

As Amended by House Committee

Session of 2016

HOUSE BILL No. 2502

By Committee on Corrections and Juvenile Justice

1-21

Proposed Amendments for HB 2502
Senator Haley
March 15, 2016
Prepared by: Jason Thompson
Office of Revisor of Statutes

AN ACT concerning civil ~~procedure; relating to~~ habeas corpus; time limitations in motion to attack sentence; amending K.S.A. 60-1507 and repealing the existing section.

civil actions; relating to people wrongfully convicted of crimes;

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

Insert Section 1 from SB 430 (attached)

Section 1. K.S.A. 60-1507 is hereby amended to read as follows: 60-1507. (a) *Motion attacking sentence.* 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, pursuant to the time limitations imposed by subsection (f), 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 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 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

SENATE BILL No. 430

By Senator Haley

2-9

1 AN ACT concerning civil actions; relating to people wrongfully convicted
2 of crimes; compensation.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) A claimant may bring an action in an appropriate state
6 court seeking damages from the state pursuant to this section and shall be
7 entitled to recover such damages if the claimant establishes the following
8 by clear and convincing evidence:

9 (1) The claimant was convicted of a felony under the Kansas criminal
10 code and served all or any part of their sentence in a state correctional
11 facility;

12 (2) the claimant did not commit the crime which resulted in such
13 conviction; and

14 (3) the claimant did not plead guilty or no contest to the crime which
15 resulted in such conviction.

16 (b) The suit, accompanied by a statement of the facts concerning the
17 claim for damages, verified in the manner provided for in the rules of civil
18 procedure, shall be brought by the claimant within two years after such
19 claimant's release from imprisonment.

20 (c) (1) A claimant entitled to damages pursuant to subsection (a) shall
21 be awarded damages in an amount equal to \$80,000 multiplied by the
22 number of years the claimant was incarcerated, expressed as a fraction to
23 reflect partial years.

24 (2) In addition to such damages, the claimant shall be entitled to
25 receive the costs of the suit, including reasonable attorney fees.

26 (3) Damages, costs and fees awarded pursuant to this section shall be
27 paid from the state general fund.

28 (d) Any award of damages to the claimant in an action against the
29 state or any political subdivision thereof, or against any employee of the
30 state or of any political subdivision thereof, with respect to the same
31 subject matter shall be offset by any award of damages awarded pursuant
32 to this section.

33 Sec. 2. This act shall take effect and be in force from and after its
34 publication in the statute book.