

The Hard 50 Sentence—Sentencing of Certain Persons to a Mandatory Minimum Term of Imprisonment of 50 Years; HB 2002

HB 2002 amends the procedure for imposing a life sentence with a mandatory minimum term of imprisonment of 50 years (the Hard 50 sentence), rather than 25 years, when a defendant is convicted of premeditated first degree murder. The bill adds provisions setting forth the procedure to be followed for premeditated murders committed on or after the effective date of the bill. The bill also amends the existing procedure for premeditated murders committed prior to the effective date of the bill. The procedures in each situation are similar.

Procedure for Crimes Committed On or After the Effective Date

The bill adds a new subsection establishing the procedure to be followed for sentencing for premeditated murders committed on or after the effective date of the bill. In such cases, after conviction and upon reasonable notice by the prosecuting attorney, the bill requires the court to conduct a separate proceeding as soon as practicable for the jury to determine whether one or more aggravating circumstances outlined in statute exist for the purpose of imposing the 50-year sentence. If any person who served on the trial jury is unable to serve on the jury for the proceeding, the court must substitute an alternate juror who had been impaneled for the trial jury. If there are not enough alternate jurors, the bill allows the court to conduct the proceeding before a jury ranging in size from 6 to 12 jurors. If the jury has been discharged prior to the proceeding, a new jury must be impaneled. Jury selection procedures, qualifications of jurors, and grounds for exemption or challenge of prospective jurors in criminal trials apply to the selection of such jury. The jury may be waived according to a procedure set out in statute, after which the court will conduct the proceeding.

In the proceeding, evidence may be presented concerning any matter relating to the aggravating circumstances; however, the evidence is not admissible if the prosecuting attorney does not make the evidence known to the defendant prior to the proceeding or the evidence is secured in violation of the *Kansas Constitution* or *U.S. Constitution*. Additionally, the bill specifies the defendant's testimony at the time of the proceeding is not admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the parties will have a reasonable period of time in which to present oral argument. At the conclusion of the evidentiary portion of the proceeding, the court will provide oral and written instructions to the jury to guide its deliberations. Specifically, if as an aggravating circumstance the prosecuting attorney relies on a defendant's prior conviction of a felony in which the defendant inflicted great bodily harm, disfigurement, or death of another, and the court finds one or more of the defendant's prior convictions satisfy those criteria, the jury will be instructed that a certified journal entry of a prior conviction is presumed to prove the existence of such conviction beyond a reasonable doubt.

The bill specifies any decision of the jury must be beyond a reasonable doubt regarding the existence of an aggravating circumstance. If, after a reasonable time for deliberation, the jury is unable to reach a unanimous sentencing decision, the court will dismiss the jury and sentence the defendant as provided by law. If by unanimous vote the jury finds one or more of the aggravating circumstances exist, the jury must designate in writing, signed by the foreman of the jury, which specific circumstance or circumstances it found. In nonjury cases, the court likewise is required to designate which specific circumstance or circumstances it found. If one or

more of the aggravating circumstances are found to exist beyond a reasonable doubt, the Hard 50 sentence will be imposed unless, following a review of mitigating circumstances, the sentencing judge finds substantial and compelling reasons to impose a life sentence with a minimum 25-years imprisonment before being eligible for parole, which could not be reduced by application of good-time credits. No other sentence is allowed, and the judge must state on the record at the time of sentencing the substantial and compelling reasons for imposing this 25-year sentence.

Procedure for Crimes Committed Prior to the Effective Date

The bill also modifies the existing procedure for imposing the Hard 50 sentence if a defendant is convicted of premeditated first degree murder for a crime committed prior to the effective date of the bill. A provision of the bill states these amendments establish a procedural rule for sentencing proceedings, and as such will be construed and applied retroactively to all crimes committed prior to the effective date, except for those cases in which the conviction and sentence were final prior to June 17, 2013, unless the conviction or sentence has been vacated in a collateral proceeding. Using a procedure similar to that outlined in this new provision, the bill requires the court, upon reasonable notice by the prosecuting attorney, to conduct a separate sentencing proceeding allowing a jury to determine whether to impose the 50-year sentence, unless the jury is waived.

The procedure for crimes committed prior to the effective date would differ in the evidentiary portion of the proceedings, however. Prior law allowed evidence concerning any matter the court deems relevant to the question of sentence, including aggravating and mitigating circumstances, to be presented. The bill clarifies that evidence of aggravating circumstances is admissible only if the prosecuting attorney makes it known to the defendant prior to the proceeding and adds that evidence of mitigating circumstances is admissible only if the defendant makes it known to the prosecuting attorney prior to the proceeding.

Procedure for Cases on Appeal After the Effective Date

For all cases on appeal after the effective date of the bill, if a Hard 50 sentence imposed pursuant to the prior law is vacated for any reason other than sufficiency of the evidence as to all aggravating circumstances, the bill requires resentencing under the law as amended, unless the prosecuting attorney chooses not to pursue such a sentence.

If any Hard 50 sentence is held to be unconstitutional, the court having jurisdiction over the person previously sentenced will cause the person to be brought before the court to sentence the person to the maximum term of imprisonment otherwise provided by law. The bill also includes a severability clause, which states the invalidity of any provision or provisions of this section or the application thereof to any person or circumstances does not affect the other provisions or applications of this section.

Finally, the bill amends the statute outlining aggravating circumstances to replace a reference to “the court” with “the trier of fact” to indicate the jury, rather than the court, will consider the aggravating circumstances, unless the jury is waived.