

January 23, 2014

REVISED

The Honorable Jeff King, Chairperson
Senate Committee on Judiciary
Statehouse, Room 341-E
Topeka, Kansas 66612

Dear Senator King:

SUBJECT: Revised Fiscal Note for SB 250 by Senator Bruce, et al.

In accordance with KSA 75-3715a, the following revised fiscal note concerning SB 250 is respectfully submitted to your committee.

In cases where a defendant is convicted of first degree premeditated murder, Kansas' "Hard 50" sentence allows a court to impose a life sentence without eligibility for parole for 50 years, rather than the mandatory minimum of 25 years, when it finds one or more aggravating factors are present. Since Kansas' law allowed judges, rather than juries, to determine whether to impose the 50-year sentence its validity was called into question by the 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." In response to this ruling, the Governor called a special session of the 2013 Legislature, which enacted HB 2002 requiring a separate sentencing proceeding following the determination of a defendant's guilt for the jury to consider aggravating circumstances that would require the "Hard 50" sentence to be imposed.

SB 250 provides for a presumptive "Hard 50" sentence for those convicted of the crime of first degree premeditated murder committed on or after July 1, 2014, rather than the current sentencing procedure requiring a weighing of factors by a jury or the court. The sentencing procedure currently in place would apply only to crimes of first degree premeditated murder committed on or after September 6, 2013, but prior to July 1, 2014. The bill would allow a judge to impose a sentence of life imprisonment without the possibility of parole for 25 years upon finding substantial and compelling reasons, following a review of mitigating circumstances. The 25 years' imprisonment could not be reduced by the application of good time credits and no other sentence would be permitted. Under current law, those sentenced for the crime of first degree premeditated murder committed on or after July 1, 1994 are eligible for parole after serving 25 years of confinement without the deduction of any good time credits. SB 250 would limit the timeframe for parole eligibility to crimes committed on or after July 1, 1994, but prior to July 1, 2014.

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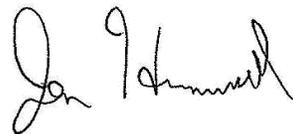
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The Office of Judicial Administration (OJA) estimates that SB 250 would increase expenditures from the State General Fund by \$218,740 across FY 2014 and FY 2015, which includes \$172,501 for judge time and pay for temporary help to conduct collateral sentencing proceedings for the 106 offenders currently serving hard 40 or hard 50 sentences; and \$46,239 for separate sentencing proceedings for the 35 cases awaiting trial and/or sentencing. If resentencing proceedings are determined to be necessary through the appeals process, OJA estimates that an additional \$384,629 from the State General Fund would be required for judge and clerk time to conduct 106 additional proceedings. The Judicial Administration also estimates that counties would incur additional costs for jury service.

The Board of Indigents Defense Services indicates that SB 250 would eliminate the incentive for defendants to plead guilty, increasing the number of cases that go to trial by approximately 69 for an additional cost of \$224,115 from the State General Fund in FY 2015. Of the amount, the Board estimates 23 cases would be assumed by assigned counsel at a cost of \$114,080 and 46 cases would be assumed by hiring 2.00 Public Defender Attorneys at a cost of \$110,035.

The Kansas Sentencing Commission indicates that SB 250 would have no fiscal effect on prison admissions or beds or the workload of the Commission. The Office of the Attorney General and the Department of Corrections indicate that SB 250 would have no fiscal effect on agency operations. Any fiscal effect associated with SB 250 is not reflected in *The FY 2015 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Hummell". The signature is fluid and cursive, with the first name "Jon" being more prominent than the last name "Hummell".

Jon Hummell,
Interim Director of the Budget

cc: Jeremy Barclay, DOC
Pat Scalia, BIDS
Mary Rinehart, Judiciary
Scott Schultz, Sentencing Commission
Willie Prescott, Attorney General's Office