

As Amended by House Committee

Session of 2011

HOUSE BILL No. 2313

By Committee on Judiciary

2-11

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

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

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

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

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

23 (2) the action or appeal:

24 (i) Is frivolous or malicious;

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

26 (iii) seeks monetary relief against a defendant who is immune from  
27 such relief.

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

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

3       Sec. 2. K.S.A. 60-1501 is hereby amended to read as follows: 60-  
4 1501. (a) Subject to the provisions of K.S.A. 60-1507, and amendments  
5 thereto, any person in this state who is detained, confined; or restrained of  
6 liberty on any pretense whatsoever, and any parent, guardian, or next  
7 friend for the protection of infants or allegedly incapacitated or  
8 incompetent persons, physically present in this state, may prosecute a writ  
9 of habeas corpus in the supreme court, court of appeals or the district court  
10 of the county in which such restraint is taking place. No docket fee shall  
11 be required, as long as the petitioner complies with the provisions of  
12 subsection (b) of K.S.A. 60-2001, and amendments thereto.

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

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

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

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