

SESSION OF 2014

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR
SENATE BILL NO. 403**

As Recommended by House Committee on
Judiciary

Brief*

House Sub. for SB 403 would amend the *habeas corpus* provisions of KSA 60-1501 to establish that a court may dismiss a 60-1501 petition without a hearing if the court determines:

- The petitioner pleaded guilty and the petition does not allege the plea was entered involuntarily, unknowingly, or without effective assistance of counsel; or
- The petitioner was convicted after trial and the grounds for the petition could have been presented to the trial court, raised in a direct appeal or prior petition for writ of *habeas corpus* or postconviction relief, or raised in any other proceeding taken by petitioner for relief from conviction and sentence, unless the court finds cause for failure to present the grounds and actual prejudice to the petitioner.

A court would be allowed to dismiss a second or successive petition without a hearing if the court determines the petition fails to allege new or different grounds for relief and the prior determination was on the merits, or new and different grounds in a prior petition constituted an abuse of the writ.

*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>

A petitioner would have the burden of pleading and proving specific facts demonstrating good cause for failure to previously present the claim or for presenting the claim again, as well as actual prejudice to the petitioner. The petitioner would be required to include in the petition all prior proceedings challenging the same conviction or sentence, and failure to do so could result in dismissal if the court has knowledge of such prior proceedings through the record of the court.

A dismissal of a petition pursuant to these provisions could be appealed to the Kansas Court of Appeals, where an abuse of discretion standard would apply. The appeal would be expedited and the decision of the Court of Appeals would not be subject to rehearing or a petition for review to the Kansas Supreme Court.

Background

The bill was introduced by the Senate Committee on Judiciary at the request of Senator Holmes. As introduced, the bill provided a procedure whereby a district court could designate a person filing multiple, meritless 60-1501 petitions an abuser of the writ, which would restrict future filings by the petitioner.

In the Senate Committee, Senator Holmes testified in support of the bill. A representative of the Attorney General's Office submitted written testimony supporting the bill. There was no neutral or opponent testimony.

The House Committee of Judiciary held a hearing on HB 2725, which was substantially similar to the original version of SB 403. Representative Crum testified in support of HB 2725. Written testimony supporting the bill was received from Senator Holmes and the Clerk of the Butler County District Court. Chief Judge Thomas Malone of the Kansas Court of Appeals submitted written testimony suggesting an

amendment to the bill adjusting the screening process for petitions by persons designated an abuser of the writ.

The House Committee recommended a substitute bill replacing the "abuser of a writ" procedure established in the original bill with an alternative procedure for curbing successive 60-1501 petitions.

According to the fiscal note prepared by the Division of the Budget on the bill, the Office of Judicial Administration indicates the bill could decrease the workload of the district courts, increase the workloads of the Kansas Court of Appeals and the clerks of the district courts, and result in the collection of additional docket fees. However, a precise fiscal effect cannot be estimated until the court have operated with the provisions of the bill in place.