

MEMORANDUM

To: Sheena Ward, Principal Analyst, Division of Budget
From: Scott M. Schultz, Executive Director
Date: August 23, 2013
Re: Prison Bed Impact Assessment, **2013 Special Session 13rs2465**, Relating to sentencing of certain persons to mandatory minimum term of imprisonment of 40 or 50 years.

IMPACT ASSESSMENT

This bill would have **minimal impact** on prison beds. It would have no impact on admissions or the workload of the Commission. As part of the assessment, consideration must be given to the fact that as an off-grid person felony crime, the Prisoner Review Board exercises its discretion regarding parole eligibility for all these specific offenders. Even if all enhanced sentences that are currently being served in KDOC were reduced to 25 years, there would be no savings in 2014 and minimal bed savings in 2023.

SUMMARY OF THE BILL

- This bill would amend K.S.A. 2012 Supp. 21-6620 by creating new procedural provisions for defendants convicted of first degree murder upon the finding of premeditated murder as defined in K.S.A. 2012 Supp. 21-5402(a)(1) in order to determine whether such defendant shall be required to serve a mandatory minimum term of imprisonment of 50 years.
- The bill would fix Kansas sentencing law provisions that were called into question by the United States Supreme Court's recent *Alleyne* decision that held that any fact that increases the mandatory minimum is an "element" that must be submitted to the jury. It would require the court to conduct a separate proceeding after the determination of guilt in order to determine whether to impose the mandatory minimum. This proceeding would be conducted before the trial jury, unless an alternate jury becomes necessary.
- This bill would:
 - Set out procedural provisions for the selection of new or alternate juries, rules of evidence, written and oral instructions from the court, and jury procedure matters.
 - Subsection (b) applies only to those crimes of conviction committed on or after the effective date of the bill.
 - If the jury finds aggravating circumstances, the court shall sentence the defendant to a 50 year mandatory minimum prison sentence, unless the court, after reviewing the mitigating circumstances, finds substantial and compelling reasons not to impose that sentence. In that event, the defendant will receive a life sentence and will not be eligible for parole prior to serving 25 years imprisonment.
 - Subsection (c) applies only to those crimes of conviction committed prior to the effective date of the bill.
 - If the jury finds aggravating circumstances outweigh any mitigating circumstances, the defendant shall be sentenced to a 50 year mandatory minimum prison sentence. If not, the defendant shall be sentenced as otherwise provided by law.

FINDINGS

- In FY 2013, the Commission received **three** hard 50 sentences related to first degree murder convictions. All three offenders were sentenced to prison and admitted to KDOC.
- On June 30, 2013, **106** offenders were housed in KDOC for the crime of **first degree murder**. Of the total, 46 received a hard 40 sentence and 60 received a hard 50 sentence.
- The following table demonstrates a breakdown of first degree murder offenders by year:

Murder in The First Degree -Premeditated Murder

Sentence Imposed	Offense Year	Number of Offenders	Year Sentenced	Number of Offenders	Year Sentence Service Began	Number of Offenders	
H40	1991	1					
	1993	2	1993	1	1993	2	
	1994	6	1994	1	1994	5	
	1995	10	1995	8	1995	7	
	1996	10	1996	5	1996	10	
	1997	3	1997	5	1997	4	
	1998	8	1998	6	1998	6	
	1999	6	1999	10	1999	8	
				2000	4	2003	1
				2001	1	2004	2
				2004	1	2005	1
				2005	3		
				2010	1		
		Total	46		46		46
H50	1999	3			1999	3	
	2000	5	2000	4	2000	5	
	2001	7	2001	5	2001	6	
	2002	9	2002	4	2002	7	
	2003	3	2003	8	2003	3	
	2004	1	2004	5	2004	2	
	2005	5	2005	1	2005	2	
	2006	6	2006	1	2006	4	
	2007	2	2007	4	2007	8	
	2008	6	2008	6	2008	5	
	2009	7	2009	4	2009	7	
	2010	5	2010	5	2010	5	
	2011	1	2011	8	2011	3	
				2012	5		
	Total	60		60		60	

Source: KDOC prison population file on June 30, 2013.

- **Capital murder offenders:** KDOC also houses **nine** offenders with hard 40 and **eight** offenders for hard 50 sentences that were convicted of capital murder. None of these offenders were under 18 at the time the offense was committed.