

SESSION OF 2016

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2502

As Amended by Senate Committee on Judiciary

Brief*

HB 2502 would amend the law concerning motions to vacate, set aside, or correct a sentence to specify that, for the purpose of finding manifest injustice, which extends the time limitation for bringing an action beyond a year, the court's inquiry would be limited to determining why the prisoner failed to file the motion within the one-year time limit or whether the prisoner makes a colorable claim of actual innocence. The bill would specify "actual innocence" would require the prisoner to show it is more likely than not that no reasonable juror would have convicted the prisoner in light of new evidence.

If the court makes a finding of manifest injustice, the bill would require the court to state the factual and legal basis for such finding in writing with service to the parties. If the court, upon its own inspection of the motions, files, and records of the case, determines the time limitations under this section have been exceeded and that the dismissal of the motion would not equate with manifest injustice, the bill would require the court to dismiss the motion as untimely filed.

The bill would be in effect upon publication in the *Kansas Register*.

Background

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Office of the Attorney General. At the House Committee on Judiciary

*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>

hearing on the bill, representatives of the Office of the Attorney General and the Kansas County and District Attorneys Association appeared as proponents. Representatives of the Kansas Association of Criminal Defense Lawyers, Midwest Innocence Project, and the Project for Innocence and Post Conviction Remedies offered opponent testimony. There was no neutral testimony.

The House Committee added language to allow the court's inquiry concerning a finding of manifest injustice to include whether the prisoner makes a colorable claim of actual innocence, which would require the prisoner to show it is more likely than not that no reasonable juror would have convicted the prisoner in light of new evidence.

At the Senate Committee on Judiciary hearing on the bill, representatives of the Office of the Attorney General and the Kansas County and District Attorneys Association appeared as proponents. The Senate Committee amended the bill to make it effective upon publication in the *Kansas Register*.

The fiscal note prepared by the Division of the Budget indicates passage of the bill, as introduced, could result in time savings, which would reduce expenditures for the Judicial Branch. The amount would be negligible, however. Any fiscal effect associated with the bill is not reflected in *The Governor's Budget Report for FY 2017*.