

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman King at 9:35 a.m. on September 4, 2013 in Room 346-S of the Capitol.

All members were present.

Committee staff present:

Robert Allison-Gallimore, Legislative Research Department
Lauren Douglass, Legislative Research Department
Katherine McBride, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Suzanne Nelson, Committee Assistant

Conferees appearing before the Committee on this day:

Attorney General Derek Schmidt
Marc Bennett, Sedgwick County District Attorney, Kansas County & District Attorney Association
Kyle Smith, Deputy Director, KBI; Assistant Attorney General
Senator Greg Smith, Kansas 21st District
Randall Hodgkinson, Visiting Assistant Professor of Law, Washburn University Law School

Others attending:

See attached list.

Chairman King recognized Senator Greg Smith for a point of personal privilege. Senator Smith introduced and welcomed his son Zack, a student at Shawnee Mission West, who was visiting the Capitol to shadow Senator Smith today for a school government project.

The Chairman then turned the Committee's attention to **HB-2002 – an act concerning crimes, punishment and criminal procedure; relating to sentencing of certain persons to mandatory minimum term of imprisonment of 40 or 50 years; amending K.S.A. 2012 Supp. 21-6620 and 21-6624 and repealing the existing sections.**

Jason Thompson spoke about the potential impact of *Alleyne v. United States* on Kansas law, potential amendments and retroactive applications of amendments to K.S.A. 2012 Supp. 21-6620. (Attachment 1) He then gave an overview of **HB-2002**, as amended by House Committee.

Following a question for Jason Thompson from Senator Smith, Chairman King called for proponent testimony.

Attorney General Derek Schmidt testified in support of the bill, stating that the "Hard 50" is a

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vital public safety tool enacted by the Legislature more than a decade ago to remove the “worst of the worst” killers from society for at least 50 years. He emphasized the necessity to act swiftly to fix the loophole created by the Supreme Court’s decisions in *Alleyne* and *Astorga*. The Attorney General said that waiting until January 2014 almost certainly will increase the number of convicted killers who will be eligible for parole after only 25 years instead of after 50 years. (Attachment 2)

Mark Bennett testified as a proponent remarking that the proposal submitted for this special session represents a consensus approach between the Attorney General’s office and the Kansas County and District Attorneys Association. He stated that HB-2002 represents a twofold approach to protect the Hard 50 sentencing scheme for Kansas prospectively and in a manner that gives the best chance to protect pending cases retrospectively. (Attachment 3)

Kyle Smith presented testimony in support of the bill stating that it is vitally important to fix this time sensitive problem in our criminal code. He further believes that the victims and victims’ families affected by this issue deserve better. They deserve to have the assurance, as much as can be expected, that murderers and rapists will continue to serve the hard 40 and 50 sentences. (Attachment 4)

Senator Greg Smith testified in favor of the bill citing the written testimony of Pat Hayes whose daughter, Keighley, was brutally murdered in 2009. Senator Smith stated that he and Mr. Hayes had become friends because Smith’s own daughter, Kelsey, had also been murdered. He stated that homicide survivors look to the court system to provide certainty, finality, and justice; however, he stated that all this has been changed by a judge’s opinion. Senator Smith strongly urged the passage of this bill to restore certainty, as much as possible, to the system. (Attachment 5)

Chairman King asked for any other proponent testimony. There was none, at which time he directed attention to the written testimony contained in the Committee’s packets (enumerated below). He then asked for any neutral testimony to be presented; there was none.

Chairman King then called for opponents’ testimony.

Randall Hodgkinson testified in opposition of the bill. He stated his concerns about the court directing the jury to find elements of a crime and also retroactive application of a sentencing fix. He discussed the ramifications of such changes, if they were made. (Attachment 6) He then stood for questions. Following questions from Senator Bruce, Senator Smith, and Chairman King, Mr. Hodgkinson was excused.

Written-only proponent testimony was submitted by:

Pat Hayes, Father of murder victim (Attachment 7)

Ed Klumpp, KS Association of Chiefs of Police, Kansas Sheriffs Association, and
Kansas Peace Officers Association (Attachment 8)

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The Chairman called for any other opposition testimony; seeing none, he closed the hearing on **HB-2002** and advised that he intended to open debate on the bill. There being no objections, Chairman King recognized Senator Bruce, who asked Jason Thompson a question regarding aggravating factors and also sought clarification from Mr. Bennett pertaining to pre-*Apprendi* cases, as well as cases after the fix by the legislature.

The Chairman asked for other comments, questions, or motions.

*Senator Smith moved that the Committee pass **HB-2002** favorable for passage; the motion was seconded by Senator Haley.*

Chairman King called for discussion on the motion and recognized Senator Haley, who added his favorable comments in vigorous support of passing the motion currently on the floor.

The Chairmen asked again for comments or questions on the motion; seeing none, the Chairman asked all in favor of passage of the motion to respond "Aye," to which there was unanimous response from Committee members; those opposed respond "No," to which there were no responses. *The motion was passed.* The favorable recommendation for passage of **HB-2002** will go to the full Senate.

Chairman King ended by thanking the staff for their diligent efforts in preparing for and supporting this Special Session and Judiciary Committee hearings.

The meeting adjourned at 10:55 a.m.