



State of Kansas

**Office of Judicial Administration**

Kansas Judicial Center  
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August 23, 2013

**Hard 50 Bill**

Bill Number:	Assigned Committee:
FN Due Date:	
Hearing Scheduled?	Date of Hearing:
Version of the bill: Introduced	DOB Analyst:
Responding Agency: Judicial Branch	
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<b>Fiscal Impact</b>	<b>Yes</b>	<b>No</b>
State (Would this bill have a fiscal effect on your agency?)		
Local (Would this bill have a fiscal effect on local governments?)		
Tax Revenue (Would this bill affect State General Fund revenues?)		
Fee or Other Revenue (Would this bill affect revenues to other state funds?)		

	<b>FY 2013</b>	<b>FY 2014*</b>	<b>FY 2015</b>
<b>Expenditures</b>			
State General Fund		\$430,868	
Fee Fund(s)		0	
Federal Fund		0	
<b>Total Expenditures</b>			
<b>Revenues</b>			
State General Fund		0	0
Fee Fund(s)		0	0
Federal Fund		0	0
<b>Total Revenues</b>		0	0
<b>FTE Positions</b>		0	0

\*Please note that it is unknown whether all sentencing proceedings, and therefore expenditures, would occur in FY 2014, or whether some would be carried over into FY 2015.

### **Bill Description**

This bill would provide for separate sentencing proceedings, to be conducted by the jury, in “hard 40” and “hard 50” first degree premeditated murder cases. The provisions of subsection (b) would apply to crimes committed on or after the effective date of the act, and the provisions of subsection (c) would apply to crimes committed prior to the effective date of the act.

Pursuant to subsection (c), for crimes committed prior to the effective date of this act, a separate sentencing proceeding would need to be conducted “as soon as practicable.”

The bill appears to contemplate that the original trial jury would be recalled. If any person from the original trial jury is unable to serve, an alternate juror who had been impaneled for the trial jury would be substituted. 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. If there are not sufficient original trial jurors and alternates to replace jurors who are unable to serve at the sentencing proceeding, the judge may summon a special jury of 12 persons to determine the sentence.

If the trial jury has been discharged prior to sentencing, which would have occurred in those cases in which sentence has already been imposed, a new jury may be impaneled.

The jury would have to be unanimous on any decision to impose a hard 40 or hard 50 sentence. If a defendant waives a jury at the sentencing proceeding, the proceeding would be conducted by the court. At the sentencing proceeding, evidence of both aggravating and mitigating circumstances would be presented, except that the defendant may present evidence of only those mitigating circumstance subject to discovery pursuant to K.S.A. 22-3212 that the defendant made known to the prosecuting attorney prior to the sentencing proceeding.

If, after a reasonable time for deliberation, the jury is unable to reach a unanimous sentencing decision, the court will dismiss the jury and the defendant will be sentenced as otherwise provided by law.

Subsection (b) would provide essentially the same sentencing proceeding for persons convicted of first degree premeditated murder committed on or after the effective date of this act. The sentencing proceeding would be conducted before the same jury that heard the trial, with alternate jurors, if necessary.

### **Assumptions for Fiscal Effect Estimate**

**Expenditures:** The Judicial Branch would incur additional work as a result of enacting this bill, which will require a separate sentencing proceeding in first degree premeditated murder cases in which the hard 40 and hard 50 sentence applies.

A significant effort has been made to determine the number of persons to whom the provisions of the bill would apply. The following table notes the actual or estimated numbers of persons in each of four categories, and notes the source for the actual number or estimate:

Numbers of Persons Impacted by Hard 50 Sentencing Bill		
Category of Persons Impacted	Entity Providing the Actual or Estimated Number	Number
Persons Imprisoned with Hard 40 Sentence Imposed	Actual Number – Kansas Sentencing Commission	46
Persons Imprisoned with Hard 50 Sentence Imposed	Actual Number – Kansas Sentencing Commission	60
Persons charged with first degree premeditated murder who have not yet been tried	Estimate – Kansas Attorney General’s Office	35
Ongoing annual cases to be tried	Estimate derived from actual and estimated cases noted above	5 per year

As written, the bill would require a separate sentencing proceeding for each of the offenders currently serving hard 40 and hard 50 terms. Even if the original jurors who heard each of these cases could be located and brought back for the sentencing proceeding, a significant amount of time would be needed to refresh their memories as to the previous trial testimony relevant to sentencing. In most cases, it would appear likely that a new jury would need to be impaneled and that major portions of the evidence presented at trial would need to be presented to the new jury.

It is estimated that it would take a minimum of eight judge days to conduct the sentencing proceeding for those cases in which the trial has already been held. This would include the time needed to empanel a jury and preside over the proceeding, as well as time to hear, research, and decide pre-proceeding motions and other issues.

A minimum of two days of clerk time would be needed to summon the jurors, answer questions, provide documents to the parties, file new documents, schedule hearings and other matters, and deal with other issues associated with the proceedings.

In speaking with representatives of the Attorney General’s Office and the State Board of Indigents’ Defense Services, it is unclear whether this sentencing proceeding would be sought for those persons currently serving hard 40 sentences. However, cost estimates for sentencing proceeding in hard 40 cases are provided, should sentencing proceedings be sought in those cases. The following tables note the estimated costs if these proceedings were held for each of the persons sentenced to hard 40 and hard 50 terms, as well as those awaiting trial in premeditated first degree murder cases. Because senior judges could address this issue without adding an ongoing full-time position, senior judge time would be the most cost-effective way to address this issue. For that same reason, temporary clerk hours are also used.

It is also not known how many sentencing proceedings could be completed in FY 2014, the current fiscal year, and how many would need to be completed in FY 2015. Therefore, the cost is noted as an FY 2014/FY 2015 cost.

Judge Time – Hard 40 Sentences		FY 2014/FY 2015 Cost
46 proceedings x 8 days	368 days = app. 3.5 senior judge contracts	\$149,800
Clerk Time		
46 proceedings x 2 days	92 days of temporary help, at \$11.29 per hour, plus fringes	\$9,040
<b>TOTAL</b>		<b>\$158,840</b>

Judge Time – Hard 50 Sentences		FY 2014/FY 2015 Cost
60 proceedings x 8 days	480 days = app. 5 senior judge contracts	\$213,999
Clerk Time		
60 proceedings x 2 days	120 days of temporary help, at \$11.29 per hour, plus fringes	\$11,790
<b>TOTAL</b>		<b>\$225,789</b>

For the estimated 35 cases in which persons have been charged, but not yet tried, some additional judge and clerk time would also be needed. However, because the same jury would be used for both the trial and the sentencing proceeding, the bill's provisions would require less additional time. It is estimated that two days of senior judge time would be needed for each case, and that one additional day of clerk time would be needed for each case. It should be noted that this new sentencing proceeding will be needed only in those cases resulting in a conviction, and it is unknown in how many of those 35 cases that will occur. Because an estimated conviction rate cannot be determined, the following table shows the estimated cost of sentencing proceedings in all 35 cases.

Judge Time – Cases Not Yet Tried		FY 2014/FY 2015 Cost
35 proceedings x 2 days	70 judge days = 1 senior judge contract	\$42,800
Clerk Time		
35 proceedings x 1 day	35 days of temporary help, at \$11.29 per hour, plus fringes	\$3,439
<b>TOTAL</b>		<b>\$46,239</b>

Although it is difficult to predict the number of persons who will commit first degree premeditated murder in the future and who will be subject to the provisions of this bill, an estimated five cases per year appears reasonable based on the numbers of cases noted above. Using the same two days for a judge and one day for temporary clerk time, the amount of work would not justify an additional senior judge contract. If temporary judge and clerk time were used, the total judge and clerk cost would be \$2,609 annually.

The bill's provisions are almost certain to result in a significant number of new appeals and additional issues on appeal. It is also possible that there will be additional trial court proceedings pursuant to K.S.A. 50-1507 and subsequent appeals of those decisions. An additional appellate research attorney position or positions may be needed to address these issues, but until we have actual experience with the number of appeals and additional issues on appeal that will result, we are unable to estimate this fiscal impact.

**Revenues:** Passage of this bill could result in the collection of docket fees in those cases filed under the provisions of the bill. Nevertheless, until the courts have had an opportunity to operate under the provisions of this bill, an accurate estimate of the fiscal effect on revenues for the Judicial Branch cannot be given.

### **Long-Term Fiscal Considerations**

N/A

### **Local Government Fiscal Effect**

County governments would pay the statutory daily rate for the jurors, which shall be not less than \$10 nor more than \$50 per day, plus mileage reimbursement. For those cases in which the hard 40 or 50 sentence has already been imposed, the first day of juror selection would include an estimated jury panel of at least 60 persons from which the panel of 12 would be selected.

### **References/Sources**

N/A