



## Kansas Bureau of Investigation

Kirk Thompson  
*Director*

Derek Schmidt  
*Attorney General*

Before the House Judiciary Committee  
Testimony in Support of  
Proposed Procedural Changes to K.S.A. 21-6620 (13rs2465)  
Kyle Smith  
Deputy Director, Assistant Attorney General  
September 3, 2013

Chairman Kinzer and Members of the Committee,

On behalf of Director Kirk Thompson and the men and women of the KBI I thank you for holding this hearing to address a vitally important and time sensitive problem in our criminal code.

The citizens of Kansas, through their representatives, decided years ago that for certain intentional, premeditated murders with aggravating circumstances, there should be serious penalties, i.e., the hard 40 and 50. We are simply asking to slightly change the procedures, as quickly as possible, and restore the will of the people of Kansas and the legislature.

We all have a constitutional right to trial by jury. In our system the jury determines the facts and the court determines and applies the law. In simple terms, the Supreme Court in *Alleyne v U.S.* simply said that the existence aggravating circumstances that change the authorized penalty is a fact for the jury, not a question of law for the court. The penalty will remain the same regardless whether the court or jury finds those aggravating factors, so this is strictly a procedural change, not substantive, and these amendments can be applied to pending cases.

I checked with our agents and the KBI currently has 4 or 5 homicide cases (unusually brutal homicides, murder for hire, murders of witnesses) currently pending before Kansas courts that, absent this bill being enacted, will likely result in a sad disparity in consequences amounting to a miscarriage of justice. In addition, there are cold cases, committed since 2007 that could be solved this fall. These victims, and their families, deserve better. Again, as long as we limit this bill to procedural changes, this legislation can apply to those cases.

In addition, I fear that this judicially imposed disruption of our sentencing process could actually encourage murders. For example, a child rapist, already facing 35 years in prison for a Jessica's law violation, might be tempted to murder the victim in an attempt to eliminate the victim to improve his chances of escaping punishment, particularly when the penalty for murder is actually less than what he is already facing.

Finally, I do not believe that strong penalties always deter criminals. But sometimes they do. Given these horrific crimes, let us do all we can to protect and serve. On behalf of the KBI I would urge your support and quick action.

I would be happy to stand for questions.