

Senate Judiciary Committee
February 5, 2025
Senate Bill 60
Written Testimony of Rebecca E. Woodman, Attorney
In Opposition

Chairman Warren and Members of the Committee:

I am an attorney with decades of experience representing death-sentenced individuals on appeal and in post-conviction in Kansas and other states. I spent many years with the Appellate Defender Office and Capital Appellate Defender Office within the Kansas public defender system, and I also served as Director of the Death Penalty Litigation Clinic in Kansas City, Missouri. In these roles and as an attorney in private practice, I have represented dozens of death-sentenced clients in both state and federal courts, including arguing before the Kansas Supreme Court and the United States Supreme Court. I am also an adjunct professor of law at UMKC School of Law, where I teach a course on the death penalty, and I have taught a similar course at Washburn Law School in past years.

I urge the Committee to reject SB60. Among many reasons the proposed legislation should be rejected -- including the genuine risk of executing innocent persons -- which the Committee will hear from other compelling witnesses in opposition to the bill, I offer the following additional observations.

It is not clear what is meant by the term “expedited” in the context of capital post-conviction proceedings, and no guidance is provided in the bill. While the appointment of counsel in capital K.S.A. 60-1507 cases is required by statute upon a showing of indigency, such appointment occurs only after a *pro se* K.S.A. 60-1507 motion is filed.¹ There is no provision in the statutes for the pre-petition appointment of counsel, or for the kind of discovery or open-file provisions that would facilitate a more expedited resolution of capital post-conviction cases. Such provisions, especially the pre-petition appointment of qualified capital counsel, would be necessary if the intent is to streamline the process in capital K.S.A. 60-1507 cases while also allowing the movant to fully exhaust their claims in state court.²

The provision in the bill prohibiting a second or successive K.S.A. 60-1507 motion while the first one is pending or on appeal is problematic. For example, the provision should not preclude amending the existing K.S.A. 60-1507 motion if the factual basis for a new claim is discovered or becomes available while the first K.S.A. 60-1507 is pending.

The bill also curtails the ability of a movant to raise a claim of ineffectiveness of previous post-conviction counsel. And the language in the bill is unclear on whether it must be alleged that the ineffectiveness of post-conviction counsel completely foreclosed an appeal *on that claim* or *at all*. Either way the provision raises due process concerns, because under well-established

¹ See K.S.A. 22-4506(d)(1).

² See 28 U.S.C. § 2254(b)(1)(A) (requiring state prisoners to “exhaust[t] the remedies available in the courts of the state” before seeking federal habeas relief).

law in Kansas, the statutory requirements for the appointment of counsel on a K.S.A. 60-1507 motion create a due process right, not only to the appointment of counsel, but to the effective assistance of post-conviction counsel.³ Moreover, because federal law requires that claims of ineffectiveness of state post-conviction counsel first be exhausted and a record made in state court before they are cognizable in federal habeas corpus,⁴ this provision would effectively require movants to present ineffectiveness of post-conviction counsel claims with as much factual basis as possible to make a state court record and exhaust the claims. It would also likely result in some cases having to be remanded from federal court back to state court for exhaustion purposes.⁵

Far from streamlining the process of K.S.A. 60-1507 proceedings, SB60 would render K.S.A. 60-1507 proceedings, particularly in capital cases, more cumbersome and result in more litigation, not less.

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³ *Robertson v. State*, 288 Kan. 217, 228, 201 P.3d 692 (2009); *Brown v. State*, 278 Kan. 481, 483, 101 P.3d 1201 (2004); *Skaggs v. State*, 59 Kan.App.2d 121, 132, 479 P.3d 499 (2020); *Alford v. State*, 42 Kan.App. 2d 392, 394, 212 P.3d 250 (2010).

⁴ *See Shinn v. Ramirez*, 596 U.S. 366 (2022) (holding federal habeas court may not conduct an evidentiary hearing or consider evidence beyond state court record based on ineffective assistance of state post-conviction counsel).

⁵ *See, e.g., Doerr v. Shinn*, ___ F.4th ___, 2025WL323099 (9th Cir.) (January 29, 2025) (because petitioner was precluded under *Shinn v. Ramirez* from developing record of ineffectiveness of state post-conviction counsel in federal court, remand granted under stay and abey procedure of *Rhines v. Weber*, 544 U.S. 269 (2005) to develop record in state court).