

SESSION OF 2014

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2490**

As Agreed to April 4, 2014

Brief*

HB 2490 would amend various statutes related to criminal sentencing.

The bill would establish that a life sentence with a mandatory minimum term of imprisonment of 50 years (the Hard 50 sentence) is to be the default sentence when a defendant is convicted of premeditated first degree murder committed on or after July 1, 2014. The sentencing judge would be permitted to impose a life sentence with a mandatory minimum term of imprisonment of 25 years (the Hard 25 sentence) if the judge reviews mitigating circumstances and finds substantial and compelling reasons to impose the lesser sentence. If the judge imposes the Hard 25 sentence, the judge would be required to state on the record the substantial and compelling reasons for imposing the sentence.

The bill would impose the Hard 25 sentence for a conviction of attempted capital murder or for a conviction of first degree murder when classified as the killing of a human being committed in the commission of, attempt to commit, or flight from any inherently dangerous felony (felony murder).

For any of these sentencing provisions, if the defendant's criminal history classification would subject the defendant to presumptive imprisonment in a range exceeding

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300 months (for a Hard 25 sentence) or 600 months (for a Hard 50 sentence), then the defendant would instead be required to serve a mandatory minimum term equal to the sentence established under the sentencing guidelines.

The bill also would amend various statutes to provide consistency and clarify that inmates sentenced to life without the possibility of parole are not eligible for sentence commutation, functional incapacitation release, parole, or out-of-state travel as a material witness. The Governor's commutation power would be limited in death penalty cases to imprisonment for life without the possibility of parole. A person under sentence of death would not be eligible for functional incapacitation release. Finally, the bill would require the presence of the defendant at every stage of trial in a prosecution for a crime punishable by life without the possibility of parole.

Conference Committee Action

At the time it was directed to Conference Committee, HB 2490 would have amended law related to Kansas Bureau of Investigation DNA sample collection and jury conduct. The Conference Committee agreed to place these provisions in the report for Senate Sub. for HB 2448.

The Conference Committee further agreed to delete the contents of HB 2490 and insert the contents of Senate Sub. for 2387 (regarding the Hard 50 sentence and the Hard 25 sentence for felony murder) and SB 255 (regarding attempted capital murder, sentences of death or life without the possibility of parole, and domestic battery offender assessments), as amended by the Senate Committee on Judiciary and passed by the Senate. (Although SB 255 was amended by the House Committee on Judiciary to include a domestic battery assessment provision, this provision did not pass either chamber and thus was not conferencable.)

Background

Background of Senate Sub. for HB 2387

As introduced by the 2013 House Committee on Federal and State Affairs and recommended by the 2013 House Committee on Corrections and Juvenile Justice, HB 2387 would have amended non-sentencing law concerning felony murder. The original provisions were incorporated into the conference committee report on HB 2093 and were enacted in 2013.

The 2014 Senate Committee on Judiciary recommended a substitute bill be passed, containing language modified from SB 250.

Background of SB 250

Under KSA 21-6620, as amended in the 2013 Special Session, the Hard 25 sentence will be imposed on a defendant convicted of premeditated first degree murder unless a jury determines beyond a reasonable doubt that one or more aggravating circumstances exist. If aggravating circumstances are found, then the Hard 50 sentence will be imposed, unless the sentencing judge reviews mitigating circumstances and finds substantial and compelling reasons to impose the Hard 25 sentence. Thus, under current law, the Hard 25 sentence is the default sentence in such cases, and the Hard 50 sentence will be imposed only where aggravating factors are found that outweigh any mitigating factors.

SB 250 was introduced by Senators Bruce, King, and Smith. In the Senate Judiciary Committee, Attorney General Derek Schmidt and a representative of the Kansas County and District Attorneys Association testified in support of the bill. Written proponent testimony was submitted by a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs'

Association. A representative of the Kansas Association of Criminal Defense Lawyers testified in opposition to the bill.

The Senate Committee modified the language of SB 250 to allow a presumptive guidelines sentence to be imposed where such sentence would be longer than the Hard 25 or Hard 50 and to impose a Hard 25 sentence for felony murder convictions. The Committee recommended this language be adopted as a substitute bill for HB 2387.

The fiscal note prepared by the Division of the Budget on SB 250, as introduced, indicates it would have no fiscal effect. The Kansas Sentencing Commission states the bill would have no effect on prison admission or bed needs.

Background of SB 255

SB 255 was introduced by the Senate Judiciary Committee at the request of Attorney General Derek Schmidt. In the Committee, Attorney General Schmidt testified in support of the bill. A representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association submitted written testimony supporting the bill.

There was no opponent testimony.

The Senate Committee amended the bill to allow a presumptive guidelines sentence to control in cases where such sentence would be longer than the Hard 25 sentence and to modify or clarify certain provisions related to the sentence of life without the possibility of parole, the death sentence, and the governor's commutation power.

According to the revised fiscal note prepared by the Division of the Budget on SB 255, as introduced, the Office of Judicial Administration indicates the bill could increase the number of cases and appeals relating to capital murder, which would increase the time required by court personnel.

Additional cases could also result in the collection of additional revenue from docket fees. However, a precise fiscal effect on the Judicial Branch cannot be determined.

The Board of Indigents' Defense Services estimates the bill would result in additional, ongoing expenses for at least \$12,000 from the State General Fund beginning in FY 2015 and occurring every other year, based upon an estimate of one additional case every two years requiring 80 hours of work at a rate of \$150 per hour.

The Kansas Sentencing Commission states the bill would have no effect on prison admission or bed needs.

Any fiscal effect associated with SB 255 is not reflected in *The FY 2015 Governor's Budget Report*.

Hard 50 sentence; premeditated first degree murder; Hard 25 sentence; felony murder; attempted capital murder; sentence of death--commutation or functional incapacitation release; sentence of life without the possibility of parole--procedures and release

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