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MEMORANDUM

To: House Committee on Corrections and Juvenile Justice

From: Office of Revisor of Statutes

Date: February 8, 2021

Subject: Bill Brief on HB 2190

HB 2190 clarifies successive motions, new evidence and time limitations for habeas corpus claims.

The bill amends K.S.A. 60-1507 to provide that a motion is considered successive if it raises issues previously raised in a motion for habeas corpus or issues that could have been raised in a previous habeas corpus motion. A successive motion shall not be filed while an appeal is pending on a separate motion or during a time within which an appeal may be perfected.

Current law provides that an action must be brought within one year of (1) the final order of the last appellate court in the state to exercise jurisdiction on a direct appeal or the termination of appellate jurisdiction or (2) the denial of a petition for writ of certiorari to the U.S. Supreme Court or issuance of such court's final order following granting such petition. This bill would add (3) the decision of the district court denying a prior motion under this section, the opinion of the last appellate court in this state to exercise jurisdiction on such prior motion or the denial of the petition for review on such prior motion, whichever is later.

Current law provides that the time limitations may be extended by the court only to prevent manifest injustice and one factor in such determination is actual innocence based on new evidence. The bill would provide that evidence shall not be considered new if the prisoner previously based a claim on such evidence but failed to present evidence in support of the prisoner's claim or withdrew the claim.