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**Testimony in Support of House Bill 2607
Clarifying time limitations for habeas corpus claims**

**Presented to the Senate Judiciary Committee
By Assistant Solicitor General Natalie Chalmers**

March 8, 2022

Chair Warren and Members of the Committee:

Thank you for the opportunity to provide testimony in support of HB 2607 on behalf of Attorney General Derek Schmidt.

The goal of this bill is to close a potential and inadvertent loophole created when the statute was amended in 2016. In that amendment, this Legislature made it clear that the district court did not have to reach the merits of an untimely K.S.A. 60-1507 motion unless the petitioner could provide justifications for the untimely filing or had a viable claim of actual innocence. However, after petitioners are unable to obtain success on their first K.S.A. 60-1507, many file a second or subsequent K.S.A. 60-1507 motion claiming their counsel's ineffectiveness on their first K.S.A. 60-1507 motion was the reason they lost. Because that claim could not have been raised in the first K.S.A. 60-1507 motion, the statute is not explicit as to whether any time limit applies to those claims. To remedy that lack of clarity, subsection (f)(C) provides that those motions must be filed within one year of the completion of the first K.S.A. 60-1507 motion and its state appeal process. Its language differs slightly from K.S.A. 60-1507(f)(A) and (B) in order to mirror time calculations in the federal habeas process.

Last year, the Court of Appeals decided *Rowell v. State*, No. 122,719, __ Kan. App. __, 490 P.3d 78 (2021), which largely aligns with the above statutory language. There, the court discussed a number of reasons why a one-year time limit makes sense for a subsequent 60-1507 and concluded that the "one-year period for filing a 60-1507 motion to challenge counsel's representation in a prior 60-1507 proceeding begins when the mandate issued on that prior 60-1507 proceeding." 490 P.3d at ¶3. But since the Kansas Supreme Court has not yet decided the issue, and the Court of Appeals panels do not bind each other, this Office believes codification of a rule similar to that announced in *Rowell* is prudent.

The rule in this bill does not entirely mirror *Rowell*. The difference is intentional in order to follow federal habeas deadlines so defendants do not miscalculate their federal deadline. Practically, it is often only a difference of about 21 days. But it is this small difference that led to

the addition of subsection (g) and the agreement to have the act take force upon publication in the Kansas register.

For the above reasons, the Office of the Attorney General supports this Committee adopting this bill. Thank you for your time.

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