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Testimony Regarding SB 60
Submitted by Aaron Breitenbach, Deputy District Attorney
On Behalf of Marc Bennett, District Attorney, Eighteenth Judicial District,
And the Kansas County and District Attorneys Association

Honorable Chairman Warren and Members of the Senate Judiciary Committee:

Thank you for the opportunity to address you regarding Senate Bill 60. On behalf of Marc Bennett, District Attorney of the Eighteenth Judicial District, and the Kansas County and District Attorneys Association, I offer a friendly amendment to prevent repetitive claims that may delay relief to deserving defendants.

K.S.A. 60-1507 provides the primary statutory process for a convicted defendant to seek review and potential release from custody due to ineffective assistance of counsel or other errors in a criminal sentence after the normal appellate process is complete. It attempts to strike a balance between providing a meaningful path to justice for the relatively small number of defendants who remain confined despite unresolved violations of their constitutional rights while achieving finality in judgment for those serving a lawful sentence. Currently, I fear the process is skewed in such a way that worthy claims are being lost in the shuffle, delaying justice from those who need it.

Our amendment focuses on subsection (c) related to successive motions. In short, currently inmates can file as many actions under this statute as they wish. They can have overlapping or competing claims and cause confusion as the same or similar issues are raised in multiple motions pending at both the district and appellate courts at the same time related to the same underlying sentence. As noted by the Supreme Court in *State v. Dedman*, 230 Kan. 793 (1982), the better policy is to have jurisdiction in only one court at a time because of the possibility that the case may get lost in the system, the possibility of confusion, and the potential of inconsistent rulings. Although the current statute has language that allows the court to dismiss "second or successive" motions, that language has been interpreted to require a prior motion to be concluded (perhaps through appeal) before a subsequent motion is considered "second" or "successive."

Admittedly, the current bill offers one approach to addressing this issue, but our proposed amendment to subsection (c) leaves existing language and case law undisturbed while adding a clear procedural mechanism for the Courts to deny overlapping motions. Our proposed amendment to subsection (c) reads as follows:

(c) *Successive motions. (1)* The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner. *(2) In addition, a court shall not be required to entertain a motion pursuant to this provision while the same prisoner has a previous motion pursuant to this provision, with respect to the same underlying criminal case, pending before any court. If a court rejects consideration of a motion pursuant to this subsection, it shall be the duty of the prisoner to refile the rejected motion upon the resolution of the prior motion, in the event the prisoner wants to have the rejected motion litigated. Any appeal based upon the rejection of a motion pursuant to this subsection shall be limited to challenging the factual determination that a prior motion with respect to the same underlying criminal case was in fact pending before any court at the time of the rejection.*

This language gives courts the authority to more efficiently process these motions by limiting them to one motion per case at a time. It makes clear it is the prisoner's obligation to re-file a denied motion and limits any appeal of that denial to determining whether there were more than one 60-1507 motion pending on a given case at once.

The current language of subsection (c) in SB60 codifies and clarifies current case law, but our amendment strengthens judicial discretion to manage these cases without limiting the substance upon which a motion may be filed. Again, the purpose of our amendment is not to limit the opportunity of a legitimate request for relief. Rather, we seek to clear repetitive, meritless claims from court dockets so greater attention and timely resolution can be brought to those truly, wrongfully imprisoned. [An example of the status quo's inefficiency can be found in *Loggins v. State*, No. 116,716 (unpublished opinion), *rev. denied* (2020), where the Court of Appeals recalled the 21 years of post-conviction litigation in that case as they reviewed the denial of his 9th motion, which was filed while his 7th and 8th motions were already pending in appellate courts.]

As for the balance of SB60, I offer two comments:

1) If the amendment to subsection (f)(1)(C) is approved, the amendment to subsection (g) must follow. To amend (f)(1)(C) without (g) would cause grievous harm to the time limitations needed to provide finality to lawful sentences.
2) The reference to "expedited" hearing and judgment in (b) for death penalty cases is concerning as that term has a certain meaning in Supreme Court rules. A defense team may spend up to a year (or longer) drafting the motion, while a prosecutor may be left with little time to respond, depending on how a given court interprets an "expedited" hearing. Further, given what is at stake in such cases, I question whether a judge's ruling should be explicitly hurried. If any change is to be made, perhaps a reference to "without undue delay" or something similar would convey that resolving these cases should be a higher priority.

Thank you for your time, attention and consideration in this matter.

Respectfully submitted,

Aaron Breitenbach
Deputy District Attorney