

HOUSE BILL No. 2705

By Committee on Corrections and Juvenile Justice

Requested by Jennifer King on behalf of Kansas Department of Corrections

2-4

1 AN ACT concerning civil procedure; relating to habeas corpus; providing
2 limitations on the circumstances that require courts to appoint counsel
3 for an indigent inmate in certain habeas corpus actions; amending
4 K.S.A. 22-4506 and 60-1503 and repealing the existing sections.
5

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

7 Section 1. K.S.A. 22-4506 is hereby amended to read as follows: 22-
8 4506. (a) Whenever any person who is in custody under a sentence of
9 imprisonment upon conviction of a felony files a petition for writ of
10 habeas corpus *pursuant to K.S.A. 60-1507, and amendments thereto*, or a
11 motion attacking sentence—~~under~~ *pursuant to K.S.A. 60-1507, and*
12 *amendments thereto*, and files with such petition or motion such person's
13 affidavit stating that the petition or motion is filed in good faith and that
14 such person is financially unable to pay the costs of such action and to
15 employ counsel therefor, the court shall make a preliminary examination
16 of the petition or motion and the supporting papers.

17 (b) If the court finds that the petition or motion *filed pursuant to*
18 *K.S.A. 60-1507, and amendments thereto*, presents substantial questions of
19 law or triable issues of fact and if the petitioner or movant has been or is
20 thereafter determined to be an indigent person as provided in K.S.A. 22-
21 4504, and amendments thereto, the court shall appoint counsel from the
22 panel for indigents' defense services, or otherwise in accordance with the
23 applicable system for providing legal defense services for indigent persons
24 prescribed by the state board of indigents' defense services, to assist such
25 person and authorize the action to be filed without a deposit of security for
26 costs. If the petition or motion in such case raises questions shown by the
27 trial record, the court shall order that the petitioner or movant be supplied
28 with a transcript of the trial proceedings, or so much thereof as may be
29 necessary to present the issue, without cost to such person.

30 (c) If an appeal is taken in such action and if the trial court finds that
31 the petitioner or movant is an indigent person, the trial court shall appoint
32 counsel to conduct the appeal *for actions filed pursuant to K.S.A. 60-1507,*
33 *and amendments thereto*, order that the appellant be supplied with a record
34 of the proceedings, or so much thereof as such counsel determines to be
35 necessary, and order that the deposit of security for costs be waived.

1 (d) (1) The state board of indigents' defense services shall provide by
2 rule and regulation for:

3 (A)- The assignment of attorneys to the panel for indigents' defense
4 services to represent indigent persons, who have been convicted of capital
5 murder and are under sentence of death, upon a filing of a petition for writ
6 of habeas corpus *pursuant to K.S.A. 60-1507, and amendments thereto*, or
7 a motion attacking sentence—~~under~~ *pursuant to K.S.A. 60-1507, and*
8 *amendments thereto*;

9 (B) standards of competency and qualification for the appointment of
10 counsel in capital cases under this section; and

11 (C) the reasonable compensation of counsel appointed to represent
12 individuals convicted of capital murder and under a sentence of death,
13 during proceedings conducted pursuant to subsection (a), (b) or (c) and for
14 reasonable and necessary litigation expense associated with such
15 proceedings.

16 (2) If a petitioner or movant, who has been convicted of capital
17 murder and is under a sentence of death, files a petition for writ of habeas
18 corpus *pursuant to K.S.A. 60-1507, and amendments thereto*, or a motion
19 attacking sentence—~~under~~ *pursuant to K.S.A. 60-1507, and amendments*
20 *thereto*, the district court shall make a determination on the record whether
21 the petitioner or movant is indigent. Upon a finding that the petitioner or
22 movant is indigent and accepts the offer of representation or is unable
23 competently to decide whether to accept or reject the offer, the court shall
24 appoint one or more counsel, in accordance with subsection (d)(1), to
25 represent the petitioner or movant. If the petitioner or movant rejects the
26 offer of representation, the court shall find on the record, after a hearing if
27 necessary, whether the petitioner or movant rejected the offer of
28 representation with the understanding of its legal consequences. The court
29 shall deny the appointment of counsel upon a finding that the petitioner or
30 movant is competent and not indigent.

31 (3) Counsel appointed to represent the petitioner or movant shall not
32 have represented the petitioner or movant at trial or on direct appeal
33 therefrom unless the petitioner or movant and counsel expressly request
34 continued representation.

35 (e) Whenever it is determined that electronic access to court records
36 is necessary to present a petitioner's cause adequately and it is further
37 determined that the petitioner or movant is an indigent person, the court
38 having jurisdiction in the matter shall order that the records be supplied to
39 the defendant, at no charge, by the electronic access service. The state
40 board of indigents' defense services shall be exempt from paying user fees
41 to access electronic court records.

42 Sec. 2. K.S.A. 60-1503 is hereby amended to read as follows: 60-
43 1503. (a) *Issuance*. The petition shall be presented promptly to a judge in

1 the district court in accordance with the procedure of the court for the
2 assignment of court business. The petition shall be examined promptly by
3 the judge to whom it is assigned. If it plainly appears from the face of the
4 petition and any exhibits attached thereto that the plaintiff is not entitled to
5 relief in the district court, the petition shall be dissolved at the cost of the
6 plaintiff. If the judge finds that the plaintiff may be entitled to relief, the
7 judge shall issue the writ and order the person to whom the writ is directed
8 to file an answer within the period of time fixed by the court or to take
9 such other action as the judge deems appropriate.

10 (b) *Form.* The writ shall be directed to the party having the person
11 under restraint and shall command such person to have the restrained
12 person before the judge at the time and place specified in the writ.

13 (c) *Service.* The writ shall be served without delay. If directed to the
14 sheriff it shall be served by the clerk. If directed to any other person it shall
15 be served by the sheriff or some other person designated by the judge. If
16 the person to whom it is directed cannot be found or shall refuse
17 admittance, the writ may be served by leaving it at such person's residence
18 or affixing it at some conspicuous place where the party is confined or
19 restrained.

20 (d) *Sundays, holidays and accessibility.* The writ may be issued and
21 served at any time, including Sundays, holidays, and days on which the
22 office of the clerk of the court is not accessible.

23 (e) *Appointment of counsel for inmates.* *The court may in its*
24 *discretion appoint counsel to an inmate in the custody of the secretary of*
25 *corrections who is challenging the conditions of confinement pursuant to*
26 *K.S.A. 60-1501, and amendments thereto.*

27 Sec. 3. K.S.A. 22-4506 and 60-1503 are hereby repealed.

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