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MEMORANDUM

To: Senate Committee on Judiciary

From: Office of Revisor of Statutes

Date: February 5, 2025

Subject: Bill Brief on SB 60

Senate Bill 60 prohibits second and successive motions and ineffective counsel claims in habeas corpus actions and provides for direct appeal to the supreme court in habeas corpus appeals filed by inmates sentenced to death.

Section 1 amends K.S.A. 60-1507, the habeas corpus statute. Current law in subsection (c) provides that the court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner. That provision is removed and replaced with a provision stating that the court shall not consider a second or successive motion unless (1) the claim relies on a new rule of constitutional law that was made retroactive and applies to the prisoner's case, or (2) the factual basis for the claim could not have been discovered and would be sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found the prisoner guilty. A provision is added that a second or successive motion shall not be filed while an appeal is pending on a motion previously filed or during the time within which such an appeal may be perfected. A motion is a second motion if it raises issues that could have been raised in a previous motion and a motion is successive if it raises issues previously raised in a motion filed pursuant to this section.

Subsection (d) is amended to provide that if an appeal is taken on a motion filed by a prisoner who has been sentenced to death, such appeal shall be taken directly to the supreme court. Subsection (g) is added to provide that the ineffectiveness of counsel during a previous action under this section shall not be a ground for relief in a subsequent action unless such claim alleged that the ineffectiveness of counsel completely foreclosed the prisoner's ability to appeal or seek discretionary review by an appellate court.

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Section 2 amends K.S.A. 60-2102, the statute that provides appeal to the supreme court as a matter of right. Subsection (b) is amended to provide that appellate jurisdiction of the supreme court may be invoked by appeal as a matter of right from a final decision of a district court in any habeas corpus action by a prisoner who has been sentenced to death.