

## House Substitute for SENATE BILL No. 403

By Committee on Judiciary

3-19

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1 AN ACT concerning civil procedure and civil actions; relating to writ of  
2 habeas corpus; amending K.S.A. 2013 Supp. 60-1501 and repealing the  
3 existing section.

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

6 Section 1. K.S.A. 2013 Supp. 60-1501 is hereby amended to read as  
7 follows: 60-1501. (a) Subject to the provisions of K.S.A. 60-1507, and  
8 amendments thereto, any person in this state who is detained, confined or  
9 restrained of liberty on any pretense whatsoever, and any parent, guardian,  
10 or next friend for the protection of infants or allegedly incapacitated or  
11 incompetent persons, physically present in this state may prosecute a writ  
12 of habeas corpus in the supreme court, court of appeals or the district court  
13 of the county in which such restraint is taking place. No docket fee shall be  
14 required, as long as the petitioner complies with the provisions of  
15 subsection (b) of K.S.A. 60-2001, and amendments thereto.

16 (b) Except as provided in K.S.A. 60-1507, and amendments thereto,  
17 an inmate in the custody of the secretary of corrections shall file a petition  
18 for writ pursuant to subsection (a) within 30 days from the date the action  
19 was final, but such time is extended during the pendency of the inmate's  
20 timely attempts to exhaust such inmate's administrative remedies.

21 (c) Except as provided in K.S.A. 60-1507, and amendments thereto, a  
22 patient in the custody of the secretary of social and rehabilitation services  
23 pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall file a  
24 petition for writ pursuant to subsection (a) within 30 days from the date the  
25 action was final, but such time is extended during the pendency of the  
26 patient's timely attempts to exhaust such patient's administrative remedies.

27 (d) *The court may dismiss a petition without a hearing if the court  
28 determines that:*

29 (1) *The petitioner's conviction was upon a plea of guilty and the  
30 petition is not based upon an allegation that the plea was involuntarily or  
31 unknowingly entered or that the plea was entered without effective  
32 assistance of counsel; or*

33 (2) *the petitioner's conviction was the result of a trial and the  
34 grounds for the petition could have been:*

35 (A) *Presented to the trial court;*

36 (B) *raised in a direct appeal or a prior petition for a writ of habeas*

1 *corpus or postconviction relief; or*

2 *(C) raised in any other proceeding that the petitioner has taken to*  
3 *secure relief from the petitioner's conviction and sentence, unless the court*  
4 *finds both cause for the failure to present the grounds and actual prejudice*  
5 *to the petitioner.*

6 *(e) A second or successive petition may be dismissed without a*  
7 *hearing if the court determines that such petition:*

8 *(1) Fails to allege new or different grounds for relief and that the*  
9 *prior determination was on the merits; or*

10 *(2) new and different grounds in a prior petition constituted an abuse*  
11 *of the writ.*

12 *(f) Pursuant to subsections (d) and (e), the petitioner:*

13 *(1) Has the burden of pleading and proving specific facts that*  
14 *demonstrate:*

15 *(A) Good cause for the petitioner's failure to present the claim or for*  
16 *presenting the claim again; and*

17 *(B) actual prejudice to the petitioner; and*

18 *(2) shall include in the petition all prior proceedings in which the*  
19 *petitioner challenged the same conviction or sentence.*

20 *(g) The court may dismiss a petition that fails to include any prior*  
21 *proceedings in which the petitioner challenged the same conviction or*  
22 *sentence and the court has knowledge of such prior proceedings through*  
23 *the record of the court.*

24 *(h) An order dismissing a petition under this section may be appealed*  
25 *to the Kansas court of appeals and shall be reviewed under an abuse of*  
26 *discretion standard. Such appeal shall be expedited and the final decision*  
27 *of the Kansas court of appeals shall not be the subject of a petition for*  
28 *rehearing or a petition for review to the Kansas supreme court.*

29 *Sec. 2. K.S.A. 2013 Supp. 60-1501 is hereby repealed.*

30 *Sec. 3. This act shall take effect and be in force from and after its*  
31 *publication in the statute book.*