (a) If a defendant is charged with capital murder, the
16 county or district attorney shall file written notice if such attorney intends,
17 upon conviction of the defendant, to request a separate sentencing pro-
18 ceeding to determine whether the defendant should be sentenced to
19 death. Such notice shall be filed with the court and served on the de-
20 fendant or the defendant's attorney not later than five days after the time
21 of arraignment. If such notice is not filed and served as required by this
22 subsection, the county or district attorney may not request such a sen-
23 tencing proceeding and the defendant, if convicted of capital murder,
24 shall be sentenced to life without the possibility of parole, and no sentence
25 of death shall be imposed hereunder.

26 (b) Except as provided in K.S.A. 21-4622 and 21-4623, and amend-
27 ments thereto, upon conviction of a defendant of capital murder, the
28 court, upon motion of the county or district attorney, shall conduct a
29 separate sentencing proceeding to determine whether the defendant shall
30 be sentenced to death. The proceeding shall be conducted by the trial
31 judge before the trial jury as soon as practicable. If any person who served
32 on the trial jury is unable to serve on the jury for the sentencing pro-
33 ceeding, the court shall substitute an alternate juror who has been im-
34 paneled for the trial jury. If there are insufficient alternate jurors to re-
35 place trial jurors who are unable to serve at the sentencing proceeding,
36 the trial judge may summon a special jury of 12 persons ~~which~~ *who* shall
37 determine the question of whether a sentence of death shall be imposed.
38 Jury selection procedures, qualifications of jurors and grounds for ex-
39 emption or challenge of prospective jurors in criminal trials shall be ap-
40 plicable to the selection of such special jury. The *right to a jury* at the
41 sentencing proceeding may be waived in the manner provided by K.S.A.
42 22-3403 and amendments thereto for waiver of a trial jury. If the jury at
43 the sentencing proceeding has been waived or the trial jury has been

1 waived, the sentencing proceeding shall be conducted by the court.

2 (c) In the sentencing proceeding, evidence may be presented con-
3 cerning any matter that the court deems relevant to the question of sen-
4 tence and shall include matters relating to any of the aggravating circum-
5 stances enumerated in K.S.A. 21-4625 and amendments thereto and any
6 mitigating circumstances. Any such evidence which the court deems to
7 have probative value may be received regardless of its admissibility under
8 the rules of evidence, provided that the defendant is accorded a fair op-
9 portunity to rebut any hearsay statements. Only such evidence of aggra-
10 vating circumstances as the state has made known to the defendant prior
11 to the sentencing proceeding shall be admissible, and no evidence se-
12 cured in violation of the constitution of the United States or of the state
13 of Kansas shall be admissible. No testimony by the defendant at the sen-
14 tencing proceeding shall be admissible against the defendant at any sub-
15 sequent criminal proceeding. At the conclusion of the evidentiary pres-
16 entation, the court shall allow the parties a reasonable period of time in
17 which to present oral argument.

18 (d) At the conclusion of the evidentiary portion of the sentencing
19 proceeding, the court shall provide oral and written instructions to the
20 jury to guide its deliberations.

21 (e) If, by unanimous vote, the jury finds beyond a reasonable doubt
22 that one or more of the aggravating circumstances enumerated in K.S.A.
23 21-4625 and amendments thereto exist and, further, that the existence of
24 such aggravating circumstances ~~is not outweighed by~~ *outweighs* any mit-
25 igating circumstances which are found to exist, the defendant shall be
26 sentenced to death; otherwise, the defendant shall be sentenced to life
27 without the possibility of parole. *If such jury finds that the aggravating*
28 *circumstances and mitigating circumstances are equal, the defendant shall*
29 *not be sentenced to death and shall be sentenced to life without the pos-*
30 *sibility of parole.* The jury, if its verdict is a unanimous recommendation
31 of a sentence of death, shall designate in writing, signed by the foreman
32 of the jury, the statutory aggravating circumstances which it found beyond
33 a reasonable doubt. If, after a reasonable time for deliberation, the jury
34 is unable to reach a verdict, the judge shall dismiss the jury and impose
35 a sentence of life without the possibility of parole and shall commit the
36 defendant to the custody of the secretary of corrections. In nonjury cases,
37 the court shall follow the requirements of this subsection in determining
38 the sentence to be imposed.

39 (f) Notwithstanding the verdict of the jury, the trial court shall review
40 any jury verdict imposing a sentence of death hereunder to ascertain
41 whether the imposition of such sentence is supported by the evidence. If
42 the court determines that the imposition of such a sentence is not sup-
43 ported by the evidence, the court shall modify the sentence and sentence

1 the defendant to life without the possibility of parole, and no sentence of
2 death shall be imposed hereunder. Whenever the court enters a judgment
3 modifying the sentencing verdict of the jury, the court shall set forth its
4 reasons for so doing in a written memorandum which shall become part
5 of the record.

6 (g) A defendant who is sentenced to imprisonment for life without
7 the possibility of parole shall spend the remainder of the defendant's
8 natural life incarcerated and in the custody of the secretary of corrections.
9 A defendant who is sentenced to imprisonment for life without the pos-
10 sibility of parole shall not be eligible for parole, probation, assignment to
11 a community correctional services program, conditional release, post-
12 release supervision, or suspension, modification or reduction of sentence.
13 Upon sentencing a defendant to imprisonment for life without the pos-
14 sibility of parole, the court shall commit the defendant to the custody of
15 the secretary of corrections and the court shall state in the sentencing
16 order of the judgment form or journal entry, whichever is delivered with
17 the defendant to the correctional institution, that the defendant has been
18 sentenced to imprisonment for life without the possibility of parole.

19 Sec. 2. K.S.A. 2004 Supp. 21-4624 is hereby repealed.

20 Sec. 3. This act shall take effect and be in force from and after its
21 publication in the Kansas register.