

## HOUSE BILL No. 2138

By Committee on Judiciary

1-24

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AN ACT concerning civil procedure; relating to habeas corpus; amending K.S.A. 60-1507 and repealing the existing section.

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

Section 1. K.S.A. 60-1507 is hereby amended to read as follows: 60-1507. (a) *Motion attacking sentence. Subject to the provisions of subsection (f)*, a prisoner in custody under sentence of a court of general jurisdiction claiming the right to be released upon the ground that the sentence was imposed in violation of the constitution or laws of the United States, or the constitution or laws of the state of Kansas, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may ~~at any time~~ move the court which imposed the sentence to vacate, set aside or correct the sentence.

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

(c) *Successive motions.* The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

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

(e) *Exclusiveness of remedy.* An application for a writ of habeas cor-

1 pus in behalf of a prisoner who is authorized to apply for relief by motion  
2 pursuant to this section, shall not be entertained if it appears that the  
3 applicant has failed to apply for relief, by motion, to the court which  
4 sentenced ~~said~~ *such* applicant, or that such court has denied ~~said~~ *such*  
5 applicant relief, unless it also appears that the remedy by motion is in-  
6 adequate or ineffective to test the legality of ~~said~~ *such* applicant's  
7 detention.

8 *(f) Time limitations. (1) Any action under this section must be brought*  
9 *within one year of the final order of the last appellate court in this state*  
10 *or the United States supreme court to exercise or deny jurisdiction on a*  
11 *direct appeal or from the termination of such appellate jurisdiction, or*  
12 *the entry of judgment of guilt by a district court, whichever is later.*

13 *(2) The limitation herein shall be extended only to prevent a manifest*  
14 *injustice.*

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

16 Sec. 3. This act shall take effect and be in force from and after its  
17 publication in the statute book.

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