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**Testimony in Support of House Bill 2271  
Clarifying the criminal sentencing status for a person with intellectual disability  
who is convicted of premeditated murder**

**Presented to the House Corrections and Juvenile Justice Committee  
By Deputy Solicitor General Kristafer Ailsieger**

**February 14, 2017**

Chairman Jennings and Members of the Committee:

The Attorney General urges passage of HB 2271 in order to clarify the original legislative intent for a person with an intellectual disability who is convicted of capital murder or first degree premeditated murder.

K.S.A. 21-6622(f) as currently written says that such a person shall not be subject to a sentence of death, life without possibility of parole, or a mandatory term of imprisonment, but rather should be sentenced “as otherwise provided by law.” When this statute was first written, the phrase “mandatory term of imprisonment” was meant to refer to a Hard 40 or Hard 50 sentence, and the phrase “as otherwise provided by law” referred to the default sentence of life imprisonment found in K.S.A. 21-6806 (formerly K.S.A. 21-4706) with the possibility of parole after 25 years as set forth in K.S.A. 22-3717. But with subsequent statutory changes that have been made, including making the Hard 50 the default sentence for the crime of first degree premeditated murder, the law has become ambiguous, and a recent Supreme Court decision contains language that suggests the Court may possibly view the old default sentence of life with possibility of parole after 25 years as a “mandatory term of imprisonment.”

In *State v. Corbin*, 386 P.3d 513 (2016), the Kansas Supreme Court addressed the standard for establishing intellectual disability and seemed to assume that a life sentence with possibility of parole after 25 years—what the Court referred to as a “hard 25 life sentence”—is a mandatory term of imprisonment for purposes of K.S.A. 21-6622(f). But if that is the case, then there is no sentence available “as otherwise provided by law” and a person convicted of either capital murder or first degree premeditated murder, who is also able to prove an intellectual disability, would escape punishment for his or crime. This circumstance is particularly absurd when one considers that if the very same person was convicted of first degree felony murder, he or she would be sentenced to life without the possibility of parole until after 25 years, and could likewise face many years of imprisonment if convicted of second degree murder or some other lesser degree of murder. To avoid our appellate courts indeed finding that a sentence of life with

the possibility of parole after 25 years in fact is a mandatory term of imprisonment, we are asking for the original legislative intent to be restored, so that the most dangerous of criminals are confined as the Legislature originally intended.

HB 2271 adds clarifying language to the K.S.A. 21-6622(f) to ensure that the law's original intent and meaning is preserved and that the absurd result noted above does not occur. Adding language clarifying that the phrase "mandatory term of imprisonment" refers to the Hard 40/50 sentence imposed under K.S.A. 21-6623, 21-6624, and 21-6625, will remove ambiguity from the law and will ensure that there remains a sentence "as otherwise provided by law" available for courts to impose upon those who commit capital or premeditated murder and who establish they possess an intellectual disability.

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