

KANSAS OFFICE *of*  
**REVISOR *of* STATUTES**

LEGISLATURE *of* THE STATE *of* KANSAS  
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**MEMORANDUM**

To: House Committee on Judiciary

From: Office of Revisor of Statutes

Date: January 30, 2023

Subject: Bill Brief on HB 2129

HB 2129 requires defendants who petition the court for forensic DNA testing to notify the court when such testing is complete and request a hearing based on whether the evidence is favorable or unfavorable.

Section 1 amends K.S.A. 21-2512, which is the statute related to forensic DNA testing. Current law authorizes a person in state custody who was convicted of first degree murder or rape to petition for testing of certain biological samples. Subsection (a) is amended to allow a person in state custody after sentencing for aggravated criminal sodomy to petition for such testing.

Subsection (f) is amended to require the petitioner, within 180 days after the conclusion of testing that is ordered, to notify the court that DNA testing is complete and claim whether the results are inconclusive, favorable or unfavorable to the petitioner. If the petitioner claims the results are unfavorable, current law requires the court to dismiss the petition and attorney fees may be assessed. The bill does not change that process. If the petitioner claims the results are inconclusive or favorable and are of such materiality that a reasonable probability exists that the new evidence would result in a different outcome at trial or sentencing or there is a substantial question of innocence, the court shall order a hearing and, if the petitioner proves such claim by a preponderance of the evidence, enter an order that serves the interest of justice.

The bill adds a new paragraph (4) to provide that if the petitioner fails to notify the court within 180 days after the conclusion of all DNA testing, the court shall dismiss the petition. Subsection (h) is added to provide that it is the intent of the legislature that the amendments made to this section are procedural in nature and shall be construed and applied retroactively to any pending petition.