


MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

Held in Room 519, at the Statehouse at 3:30 ~~xxx~~ a.m./p. m., on January 10, 1978.

All members were present ~~except~~

The next meeting of the Committee will be held at 3:30 ~~xxx~~ p. m., on January 11, 1978.

These minutes of the meeting held on \_\_\_\_\_, 19\_\_\_\_ were considered, corrected and approved.



Chairman

The conferees appearing before the Committee were:

Chief Fred Howard, TPD, and KACP  
Chief John Woody, Salina Police Department  
Mr. Brad Smoot, Pardon and Extradition Attorney  
Mr. Dan Watkins, Attorney General's Office  
Mr. Don Murphy, Peace Officers Association  
Mr. Robert Tilton, Sheriffs' Association

The meeting was called to order by the Chairman who welcomed members, and announced that proponents to HB 2236 would be heard.

Mr. Brad Smoot, the Governor's Pardon and Extradition Attorney, who noted that approximately two-thirds of the states have capital punishment statutes which appear to be valid, and further, that seven states have rejected capital punishment since the 1976 Supreme Court ruling. He stated that material available to him indicates that two-thirds of the public support capital punishment. He stated that while there is no statistical evidence that such punishment is a deterrent to crime, the Governor feels that it is a deterrent to certain kinds of crimes and that if its existence saves even a single individual it is justified. (See printed statement.)

Mr. Dan Watkins of the Attorney General's office, and offered a statement by the Attorney General, supporting reinstatement of the death penalty. (See printed statement.) He also offered a proposal which differs slightly from the bill under consideration. It would provide for a review in a separate hearing, specific guidelines in jury proceedings, reciprocal discovery, appellate review, and in fact, suggesting seven different categories. (See printed proposal.)

The Chairman inquired if the Attorney General is suggesting that felony murder must be punishable by death, per se. Mr. Watkins explained that the jury and the court would look at the circumstances; that premeditation would need to be proven.

Topeka Police Chief, Fred Howard, testified that Kansas presently has the death penalty, but that the victims are innocent people. He stressed his belief that such provision has real deterrent value. (See printed statement.)

The Chairman inquired if the Association supports Chief Howard's testimony, and the Chief explained that he had not heard any other theories expounded but that he was speaking only for himself except for the position that the Association supports reinstatement of the death penalty.

Rep. Martin inquired if the Chief had any feelings about legal representation for such defendants, and Chief Howard stated he felt such individuals are entitled to the best legal minds available and that practice should be encouraged to insure quality representation.

Mr. Don Murphy, representing the Kansas Peace Officers Association, testified on behalf of his Association, and stated that Kansas has tried to operate without capital punishment and it is not working. He explained that in Topeka alone, murders have increased 33-1/3% in 1977. He suggested that a survey over the state would indicate something similar, and that his Association feels something must be done quickly in order to curb the trend. He stated that while they do not feel such legislation will eliminate murders and homicides, but that it will result in a reduction.

Mr. Robert Tilton of the Kansas Sheriffs' Association noted this was the fifth occasion that he had testified on this subject and in behalf of such legislation. He explained that sheriffs are exposed to the results of murders, see the victims, deal with the families of the victims and see much suffering and agony. He stated that because of these things the Association is unanimously supporting such legislation, although they do recognize it as an emotional issue.

Chief of Police, John Woody of Salina, stated he would talk more about the disease than the treatment; that in his city, the residents have said ten to one, that they favor capital punishment. The Chief stated that in 1972, the year capital punishment was abolished in Kansas, 93 persons were murdered. In 1973 the figure rose to 135, in 1974 to 156, and in 1975 it leveled back to 125. He stated that he was representing the victims and their families and that he had been asked to come to the Committee and "tell it like it is". He spoke of the murder of the coed from Salina who was attending school at Hays; of the Rangerette from Concordia who was brutally treated and then murdered and of the Wichita State coed who was murdered in her dormitory while doing laundry in the basement. He told the Committee that law enforcement people have heard the victims cry out before they die, and it is their desire to reduce those occasions and feel that reinstatement of the death penalty will be a move in that direction.

The Chairman noted that the opponents to HB 2236 would be heard on January 11th.

Copies of 1977 bills carried over in Committee were called to the attention of members, and lists were distributed. The Chairman urged members to study them and see if there are matters which can be dealt with rather quickly.

The meeting was adjourned.

JANUARY 10, 1978  
STATEMENT BY BRADLEY J. SMOOT  
HOUSE JUDICIARY COMMITTEE

MR. CHAIRMAN; MEMBERS OF THE COMMITTEE . . .

MY NAME IS BRAD SMOOT. I AM NOW SERVING AS THE GOVERNOR'S PARDON AND EXTRADITION ATTORNEY. THIS IS A NEW POSITION FOR ME. ONE THAT I HAVE HELD FOR ONLY 3 DAYS.

THUS, AN APPEARANCE BEFORE A COMMITTEE SUCH AS THIS IS A NEW EXPERIENCE FOR ME. BUT, THE GOVERNOR HAS ASKED ME TO APPEAR AND BRIEFLY ARTICULATE HIS POSITION ON THE ISSUE OF CAPITAL PUNISHMENT FOR THE STATE OF KANSAS.

BEFORE I GO ANY FURTHER, LET ME ADD THAT THE GOVERNOR WISHES ME TO EXPRESS HIS APPRECIATION FOR THIS OPPORTUNITY TO PRESENT HIS VIEWS. AND, ALTHOUGH, I HAVE A FEW BRIEF COMMENTS TO MAKE, I WILL BE HAPPY TO TRY AND ANSWER ANY GENERAL QUESTIONS YOU MAY HAVE AND WILL ALSO BE GLAD TO PROVIDE YOU WITH A WRITTEN RESPONSE ON ANY RELATED MATTER IF YOU SO DESIRE.

AS THIS COMMITTEE IS WELL AWARE, THE CATEGORY OF CRIMES FOR WHICH CAPITAL PUNISHMENT HAS BEEN RESERVED TRADITIONALLY IS QUITE NARROW. THUS, WE ADDRESS TODAY ONLY A NARROW ASPECT OF THE OVERALL CRIME PROBLEM IN KANSAS. THIS COMMITTEE, AS IN THE PAST, WILL CONFRONT THE ISSUE OF DEVELOPING A BROAD AND DIVERSE CRIME CONTROL PROGRAM.

SO IN THIS CONTEXT, LET ME TURN TO THE ISSUE OF CAPITAL PUNISHMENT. IT IS A HIGHLY CONTROVERSIAL ISSUE. AN ISSUE ABOUT WHICH REASONABLE MINDS MAY DIFFER AND SENSITIVE PERSONS DISAGREE.

IT IS THEREFORE AN ISSUE PARTICULARLY APPROPRIATE FOR RESOLUTION BY THE LEGISLATURES OF THE VARIOUS STATES.

THE U. S. SUPREME COURT TOLD US IN 1972 THAT CAPITAL PUNISHMENT WAS UNCONSTITUTIONAL WHEN ADMINISTERED IN AN ARBITRARY FASHION.

BUT THE HIGH COURT TOLD US IN 1976 THAT CAPITAL PUNISHMENT IN MURDER CASES IS NOT PER SE "CRUEL AND UNUSUAL PUNISHMENT" IN VIOLATION OF THE 8TH AMENDMENT TO THE CONSTITUTION.

THIS COMMITTEE IS, THEREFORE, CONFRONTED WITH THE RESPONSIBILITY TO DRAFT LEGISLATION WHICH BOTH REFLECTS THE WILL AND MORAL VALUES OF KANSAS CITIZENS AND WHICH MEETS THE DUE PROCESS REQUIREMENTS OF THE CONSTITUTION.

ROUGHLY 2/3 (34) OF ALL STATES HAVE CAPITAL PUNISHMENT STATUTES THAT ARE "PRESUMPTIVELY VALID." SIXTEEN STATES HAVE NO VALID CAPITAL PUNISHMENT STATUTE.

SEVEN (7) STATES HAVE REJECTED CAPITAL PUNISHMENT EITHER BY LEGISLATIVE ACTION OR GUBERNATORIAL VETO SINCE THE 1976 SUPREME COURT RULINGS.

CAPITAL PUNISHMENT HAS BEEN RECOGNIZED IN THE LAW -- BY BOTH THE COURTS AND LEGISLATURES -- FOR 2 CENTURIES. I AM TOLD THAT PUBLIC OPINION POLLS INDICATE 2/3 OF THE PUBLIC SUPPORT CAPITAL PUNISHMENT.

WHETHER THE EXISTENCE OF CAPITAL PUNISHMENT OPERATES AS A DETERRENT TO THE COMMISSION OF CRIMES FOR WHICH IT MAY BE IMPOSED IS A MATTER OF MUCH SPECULATION AND YET LITTLE EXISTS IN THE FORM OF EMPIRICAL EVIDENCE. BUT THE GOVERNOR BELIEVES THAT CAPITAL PUNISHMENT IS A DETERRENT TO THE COMMISSION OF CERTAIN CRIMES AND FURTHER FEELS IF THE EXISTENCE OF A CAPITAL PUNISHMENT PROVISION SAVES ONE SINGLE INNOCENT LIFE, IT IS VALUABLE AND JUSTIFIED. HE BELIEVES THE PEOPLE OF KANSAS ARE ENTITLED TO SUCH PROTECTION.

AS YOU KNOW, THE GOVERNOR HAS SUPPORTED THE RE-ENACTMENT OF CAPITAL PUNISHMENT IN KANSAS. HE HAS VOICED THIS POSITION IN 4 LEGISLATIVE SESSIONS. AND SINCE YOU HAVE HAD THE OPPORTUNITY TO REVIEW AND CONSIDER VARIOUS EXAMPLES OF LEGISLATION DESIGNED TO COMPLY WITH THE CONSTITUTIONAL SAFEGUARDS NOW BELIEVED TO BE REQUIRED, I WILL NOT GO INTO GREAT DETAIL REGARDING THE LEGAL REQUIREMENTS OF SUCH LEGISLATION.

CARRY OVER BILL, HB #2236 WAS DRAFTED TO MEET THE REQUIREMENTS OF THE CONSTITUTION AS THEY ARE NOW UNDERSTOOD. THREE ELEMENTS OF THE BILL SHOULD BE MENTIONED:

1) THE BIFURCATED PROCESS OF DETERMINING GUILT IN ONE STAGE AND SENTENCING IN A SECOND.

2) THE GUIDELINES FOR THE JURY AND/OR JUDGE IN WEIGHING AGGRAVATING AND MITIGATING CIRCUMSTANCES.

3) THE OPPORTUNITY FOR PROMPT APPELLATE REVIEW ON THE ENTIRE RECORD.

THE GOVERNOR RECOGNIZES THE NECESSITY FOR THESE PROVISIONS.

ALL THESE ELEMENTS SEEM TO PROVIDE AN ASSURANCE OF CONTROLLED DISCRETION IN THE SENTENCING PROCESS AND THUS ELIMINATE THE EVILS IDENTIFIED IN THE FURMAN CASE OF 1972.

HOWEVER, THE GOVERNOR IS OF THE OPINION THAT HB 2236 SHOULD BE AMENDED TO INCREASE THE SCOPE OF THE CRIMES FOR WHICH CAPITAL PUNISHMENT MAY BE IMPOSED.

AS CURRENTLY WRITTEN HB 2236 APPLIES ONLY TO MURDER OF THE FIRST DEGREE. ALL FELONY MURDER SITUATIONS ARE SUBJECT TO A "LIFE" SENTENCE ONLY. THE GOVERNOR BELIEVES THAT WHERE A MURDER OCCURS IN THE COMMISSION OF AN AGGRAVATED ROBBERY OR AGGRAVATED KIDNAPPING THAT THE DEATH PENALTY SHOULD BE AN ALTERNATIVE.

IT IS HIS OPINION THAT SUCH CRIMES ARE SO COMMON IN OUR STATE AND SO HEINOUS IN THEIR NATURE AS TO WARRANT THE MOST SERIOUS OF ALL PENALTIES.

OF COURSE, IT MUST BE REMEMBERED THAT CAPITAL PUNISHMENT IS RECOMMENDED ONLY WHEN A DEATH RESULTS IN THE COMMISSION OF EITHER OF THESE AGGRAVATED CRIMES.

OTHERWISE, THE GOVERNOR IS ENCOURAGED THAT THE LEGISLATURE WILL AGAIN CONSIDER THE ISSUE OF CAPITAL PUNISHMENT.

THANK YOU -- ANY QUESTIONS . . .





STATE OF KANSAS

*Office of the Attorney General*

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider  
Attorney General

January 10, 1978

MEMORANDUM

TO: The Honorable Richard Brewster, Chairman and  
the House Judiciary Committee

FROM: Curt T. Schneider, Attorney General

RE: Death Penalty Legislation

As Attorney General, I support reinstatement of the death penalty in Kansas. In Furman v. Georgia, Chief Justice Burger stated, "legislative bodies have been given the opportunity and indeed unavoidable responsibilities, to make a thorough re-evaluation of the entire subject of capital punishment." Since the Chief Justice spoke in Furman, some thirty-eight states have adopted death penalty statutes. The Kansas Legislature has considered several capital punishment proposals in the past few sessions without reaching a consensus. In considering a death penalty bill in the current session, the legislature has the benefit of considering the guidelines enunciated in the United States Supreme Court's decisions which have considered other states' death penalty statutes.

I am submitting to the committee for its consideration and attention the attached proposed capital punishment bill which is drafted to most efficaciously achieve the objective enunciated in the Supreme Court opinions, i.e., the fair and evenhanded application of the death penalty to offenders in similar circumstances.

Although many types of offenses are reprehensible and arguably could be deterred more effectively by the presence of the death penalty, it would seem that this most ultimate of penalties should be reserved solely for the most severe offense outlawed by society, first-degree murder. Although admittedly many offenses other than first-degree murder may inflict tragic

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consequences upon their victims, when the factor of the proportionality of a death sentence to a particular offense is considered, it is reasonable to restrict the imposition of the penalty to those situations where a life has been taken by the offender. Of equal importance in determining the type of offenses that should be subject to the penalty is the fact that death sentences in the State of Kansas in this century have been imposed and executed only upon those convicted of first-degree murder.

The significant question remains as to what categories of first-degree murders should be subject to the death penalty. The Supreme Court, although not indicating that the death penalty could not be imposed in all instances of first-degree murder, clearly demonstrated a preference for statutes that restricted the sanction to those specific categories of the offense deemed especially reprehensible by society. This narrowing of focus was the purpose served by the aggravating circumstances.

Although the following does not purport to constitute a comprehensive enumeration of the special circumstances warranting the imposition of a death penalty in a first-degree murder case, reasonable specifications of aggravating circumstances would include: (1) murder of public officers or employees during the course of his official duties or as a result of the exercise of his or her official duties; (2) murder committed by one serving a felony sentence; (3) murder committed in an especially heinous, atrocious or cruel manner; (4) murder committed by one posing a great risk of death to many persons; (5) murder performed for hire or for the purpose of obtaining anything of monetary value; (6) murder committed during the commission inherently dangerous felonies, i.e., kidnapping, burglary, robbery, rape, etc.; and (7) murder committed by one previously convicted of first- or second-degree murder, voluntary manslaughter or aggravated battery.

Respecting the so-called mitigating circumstances, it would clearly seem preferable to designate them by statute in order to focus the jury's attention on the proper factors rather than follow the Georgia practice of non-specification. However, since any such list of factors cannot possibly be all inclusive, the provision should also generally allow any other relevant evidence in mitigation, thus insuring full consideration of the character of the offender and avoiding any possible constitutional challenges under either the federal and state (§ 9 of the Kansas Bill of Rights) constitutions.

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Certain procedural guarantees should be enacted to insure the proper consideration and application of the aggravating and mitigating circumstances by the sentencing authority, be it judge or jury. Thus, the sentencing authority should be directed to weigh the factors against each other in reaching its penalty assessment and should be required to find the existence of an aggravating circumstance beyond a reasonable doubt. Although none of the statutes involved in the recent cases contained such a provision, it would seem appropriate to provide for reciprocal discovery by the parties prior to the penalty stage in order to prevent undue surprise in the presentation of the evidence. Also, it would seem advisable to allow the defendant to produce psychiatric evidence at the penalty stage even if a defense of mental incapacity was not relied upon at trial to insure that all relevant evidence is brought before the judge or jury. In order to avoid undue delay between the guilt and penalty stages of the proceedings, any mental evaluation could be conducted in advance of trial.

Insofar as appellate review is concerned, the Georgia system requiring the court to analyze the evidence and to compare the penalty imposed with that imposed in similar cases should be statutorily provided. In order to insure that all similar cases are indeed considered, the Kansas Supreme Court should be authorized to compare not only cases in which a death penalty has been imposed, but also those cases where a defendant was found guilty of a capital crime but was sentenced to life imprisonment.

The above mentioned considerations are incorporated into the attached bill prepared by my office. I stand ready to assist the committee with any legal opinions or other questions they may have concerning the subject of capital punishment during their deliberations in drafting a bill and I ask that careful consideration be given the attached proposal.

Respectfully submitted,



CURT T. SCHNEIDER

Attorney General

AN ACT relating to sentencing procedures in capital felonies  
*Be it enacted by the Legislature of the State of Kansas*

Section 1. Separate proceedings on issue of penalty -  
Upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by K.S.A. 21-4501. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special jury of twelve persons to determine the question of the penalty to be imposed. If the trial jury has been waived, or if the defendant pleaded guilty or nolo contendere, the sentencing proceeding shall be conducted by the court. In the proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of sentence, and shall include matters relating to any of the aggravating or mitigating circumstances enumerated hereafter. Any such evidence which the court deems to have probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. However, this subsection shall not be construed to authorize the admission of any evidence obtained in violation of the Constitutions of the United States or the State of Kansas. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument.

Sec. 2. Instructions of the Court in jury proceedings - At the conclusion of the evidentiary portion of the proceedings, the court shall provide instructions to the jury orally and in writing to guide its deliberations. The court's instructions shall include those aggravating and mitigating circumstances as demonstrated by the evidence and all other matters necessary to the proper consideration of the penalty decision.

Sec. 3. Jury deliberations - After hearing the evidence and argument of the parties, and having received the instructions of the court, the jury shall retire to deliberate whether a sentence of life imprisonment or death should be imposed upon the defendant. In determining the question of sentence, the jury shall initially determine whether any aggravating circumstances have been established beyond a reasonable doubt by the state. If the jury, by unanimous vote, finds the existence of one or more aggravating circumstances, it shall then determine whether any mitigating circumstances have been demonstrated and whether such circumstances, if present, outweigh the aggravating circumstances. Based upon these considerations, the jury shall determine whether a sentence of death or life imprisonment should be imposed. A death sentence shall require the unanimous consent of all jurors and shall be evidenced in writing, signed by the foreman of the jury, designating the statutory aggravating circumstance or circumstances which it found beyond a reasonable doubt. Should the jury, after a reasonable period for deliberation, be unable to reach a verdict, the jury shall be discharged and shall be deemed to have rendered a verdict of life imprisonment. In non-jury cases, the

court shall follow the requirements of this section in determining the sentence to be imposed.

Sec. 4. Trial court review of sufficiency of jury's verdict - Notwithstanding the verdict of the jury concerning the sentence to be imposed, the trial court shall review the sentence in all cases to ascertain whether it is supported by the evidence. If the court should determine that the sentence is not supported by the evidence, it shall be authorized to modify the sentence to life imprisonment or death. However, whenever the court enters a judgment modifying the sentencing verdict of the jury, the court shall set forth its reasons for so doing in a written memorandum which shall become part of the record.

Sec. 5. Review of judgment and sentence - A judgment of conviction resulting in a death sentence shall be subject to automatic review in the Supreme Court of Kansas. The review shall be expedited in every manner consistent with the proper presentation of the appeal. It shall be the duty of the court reporter to transcribe the entirety of the trial and sentencing proceedings in the case and to prepare a certified record thereof within sixty (60) days of the rendition of sentence by the court. For good cause shown, the trial court may allow an additional period of thirty (30) days in which the transcript shall be completed. Upon completion of the transcript, the clerk of the trial court shall certify the entire record and transmit the same to the Clerk of the Supreme Court together with a notice setting forth the title and docket number of the case, the name of the defendant and the name and address of his attorney, and a narrative statement

of the offense, the judgment, and the punishment prescribed. The briefs of the parties shall be filed in accordance with the Rules of the Supreme Court and the appeal shall be given priority for hearing over all other types of cases.

The Supreme Court of Kansas shall consider the question of punishment as well as any errors asserted in the appeal and shall be authorized to notice unassigned errors appearing of record if the ends of justice would be served thereby.

Regarding the sentence, the court shall determine:

(a) Whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor, and

(b) Whether the evidence supports the findings that an aggravating circumstance or circumstances existed and that any mitigating circumstances were insufficient to outweigh the aggravating circumstances and

(c) Whether the death sentence is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. Similar cases shall include, in addition to those in which a death sentence has been imposed for the particular offense, those in which a defendant has received a sentence of life imprisonment.

The court shall be authorized to enter such orders as are necessary to effect a proper and complete disposition of the appeal. In its decision, the court shall include a reference to the similar cases which it took into consideration.

Sec. 6. Aggravating circumstances - Aggravating circumstances shall be limited to the following:

(a) The offense of first degree murder was committed by a person with a prior record of conviction for first or second degree murder, aggravated kidnapping, aggravated robbery, voluntary manslaughter, or aggravated battery.

(b) The offense of first degree murder was committed by a person who knowingly created a great risk of death to more than one person.

(c) The killing of a human being occurred while the offender was engaged in the commission of, or the attempted commission of, any robbery, burglary, kidnapping, arson, or rape.

(d) The offender committed the offense of first degree murder for himself or another for the purpose of receiving money or any other thing of monetary value or authorized or employed another person to commit the offense of first degree murder.

(e) The offense of first degree murder was committed against a public officer or employee during or because of the exercise of his official duties or against a former public officer or employee because of the exercise of his official duties.

(f) The offense of first degree murder was committed in order to avoid or prevent a lawful arrest or prosecution.

(g) The offense of first degree murder was committed in an especially heinous, atrocious, or cruel manner.

(h) The offense of first degree murder was committed by a person serving a sentence of imprisonment for a felony offense.

Evidence in aggravation of the offense shall be limited to those circumstances revealed to the defendant by the state prior to trial.



Sec. 7. Mitigating circumstances - Mitigating circumstances shall include the following:

(a) The defendant has no significant history of prior criminal activity.

(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(c) The victim was a participant in the defendant's conduct.

(d) The defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor.

(e) The defendant acted under extreme distress or under the substantial domination of another person.

(f) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(g) The age of the defendant at the time of the crime.

Sec. 8. Death sentence constitutionality - In the event the death penalty or any provision of this act authorizing the death penalty is held to be unconstitutional by the Kansas Supreme Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death shall cause such person to be brought before the court, and the court shall sentence such person to imprisonment for life.

Sec. 9. Severability - The provisions of this act are severable and if any part or provision hereof shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

K.S.A. 21-3401 is hereby amended as follows:

Murder in the first degree is the killing of a human being committed maliciously, willfully, deliberately and with premeditation or committed in the perpetration or attempt to perpetrate any felony.

Murder in the first degree is a class A felony *for which the penalty shall be death or imprisonment for life.*

K.S.A. 21-4501 is hereby amended as follows:

For the purpose of sentencing, the following classes of felonies and terms of imprisonment authorized for each class are established:

(a) Class A, the sentence for which shall be death or imprisonment for life *as provided by law.* ~~If there is a jury trial the jury shall determine which punishment shall be inflicted.~~  
~~If there is a plea of guilty or if a jury trial is waived the court shall determine which punishment shall be inflicted and in so doing shall hear evidence;~~

K.S.A. 21-3421 is hereby amended as follows:

Aggravated kidnapping is kidnapping, as defined in section 21-3420, when bodily harm is inflicted upon the person kidnapped.

Aggravated kidnapping is a class A felony *for which the penalty shall be imprisonment for life.*

K.S.A. 21-3433 is hereby amended as follows:

Aircraft piracy is the willful or unauthorized seizure in this state of any aircraft containing a pilot and one or more persons by the use of force or any other means with the intent to exercise control over the aircraft.

Aircraft piracy is a class A felony for which the penalty shall be imprisonment for life.

K.S.A. 21-3801 is hereby amended as follows:

(1) Treason is levying war against the state, adhering to its enemies, or giving them aid and comfort.

(2) No person shall be convicted of treason unless on the evidence of two (2) witnesses to the overt act or confession in open court.

(3) Treason is a class A felony for which the penalty shall be imprisonment for life.

1-10-78

TOPEKA POLICE DEPARTMENT CHIEF OF POLICE FRED H. HOWARD II

SINCE THE ~~1977~~ U.S. SUPREME COURT DECISION OF FURMAN VS. GEORGIA INVALIDING CAPITAL PUNISHMENT LAWS ACROSS THE NATION, THE MAJORITY OF THE LAW ENFORCEMENT OFFICIALS IN AMERICA HAVE SOUGHT ITS REINSTATEMENT. KANSAS LAW ENFORCEMENT PERSONNEL WERE NO DIFFERENT. STRONG BELIEFS PERSIST OF THE DETERENT VALUE OF CAPITAL PUNISHMENT, CONTROVERSIAL THOUGH IT IS, WE HAVE SUBMITTED ORAL AND WRITTEN STATEMENTS TO LEGISLATORS SUGGESTING VALIDITY AND VALUE OF THIS FORM OF PUNISHMENT. SWIFT AND CERTAIN IMPLEMENTATION OF THE MAXIMUM PENALTY WOULD DIMINISH SOCIETY'S MAJORITY OF THE CYNICISM ABOUT OUR SYSTEM OF LAW.

YOU NOR I CAN BE SPARED OF ACCOUNTIBILITY TO ALL FOR WHOM WE GAVE OATH TO SERVE AND PROTECT. WE HAVE A DEATH PENALTY NOW; HOWEVER, UNFORTUNATELY THE INNOCENT ARE ITS VICTIMS. IMPOSITION OF THE DEATH PENALTY IS SURELY AN AWESOME RESPONSIBILITY FOR ANY SYSTEM OF JUSTICE AND THOSE WHO PARTICIPATE IN IT. HOWEVER, ONE OF SOCIETY'S MOST BASIC TASKS IS THAT OF PROTECTING THE LIVES OF ITS CITIZENS AND ONE OF THE MOST BASIC WAYS IN WHICH IT ACHIEVES THE TASK IS THROUGH CRIMINAL LAWS AGAINST MURDER. K.A.C.P. MEMBERS ARE CONCERNED HERE ONLY WITH THE IMPOSITION OF CAPITAL PUNISHMENT

FOR THE CRIME OF MURDER, AND WHEN LIFE HAS BEEN TAKEN MALICIOUSLY, WILLFULLY, AND DELIBERATELY WITH PREMEDITATION BY THE OFFENDER, WE CANNOT SAY THAT THE PUNISHMENT IS INVARIABLY DISPROPORTIONATE TO THE CRIME. IT IS SUITABLE TO THE MOST EXTREME OF CRIMES.

\* \* \* \*

SMITH AND HICKOCK - - - CLUTTER

HENRY FLOYD BROWN CASE

SEDGWICK COUNTY - - - ELLSWORTH COUNTY

IMPRISONMENT - - - FUTILE - - - BOLTON CASE

HOSTAGES

THE LEGISLATURES OF AT LEAST 35 STATES HAVE ENACTED NEW STATUTES THAT PROVIDE FOR THE DEATH PENALTY FOR AT LEAST SOME CRIMES THAT RESULT IN THE DEATH OF ANOTHER PERSON. SURELY, IF 35 STATES HAVE PLACED SUCH CONFIDENCE IN A SYSTEM OF JURISPRUDENCE, THEN NO LESS OUGHT TO OCCUR IN THE STATE OF KANSAS BECAUSE WE BELIEVE OUR STATE'S JURISTS ARE IN THEIR WISDOM, OF EQUAL.

LEGISLATURES ARE CONSTITUTED TO RESPOND TO THE WILL AND CONSEQUENTLY THE MORAL VALUE OF THE PEOPLE AND NOT THE COURTS. THE SPECIFICATION OF PUNISHMENTS IS INDEED YOUR RESPONSIBILITY AND CONCERN AND THESE ARE PECULIARLY QUESTIONS OF LEGISLATIVE POLICY.

KANSAS ASSOCIATION OF CHIEFS OF POLICE URGES THE ENACTMENT OF A DEATH PENALTY LAW AND WE ENDORSE AND EXPECT TO BE WRITTEN INTO ANY SUCH LAW THAT ANY DEFENDANT SENTENCED TO DEATH HAVE AS A MATTER OF RIGHT AN EXPEDITED MANDATORY APPEAL TO THE SUPREME COURT. LEGISLATION SHOULD SPECIFICALLY CALL FOR THE SUPREME COURT TO

CONSIDER ALL TRIAL ERRORS AND WHETHER THERE WAS:

- (A) ANY PASSION, PREJUDICE OR ARBITRARINESS;
- (B) WHETHER THE EVIDENCE SUPPORTS THE IMPOSITION OF DEATH;
- (C) WHETHER IT IS EXCESSIVE OR DISPROPORTIONATE;
- (D) AND COMPARE IT TO OTHER SIMILAR CAPITAL CASES WHICH  
HAVE COME BEFORE THE COURT TO INSURE SIMILAR RESULTS.

THE CITIZENS OF KANSAS HAVE LONG EXPRESSED THEIR DESIRE FOR REINSTATEMENT OF CAPITAL PUNISHMENT. THE SUPREME COURT OF THE UNITED STATES HAS GIVEN THEIR OPINION OF THE CONSTITUTIONALITY QUESTION CONCERNING THE EXTREME PUNISHMENT. OUR ASSOCIATION CHOSE NOT TO SUPPORT ANY ONE BILL BUT EXPECTS THE LEGISLATURE TO ENACT A LAW WHICH MEETS THE HIGH COURTS ESTABLISHED GUIDELINES. THE CITIZENS OF KANSAS AWAIT ONLY YOUR ACTION.