

**HOUSE BILL No. 2607**

By Committee on Corrections and Juvenile Justice

2-7

Proposed Amendments to HB 2607 - notice period  
House Corrections and Juvenile Justice Committee  
Prepared by the Office of Revisor of Statutes  
February 11, 2022

1 AN ACT concerning civil actions; relating to habeas corpus; clarifying  
2 time limitations for filing; amending K.S.A. 2021 Supp. 60-1507 and  
3 repealing the existing section.  
4

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

6 Section 1. K.S.A. 2021 Supp. 60-1507 is hereby amended to read as  
7 follows: 60-1507. (a) *Motion attacking sentence.* A prisoner in custody  
8 under sentence of a court of general jurisdiction claiming the right to be  
9 released upon the ground that the sentence was imposed in violation of the  
10 constitution or laws of the United States, or the constitution or laws of the  
11 state of Kansas, or that the court was without jurisdiction to impose such  
12 sentence, or that the sentence was in excess of the maximum authorized by  
13 law, or is otherwise subject to collateral attack, may, pursuant to the time  
14 limitations imposed by subsection (f), move the court which imposed the  
15 sentence to vacate, set aside or correct the sentence.

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

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

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

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

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

7 (f) *Time limitations.* (1) Any action under this section must be  
8 brought within one year of:

9 (A) The final order of the last appellate court in this state to exercise  
10 jurisdiction on a direct appeal or the termination of such appellate  
11 jurisdiction;~~or~~

12 (B) the denial of a petition for writ of certiorari to the United States  
13 supreme court or issuance of such court's final order following granting  
14 such petition; *or*

15 (C) *the decision of the district court denying a prior motion under*  
16 *this section, the opinion of the last appellate court in this state to exercise*  
17 *jurisdiction on such prior motion or the denial of the petition for review on*  
18 *such prior motion, whichever is later.*

19 (2) The time limitation herein may be extended by the court only to  
20 prevent a manifest injustice.

21 (A) For purposes of finding manifest injustice under this section, the  
22 court's inquiry shall be limited to determining why the prisoner failed to  
23 file the motion within the one-year time limitation or whether the prisoner  
24 makes a colorable claim of actual innocence. As used herein, the term  
25 actual innocence requires the prisoner to show it is more likely than not  
26 that no reasonable juror would have convicted the prisoner in light of new  
27 evidence.

28 (B) If the court makes a manifest-injustice finding, it must state the  
29 factual and legal basis for such finding in writing with service to the  
30 parties.

31 (3) If the court, upon its own inspection of the motions, files and  
32 records of the case, determines the time limitations under this section have  
33 been exceeded and that the dismissal of the motion would not equate with  
34 manifest injustice, the district court must dismiss the motion as untimely  
35 filed.

36 Sec. 2. K.S.A. 2021 Supp. 60-1507 is hereby repealed.

37 Sec. 3. This act shall take effect and be in force from and after its  
38 publication in the ~~statute book.~~

(g) The amendments made to subsection (f) by this act shall not bar actions under this section that are brought within one year of the effective date of this act.

Kansas register