

August 30, 2013

The Honorable Lance Kinzer, Chairperson
Special Committee on Judiciary
Statehouse, Room 165-W
Topeka, Kansas 66612

Dear Representative Kinzer:

SUBJECT: Fiscal Note for 13rs2465, as Amended

In accordance with your request, the following fiscal note concerning 13rs2465, as amended, is respectfully submitted.

In cases where a defendant is convicted of premeditated first degree murder, Kansas' "Hard 50" sentence allows a court to impose a life sentence without eligibility for parole for 50 years, rather than 25 years, when it finds one or more aggravating factors are present. Prior to 1999 this sentence was limited to 40 years. Since Kansas' law allows judges, rather than juries, to determine whether to impose a 50-year sentence its validity was called into question by a recent United States Supreme Court decision, *Alleyne v. U.S.*, 133 S.Ct. 2151, issued June 17, 2013, which held "any fact that increases the mandatory minimum is an 'element' that must be submitted to the jury."

The amended proposal would alter Kansas sentencing law provisions by requiring a separate proceeding following the determination of a defendant's guilt for the jury to consider aggravating circumstances that would require the "Hard 40" or "Hard 50" sentence to be imposed. For convictions resulting from crimes committed on or after the effective date of this bill, if the jury finds aggravating circumstances the court would be required to sentence the defendant to 50 years unless the court finds substantial and compelling reasons not to impose that sentence after reviewing any mitigating circumstances. In that event, the defendant would be sentenced to life imprisonment without the possibility of parole for 25 years.

For convictions resulting from crimes committed prior to the effective date of this bill, if the jury finds aggravating circumstances outweigh any mitigating circumstances, the defendant would be sentenced to 50 years imprisonment without the possibility of parole for 50 years. If not, the defendant would be sentenced as otherwise provided by law. Further, if the jury is unable to reach a unanimous decision the defendant would be sentenced as otherwise provided by law.

The proceeding would be conducted before the trial jury including substitution with alternate jurors who had been impaneled for the trial jury if necessary. If there are not sufficient original jury members or alternates, the sentencing proceeding could be conducted with less than 12, but not less than six jurors or the judge may summon a special jury of 12 to determine the sentence. In addition, if the trial jury was discharged prior to sentencing, a new jury may be impaneled. This bill would not apply to cases in which the defendant's conviction and sentence were final prior to June 17, 2013, unless the conviction or sentence has been vacated in a collateral proceeding. The bill would take effect upon its publication in the *Kansas Register*.

Under the original bill, these provisions were applied retroactively and would have returned all cases to court in which the defendant's conviction and sentence were final prior to June 17, 2013.

The Kansas Sentencing Commission estimates that there are currently 106 offenders sentenced to the Kansas Department of Corrections for first degree murder, of which 46 received the hard 40 sentence and 60 received the hard 50 sentence. The Attorney General's Office estimates that there are 35 persons currently charged with first degree murder who have not been tried or sentenced yet and estimates that approximately five new cases for first degree premeditated murder in future years.

Based on these numbers, the proposed bill would increase State General Fund expenditures by approximately \$335,395 across FY 2014 and FY 2015. The estimate is applied to both FY 2014 and FY 2015 since it is unknown how many cases could be completed in FY 2014 and how many would remain to be completed in FY 2015. The estimate includes an additional \$218,740 incurred by the Judicial Branch and \$116,655 for the Board of Indigents Defense Services (BIDS).

The Office of Judicial Administration indicates that its estimate includes \$172,501 for judge time and pay for temporary help to conduct collateral sentencing proceedings for the 106 offenders who have already been convicted and are currently serving hard 40 or hard 50 sentences; and \$46,239 for separate sentencing proceedings which will be required for the 35 cases awaiting trial and/or sentencing.

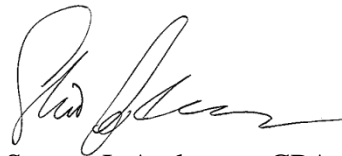
The Judicial Administration further provides that if through the appeals it is determined that resentencing proceedings are required for the 106 offenders currently serving hard 40 or hard 50 terms, the courts would incur additional costs of \$158,840 for judge and clerk time to conduct 46 additional proceedings for the hard 40 cases; \$225,789 for judge and clerk time to conduct 60 proceedings for the hard 50 cases. The Judicial Administration also estimates that future cases could increase yearly expenditures by \$2,609. In addition, the Judicial Branch indicates that the bill is likely to result in a sizable number of new appeals which would require an additional appellate research attorney position but is unable to provide an estimate for this cost. The Judicial Branch indicates that the bill would result in the collection of additional docket fees from the additional cases, but is unable to provide a revenue estimate until the courts have had an opportunity to operate under the new provisions.

The estimate provided by BIDS includes \$29,155 for 20 additional hours of work for homicide qualified public defenders for the 35 cases currently awaiting trial or sentencing at \$833 per case; and \$87,500 for expert services from mental health professionals at \$2,500 for each of the 35 cases. The agency anticipates future cases to cost \$16,665 per year beginning in FY 2015 which includes expert costs of \$12,500 (5 cases x \$2,500 per case) and \$4,165 for attorney hours (5 cases x \$833 per case) and the cost of the appeals of future cases to be \$20,830 each year (5 case x \$833 per case). BIDS indicates that appellate review of the cases currently in district court is estimated to require an additional 20 hours of appellate defender time, but those cases would not be complete in FY 2014 or FY2015.

The Kansas Sentencing Commission estimates that any fiscal effect on prison beds resulting from this proposal would be negligible. The Commission reports that even if all of 106 sentences currently being served were reduced to 25 years any potential savings would not be realized until calendar year 2023.

The Kansas Attorney General indicates that the bill could result in counties incurring additional costs as a result of extending the length of a jury's service, but the added expense would be negligible. Any fiscal effect associated with the proposed bill is not reflected in *The FY 2014 Governor's Budget Report*.

Sincerely,



Steven J. Anderson, CPA, MBA
Director of the Budget

cc: Scott Schultz, Sentencing Commission
Eric Montgomery, Attorney General's Office
Jeremy Barclay, KDOC
Kim Fowler, Judiciary
Pat Scalia, BIDS