

SESSION OF 2014

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 255**

As Amended by House Committee on Judiciary

**Brief\***

SB 255, as amended, would amend statutes related to attempted capital murder, sentences of death or life without the possibility of parole, and assessments for domestic battery offenders.

The bill would amend criminal and sentencing statutes to impose a life sentence with a mandatory minimum term of imprisonment of 25 years (the Hard 25 sentence) for a conviction of attempted capital murder, unless the defendant's criminal history classification would subject the defendant to presumptive imprisonment in a range exceeding 300 months, in which case the defendant would be required to serve a mandatory minimum term equal to the sentence established under the sentencing range.

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.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Finally, the bill would amend the domestic battery statute to require a first-time offender to undergo a domestic violence offender assessment and follow program recommendations as a condition of any grant of probation, suspension of sentence, parole, or any other release, unless otherwise ordered by the court. Under current law, a court may order this assessment in its discretion for a first-time offender, and the assessment and compliance with program recommendations is required if a domestic battery offender has been previously convicted of domestic battery within the preceding five years, unless otherwise ordered by the court or the Department of Corrections. The bill would remove this authority from the Department of Corrections. Additionally, the bill would required the court to consider any available information regarding a current or prior protective order issued against the offender in determining the sentence to be imposed within the limits provided for a first or subsequent offense. The bill would define “protective order” for this purpose.

## **Background**

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.

The House Committee amended the bill by adding language modified from HB 2712 relating to domestic battery.

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*.

### ***Background of HB 2712***

HB 2712 was introduced by the House Committee on Judiciary. In the House Committee, Representative Kuether and a private citizen testified in support of the bill. A representative of the Department of Corrections also testified in support of the bill and suggested an amendment removing language giving the Department authority to excuse a domestic battery offender from the required assessment and completion of recommendations. A representative of the Kansas Coalition Against Sexual and Domestic Violence submitted written testimony supporting the bill.

A representative of the Office of Judicial Administration testified as a neutral conferee and suggested an amendment clarifying the definition of "protective orders" in the bill.

The House Committee adopted amendments based on the suggestions by the Department of Corrections and the Office of Judicial Administration before inserting the modified language into SB 255.

According to the revised fiscal note prepared by the Division of the Budget on HB 2712, as introduced, the Office of Judicial Administration estimates an additional 2.0 Court Services Officer FTE positions would be required to process the presentence investigation reports necessary to provide the information required by the bill. These positions would require salary and wage expenditures of \$102,846 from the State General Fund for FY 2015.

The Kansas Association of Counties indicates the increase in assessments provided would add to local government expenditures. Also, county jail time could increase. However, the Association cannot predict a precise fiscal effect.