

HOUSE BILL No. 2190

By Committee on Corrections and Juvenile Justice

2-1

1 AN ACT concerning civil actions; relating to habeas corpus; defining
2 successive motions; clarifying what constitutes new evidence and time
3 limitations; amending K.S.A. 2020 Supp. 60-1507 and repealing the
4 existing section.
5

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

7 Section 1. K.S.A. 2020 Supp. 60-1507 is hereby amended to read as
8 follows: 60-1507. (a) *Motion attacking sentence.* A prisoner in custody
9 under sentence of a court of general jurisdiction claiming the right to be
10 released upon the ground that the sentence was imposed in violation of the
11 constitution or laws of the United States, or the constitution or laws of the
12 state of Kansas, or that the court was without jurisdiction to impose such
13 sentence, or that the sentence was in excess of the maximum authorized by
14 law, or is otherwise subject to collateral attack, may, pursuant to the time
15 limitations imposed by subsection (f), move the court which imposed the
16 sentence to vacate, set aside or correct the sentence.

17 (b) *Hearing and judgment.* Unless the motion and the files and
18 records of the case conclusively show that the prisoner is entitled to no
19 relief, the court shall cause notice thereof to be served upon the county
20 attorney, grant a prompt hearing thereon, determine the issues and make
21 findings of fact and conclusions of law with respect thereto. The court may
22 entertain and determine such motion without requiring the production of
23 the prisoner at the hearing. If the court finds that the judgment was
24 rendered without jurisdiction, or that the sentence imposed was not
25 authorized by law or is otherwise open to collateral attack, or that there has
26 been such a denial or infringement of the constitutional rights of the
27 prisoner as to render the judgment vulnerable to collateral attack, the court
28 shall vacate and set the judgment aside and shall discharge the prisoner or
29 resentence said prisoner or grant a new trial or correct the sentence as may
30 appear appropriate.

31 (c) *Successive motions.* The sentencing court shall not be required to
32 entertain a second or successive motion for similar relief on behalf of the
33 same prisoner. *A motion is a successive motion if it raises issues*
34 *previously raised in a motion filed pursuant to this section or issues that*
35 *could have been raised in a previous motion filed pursuant to this section.*
36 *A successive motion shall not be filed while an appeal is pending on a*

1 *separate motion filed pursuant to this section or during a time within*
2 *which an appeal may be perfected.*

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

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

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

16 (A) The final order of the last appellate court in this state to exercise
17 jurisdiction on a direct appeal or the termination of such appellate
18 jurisdiction; ~~or~~

19 (B) the denial of a petition for writ of certiorari to the United States
20 supreme court or issuance of such court's final order following granting
21 such petition; *or*

22 (C) *the decision of the district court denying a prior motion under*
23 *this section, the opinion of the last appellate court in this state to exercise*
24 *jurisdiction on such prior motion or the denial of the petition for review on*
25 *such prior motion, whichever is later.*

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

28 (A) For purposes of finding manifest injustice under this section, the
29 court's inquiry shall be limited to determining why the prisoner failed to
30 file the motion within the one-year time limitation or whether the prisoner
31 makes a colorable claim of actual innocence. As used herein, the term
32 actual innocence requires the prisoner to show it is more likely than not
33 that no reasonable juror would have convicted the prisoner in light of new
34 evidence. *Evidence shall not be considered new if the prisoner previously*
35 *based a claim on such evidence but failed to present evidence in support of*
36 *the prisoner's claim or withdrew the claim.*

37 (B) If the court makes a manifest-injustice finding, it must state the
38 factual and legal basis for such finding in writing with service to the
39 parties.

40 (3) If the court, upon its own inspection of the motions, files and
41 records of the case, determines the time limitations under this section have
42 been exceeded and that the dismissal of the motion would not equate with
43 manifest injustice, the district court must dismiss the motion as untimely

1 filed.

2 Sec. 2. K.S.A. 2020 Supp. 60-1507 is hereby repealed.

3 Sec. 3. This act shall take effect and be in force from and after its

4 publication in the statute book.