

SESSION OF 2018

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2479**

As Recommended by House Committee on  
Judiciary

**Brief\***

HB 2479 would create law in the Kansas Code of Criminal Procedure providing for an automatic stay in an underlying criminal case when a district court has granted relief in a KSA 60-1507 proceeding and the prosecution files an appellate docketing statement appealing from the district court's decision. The time during the prosecution's appeal would not be counted for purposes of the speedy trial statute until the mandate in the appeal has issued. Despite the stay, the court could release the prisoner on bond, even where the prisoner has not filed a notice of appeal, pursuant to the statute governing release after conviction.

The stay could be lifted, upon motion filed in the appellate court, if the court finds the prisoner has made a strong showing the prisoner is entitled to relief and will be irreparably injured if the stay is not lifted. If the stay is lifted, the time during the prosecution's appeal still would not be counted for purposes of the speedy trial statute until the mandate in the appeal has issued, and the prisoner would be entitled to a new bond hearing in the underlying criminal case.

**Background**

KSA 60-1507 provides a *habeas corpus* civil proceeding by which a prisoner in custody under sentence may move the

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

court that imposed the sentence to vacate, set aside, or correct the sentence on various grounds.

The bill was introduced by the House Committee on Judiciary at the request of the Office of the Attorney General.

In the House Committee hearing, a representative of the Office of the Attorney General testified in support of the bill. Written-only proponent testimony was submitted by the Shawnee County District Attorney. No opponent or neutral testimony was provided.

According to the fiscal note prepared by the Division of the Budget on the bill, the Office of Judicial Administration indicates the bill could increase litigation in the courts, which would have a fiscal effect on the court system. However, a precise fiscal effect cannot be determined, and would most likely be accommodated within the existing schedule of court cases without requiring additional resources. Any fiscal effect is not reflected in *The FY 2019 Governor's Budget Report*.

The Kansas Association of Counties indicates any changes allowing for tolling of the prosecutorial and appellate process could lead to longer jail stays, but the Association cannot estimate a fiscal effect.