

House Substitute for SENATE BILL No. 74

AN ACT concerning civil procedure; relating to social and rehabilitation services; amending K.S.A. 60-1501 and repealing the existing section.

*Be it enacted by the Legislature of the State of Kansas:*

New Section 1. (a) Any patient in the custody of the secretary of social and rehabilitation services pursuant to K.S.A. 59-29a01 *et seq.*, and amendments thereto, prior to filing any civil action naming as the defendant pursuant to the rules of civil procedure, the state of Kansas, any political subdivision of the state of Kansas, any public official, the secretary of social and rehabilitation services or an employee of the department of social and rehabilitation services, while such employee is engaged in the performance of such employee's duty, shall be required to have exhausted such patient's administrative remedies, established by procedures adopted pursuant to subsection (d) of K.S.A. 59-29a22, and amendments thereto, concerning such civil action. Upon filing a petition in a civil action, such patient shall file with such petition proof that the administrative remedies have been exhausted.

(b) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that:

(1) The allegation of poverty is untrue, notwithstanding the fact that a filing fee, or any portion thereof has been paid; or

(2) the action or appeal:

(A) Is frivolous or malicious;

(B) fails to state a claim on which relief may be granted; or

(C) seeks monetary relief against a defendant who is immune from such relief.

(c) In no event shall such patient bring a civil action or appeal a judgment in a civil action or proceeding under this section if such patient has, on three or more prior occasions, while in the custody of the secretary of social and rehabilitation services pursuant to K.S.A. 59-29a01 *et seq.*, and amendments thereto, brought an action or appeal in a court of the state of Kansas or of the United States that was dismissed on the grounds that it was frivolous, malicious or failed to state a claim upon which relief may be granted, unless the patient is under imminent danger of serious physical injury.

(d) The provisions of this section shall not apply to a writ of *habeas corpus*.

Sec. 2. K.S.A. 60-1501 is hereby amended to read as follows: 60-1501.

(a) Subject to the provisions of K.S.A. 60-1507, and amendments thereto, any person in this state who is detained, confined; or restrained of liberty on any pretense whatsoever, and any parent, guardian, or next friend for the protection of infants or allegedly incapacitated or incompetent persons, physically present in this state may prosecute a writ of *habeas corpus* in the supreme court, court of appeals or the district court of the county in which such restraint is taking place. No docket fee shall be required, as long as the petitioner complies with the provisions of subsection (b) of K.S.A. 60-2001, and amendments thereto.

(b) Except as provided in K.S.A. 60-1507, and amendments thereto, an inmate in the custody of the secretary of corrections shall file a petition for writ pursuant to subsection (a) within 30 days from the date the action was final, but such time is extended during the pendency of the inmate's timely attempts to exhaust such inmate's administrative remedies.

(c) *Except as provided in K.S.A. 60-1507, and amendments thereto, a patient in the custody of the secretary of social and rehabilitation services pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall file a petition for writ pursuant to subsection (a) within 30 days from the date the action was final, but such time is extended during the pendency of the patient's timely attempts to exhaust such patient's administrative remedies.*

Sec. 3. K.S.A. 60-1501 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

\_\_\_\_\_  
SENATE concurred in  
HOUSE amendments \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

Passed the HOUSE  
as amended \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*