



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

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August 19, 2013

Honorable Lance Kinzer, Chairman
Special Committee on Judiciary
12549 South Brougham
Olathe, KS 66062

Honorable Jeff King, Vice Chairman
Special Committee on Judiciary
1212 North Second Street
Independence, KS 67301

Honorable David Haley, Ranking Minority Member
Senate Committee on Judiciary
936 Cleveland Avenue
Kansas City, KS 66101

Honorable Jan Pauls, Ranking Minority Member
House Committee on Judiciary
101 E. 11th Avenue
Hutchinson, KS 67501

Dear Chairman Kinzer, Vice Chairman King, Senator Haley and Representative Pauls:

Thank you for your work to restore certainty to the Kansas “Hard 50” sentence. I believe strongly that the public policy Kansas has had for the past 15 years – to remove the most heinous murderers from society for at least 50 years before parole eligibility rather than the usual 25 years – is the right public policy and should be reaffirmed after the recent Supreme Court decision that has damaged it.

Please find enclosed draft legislation that is recommended by the Office of the Attorney General to repair the Kansas “Hard 50” law after the United States Supreme Court’s decision in *Alleyne v. U.S.*, 133 S.Ct. 2151 (June 17, 2013). I respectfully request that your committee consider this proposed legislation when it convenes August 26.

In drafting this legislation, we have to the extent possible incorporated language from other sections of existing statute in order to minimize the injection of “new” concepts or language into this special session. We recommend a two-part approach in this legislation:

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First, adopt a new sentencing procedure for new crimes, committed on or after the effective date of this legislation, that conforms with the constitutional commands of *Alleyne* so that qualifying murders committed in the future can once again be subject to the certainty of a “Hard 50” sentence. This going-forward approach also seeks to minimize administrative inefficiency in the operation of the criminal justice system. This proposed new procedure is contained in Subsection (1)(b) of the enclosed draft.

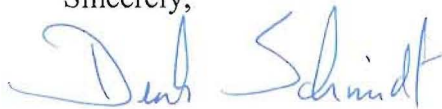
Second, make procedural changes to the existing process related to “Hard 50” sentencing for crimes committed before the effective date of this legislation. In this retrospective provision, we recommend keeping the existing statutory structure and making minimal modifications to comply with *Alleyne*’s command that juries, not judges, make certain findings. This retrospective approach seeks to comply with *Alleyne* while maximizing the likelihood that those “Hard 50” sentences for crimes already committed can be preserved on appeal. This proposed modification to existing procedure is contained in Subsection (1)(c) of the enclosed draft.

This legislation represents a consensus recommendation by the Office of the Attorney General and Kansas prosecutors. It was formally endorsed Friday by the Kansas County and District Attorneys Association.

Thank you for the opportunity to present this recommendation to you. In light of the unusual circumstance of this special session, I have taken the liberty of sending a copy of this letter to all members of the Senate and House of Representatives in order to keep them apprised. I also have established a new page on the Website of the Office of the Attorney General where information about the “Hard 50” issue in the special session is posted and publicly available, and a copy of this letter and of this proposed legislation are posted there. It can be accessed at www.ag.ks.gov in the Media Center.

Please let me know if we may be of further assistance.

Sincerely,

A handwritten signature in blue ink that reads "Derek Schmidt". The signature is fluid and cursive, with the first name "Derek" and last name "Schmidt" clearly legible.

Derek Schmidt
Kansas Attorney General

Enclosure

cc: Honorable Sam Brownback
All Members of the Senate and House of Representatives