

February 11, 2014

The Honorable Lance Kinzer, Chairperson
House Committee on Judiciary
Statehouse, Room 165-W
Topeka, Kansas 66612

Dear Representative Kinzer:

SUBJECT: Fiscal Note for HB 2423 by Representative Whipple

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2423 is respectfully submitted to your committee.

HB 2423 would amend the definition of aggravated habitual sex offender by including offenders who are convicted of a sexually violent crime on or after July 1, 2014, and who have one or more prior convictions of a sexually violent crime. The requirement under current law of two or more prior convictions of sexually violent crimes would remain for offenders who are convicted after July 1, 2006, but before July 1, 2014.

After July 1, 2014, if a defendant 18 years of age or older is convicted of aggravated human trafficking, rape, aggravated indecent liberties with a child, aggravated criminal sodomy, commercial sexual exploitation of a child, sexual exploitation of a child, or any attempt, conspiracy, or criminal solicitation to commit such crimes, courts must determine whether the defendant must serve a mandatory minimum term of imprisonment of 50 years. Following the conviction, courts must conduct separate proceedings before a jury to determine whether one or more aggravating circumstances exist. HB 2423 specifies the rules for jury selection, qualification, and instruction and the rules for procedure and evidence. If the jury unanimously finds beyond a reasonable doubt that one or more aggravating circumstances exist, the court must sentence the defendant to a mandatory minimum of 50 years' imprisonment. If the jury cannot reach a unanimous decision regarding aggravating circumstances or if the jury unanimously decides that no aggravating circumstances exist, the defendant would be sentenced to imprisonment for life and would not be eligible for parole prior to serving 25 years' imprisonment. The sentence cannot be reduced by the application of good time credits.

For non-jury cases, if the court finds that one or more aggravating circumstances exist, the defendant would be sentenced to a mandatory minimum of 50 years' imprisonment. If no aggravating circumstances are determined to exist, the defendant would be sentenced to

imprisonment for life and would not be eligible for parole prior to serving 25 years' imprisonment. The sentence could not be reduced by the application of good time credits.

Defendants would not be required to serve a mandatory minimum of 50 years' imprisonment if courts find that the defendant, because of the defendant's criminal history classification, is subject to imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range exceeds 600 months.

For a defendant convicted of the crimes above, courts may choose not to sentence the defendant to the 50-year mandatory minimum if the sentencing judge finds substantial and compelling reasons following a review of mitigating circumstances. The reasons for sentence departure must be stated on the record at the time of sentencing. In these cases, defendants would be sentenced to imprisonment for life and would not be eligible for parole prior to serving 25 years' imprisonment. Sentences could not be reduced by the application of good time credits.

According to the Kansas Sentencing Commission, HB 2423 would not increase prison admissions or the need for additional prison beds over the next ten fiscal years. However, the agency states that the bill would have a long-term effect on prison bed needs beyond the forecast period. The Commission notes that in FY 2013 there were 85 offenders convicted of the crimes defined in the bill and all were sentenced to prison.

The Office of Judicial Administration indicates that additional court time would be needed for the separate sentencing proceedings but that senior judges and temporary clerks could be used to address the cases without adding full-time positions. Using the Kansas Sentencing Commission's FY 2013 figure of 85 offenders and assuming that two days of senior judge time and one day of clerk time would be needed for each case, the Office estimates the bill would require additional expenditures of \$93,950 from the State General Fund for FY 2015. The total amount includes \$85,600 for two senior judge contracts to cover 170 days of proceedings (85 proceedings X two days per proceeding) and \$8,350 for 85 days of temporary clerk help (85 proceedings X one day per proceeding).

The Office further states that HB 2423 would create additional issues for appeals which may result in the need to add appellate research attorney positions. Also, there could be a fiscal effect on revenues if the bill results in the filing of new appeals. However, it is not possible to predict the number of additional appeals that would arise or how complex and time-consuming they would be. Therefore, a precise fiscal effect relating to appeals cannot be determined.

The Kansas Board of Indigents Defense indicates that the bill would result in more high level trial work and more case work time for public defenders and assigned counsel attorneys. Using actual caseload and salary information from FY 2013, the Board estimates that the additional work would require \$395,766 from the State General Fund in FY 2015 to cover only the costs of the trial phase for each case. The total amount includes \$280,240 for assigned counsel (113 cases X \$2,480 per case) and \$115,526 for 2.00 Public Defender FTE positions to handle approximately 87 cases. The assigned counsel per case cost assumes 40 hours for each trial and a rate of \$62 per hour. It is expected that the additional work would continue into the

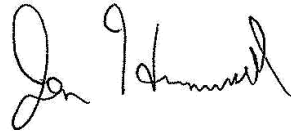
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out-years and the costs would be ongoing. Any fiscal effect associated with HB 2423 is not reflected in *The FY 2015 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Hummell". The signature is written in a cursive style with a large initial "J" and a distinct "H".

Jon Hummell,
Interim Director of the Budget

cc: Mary Rinehart, Judiciary
Scott Schultz, Sentencing Commission
Jeremy Barclay, KDOC
Pat Scalia, BIDS