



**Senate Judiciary Committee  
February 5, 2025**

**Senate Bill 60  
Testimony of the BIDS Legislative Committee  
Presented by Clayton J. Perkins  
Opponent**

Chairperson Warren and Members of the Committee:

Kansas' public defense system is tasked with providing constitutionally effective and efficient legal representation to all indigent persons in Kansas accused of state felony crimes during trial proceedings, on direct appeal, and in habeas proceedings under K.S.A. 60-1507. Under that system we engage in direct appeals from a conviction to ensure that the judges ruled correctly on the issues that were brought before them by the parties, and we engage in review under K.S.A. 60-1507 to ensure that there were no issues prior counsel failed to raise, or evidence that was originally missed that would have resulted in a different conviction or sentence. SB 60 would cause irreparable harm to that final system of review provided by K.S.A. 60-1507. Because SB 60 will cause more wrongful convictions and sentencings to remain uncorrected, and will damage the right to effective defense counsel in Kansas, the BIDS Legislative Committee opposes SB 60.

**SB 60 will cause more wrong convictions and sentencings to remain uncorrected**

SB 60 should first be rejected because it will cause more wrongful convictions and sentencings to remain uncorrected by drastically reducing the availability of one of our system's final escape valves to correct those errors, a successive K.S.A. 60-1507 petition. Right now, Kansas statutes<sup>1</sup>, caselaw<sup>2</sup>, and court rules<sup>3</sup> already impose significant limits on the ability to file a successive petition. Yet limited exceptions must exist, as they do now, to allow review of the merits of a claim when exceptional circumstances warranting review in the interest of justice. We need these mechanisms because we know meritorious issues can fall through the cracks, and late stage review of criminal convictions have led to correction of wrongful convictions or sentences. SB 60 will rewrite those rules to be even more restrictive on the filing of successive petitions in myriad ways. For example, it will limit possible relief to cases where the basis of the claim "could not have been discovered previously through the exercise of due diligence", yet often wrongful convictions involve issues where the past defense counsel could have discovered exonerating evidence had they exercised due diligence but they did not. As another example, new section (c)(1)(B) would limit all relief to claims going to the guilt finding, and eliminate all

<sup>1</sup> See K.S.A. 60-1507(c)

<sup>2</sup> See *State v. Mitchell*, 315 Kan. 156, 161 (2022)

<sup>3</sup> See KS. Sup.Ct.Rules, Rule 183, PROCEDURE UNDER K.S.A. 60-1507.

claims proving a wrongful sentencing. Kansans deserve a justice system that can acknowledge its most fundamental failures and correct them. Because SB 60 makes that process less likely to function and correct those mistakes, it should be rejected.

### **SB 60 damages the right to effective defense counsel in Kansas**

SB 60 should also be rejected because it damages the right to effective habeas counsel in Kansas. At a fundamental level, it seems most people would agree that if a person has a right to have an attorney represent them in the defense of their life or liberty, that attorney should reasonably perform their job to the standard practice level expected of that attorney. In Kansas, a person accused or convicted of a felony can have that right to counsel at trial, on appeal, or in habeas proceedings under 60-1507. And both our society, and the individual being represented, have a strong interest in making sure our criminal justice system functions properly by allowing review of the effectiveness of the representation provided by defense counsel at all those stages. SB 60 would eliminate that review through subsection (g), by preventing a defendant from raising claims of ineffective assistance of counsel by their prior habeas counsel. Thus, a defendant who was never adequately represented by any counsel at their trial, on their appeal, or in their original habeas would forever be barred from establishing that effective habeas counsel would have shown failures of counsel at the other levels. Kansas will be deprived of the final stages of review that can provide confidence that our system works, and the wrongfully convicted will be deprived of the ability to seek correction when they are failed at every level of representation.

In sum, SB 60 makes our criminal justice system less fair, and less able to correct its most fundamental mistakes. For those reasons, I ask that you reject SB 60 and the changes to our habeas process the bill would make. Thank you for your time and consideration.

Clayton J. Perkins  
BIDS Legislative Committee Co-Chair  
cperkins@sbids.org  
785-291-3006