

August 26, 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 by Special Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning 13rs2465 is respectfully submitted to your committee.

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 proposed bill would alter Kansas sentencing law provisions as follows:

1. Require the court to conduct a separate proceeding after the determination of guilt in order to determine whether to impose the mandatory minimum of 25 years; and
2. Return to district court for jury proceedings those cases with sentences increased to 40 or 50 years by a judge due to certain circumstances not considered by a jury. 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 has been discharged prior to sentencing, a new jury may be impaneled.

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 bill would take effect upon its publication in the *Kansas Register*.

Estimated State Fiscal Effect				
	FY 2013 SGF	FY 2013 All Funds	FY 2014 SGF	FY 2014 All Funds
Revenue	--	--	--	--
Expenditure	--	--	\$874,408	\$874,408
FTE Pos.	--	--	--	--

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 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 \$874,408 in FY 2014. The estimate includes an additional \$430,868 incurred by the Judicial Branch and \$441,540 for the Board of Indigents Defense Services (BIDS).

If enacted, the proposed bill will require those 106 offenders to have their sentence reconsidered by a jury. The additional court and defense costs for these 106 generate the bulk of the immediate expense to the state.

The Office of Judicial Administration indicates that its estimate includes \$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; and \$46,239 for additional proceedings which will be required for the 35 cases awaiting trial. The Judicial Administration 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.

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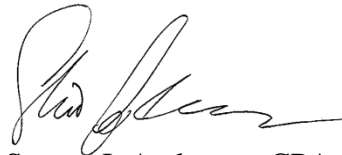
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The estimate provided by BIDS is based largely on a minimum of 100 additional homicide qualified public defender hours for 106 cases at \$4,165 per case and if assigned counsel defended the original case, the cost would total \$6,200 per case. The agency also indicates that costs for mental health experts would cost a minimum of \$2,500 per case. The Board also estimates that appellate review of newly sentenced cases would require an additional 48 appellate public defenders hours at \$1,999.20 per case. In addition, appellate review of current cases would require an additional 20 appellate public defenders hours at \$833 per case.

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,

A handwritten signature in black ink, appearing to read "Steven J. Anderson", written in a cursive style.

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