

MINUTES OF THE House COMMITTEE ON Judiciary

Held in Room 522, at the Statehouse at 3:30 ~~xxx~~ a.m./p. m., on January 12, 1978.

All members were present except: Rep. Hayes, who was excused.

The next meeting of the Committee will be held at 3:30 ~~xxx~~ a.m./p. m., on January 16, 1978.

These minutes of the meeting held on _____, 19____ were considered, corrected and approved.



Chairman

The conferees appearing before the Committee were:

The meeting was called to order by the Chairman, who directed attention to HB 2823 which was introduced by Rep. Hamm, and asked members to study the ramifications. He then called attention to the bill scheduled for consideration, HB 2236, and asked Mary Torrence of the Revisor's Office to brief the Committee. He noted that some members had expressed opposition to the bill, while at the same time they agree that the proposal is constitutional. He explained that there are a couple of amendments which should be adopted if the bill is to be acted upon.

Miss Torrence reviewed the bill, calling special attention to the fact that it provides for two separate proceedings, one to determine guilt and one for sentencing. On pages four and five of the bill it speaks to "aggravated" and "mitigating" circumstances. There is provision for automatic review by the Supreme Court and such review is to be expedited.

The Chairman called attention to an amendment which would make some minor changes and inserting a new Section 11. (See exhibit.) Rep. Frey questioned if this would create a privileged class, and Rep. Hurley expressed the opinion it would not. Mr. Griggs of the Revisor's Office pointed out that in any event it is permissible to set up a privileged class if there is a rational basis. It was moved by Rep. Hurley and seconded by Rep. Stites that the amendment be adopted. Upon vote, motion carried.

The Chairman distributed another proposed amendment on page 3, line 96 (see exhibit), concerning waiver of trial jury. It was moved by Rep. Stites and seconded by Rep. Augustine that the amendment be adopted. Motion carried.

It was moved by Rep. Hoagland that the bill be amended on page 4, line 123, striking "reasonable" and inserting "scienter", which he explained would increase the burden of proof. Motion was seconded by Rep. Hurley, and upon vote, motion lost.

There was considerable discussion concerning the dual proceedings and whether or not the same jury should be sitting in both proceedings. Rep. Stites suggested that on line 96 after the word "imposed" it could be qualified and clarified by saying "the jury shall be subject to the same qualifications.....". It was the consensus that this is satisfactory. Otherwise, Rep. Stites explained, the second jury would be trying the case all over again, and he feels the same jury is appropriate.

Rep. Hurley disaareed, and moved, conceptually, that it be an automatic process to have two separate juries. Motion was seconded by Rep. Baker. Rep. Frey suggested taking the wording from HB 2678. Miss Torrence stated this is the wording in the Witherspoon case. After extensive discussion and upon vote, the motion lost.

Rep. Ferguson called attention to a printing error on line 142. Rep. Stites inquired how a decision would be reached on "mitigating" and "aggravated" circumstances. The Chairman suggested that "sentence" could be stricken in line 126, and then noted there is another problem in line 127 regarding enumeration with reference to Section 8, and pointed out that Section 8 says "shall include the following:" Miss Torrence suggested reference to Section 8 could be eliminated. It was the consensus that this should be done. Rep. Frey suggested that if this is removed, there is no place where it says they must exist. Miss Torrence suggested insering "is not outweighed by any mitigating circumstances found to exist, a sentence of death may be imposed." It was the consensus that this would be proper.

Rep. Martin distributed copies of proposed amendments and also noted that he had prepared a substitute bill which had passed the House and Senate last year but was vetoed. He noted it broadens the scope regarding counsel. The Chairman suggested taking the proposed amendments one at a time. (See proposed amendments.)

Mr. Martin pointed out that the first amendment would allow the judge to appoint any attorney; that it would take care of some areas where there is no experienced attorney. He moved the amendment, which was seconded by Rep. Ferguson. Upon vote, the motion carried.

Rep. Martin offered a proposed amendment dealing with compensation for appointed counsel, and not limiting counsel to the \$20 or \$30, which in effect removes his livelihood for a situation where there may be only one qualified attorney who is appointed for all such cases. Rep. Hurley pointed out the limit does not apply to Class A felonies now, and Rep. Martin stated he would not offer the proposed amendment at the present time.

Rep. Roth presented a proposal which deals with an alternate method of execution, which he explained is patterned after the Oklahoma law, and provides for lethal injection. (See explanation.) He proposed that persons who become insane after sentencing, should be executed anyway because their insanity defense had already been used in the previous trial.

Rep. Foster urged that a change of this magnitude should have hearings and that he knows very little about execution by injection. The Chairman agreed that there are a number of approaches to the matter, but suggested that this subject should be addressed in a separate bill.

It was moved by Rep. Roth and seconded by Rep. Heinemann that death by injection be adopted. After further discussion, the motion was lost.

The Chairman suggested that since the proposal is in bill form that it be introduced and dealt with separately, with some testimony solicited.

The Chairman commended Miss Torrence on the splendid drafting job she had done, and stated that he is satisfied that the bill under consideration is constitutional. Because it is constitutional, he explained that he is anxious that the House have an opportunity to debate it on the floor rather than a lot of separate bills which may not be of such quality.

Rep. Baker stated he has some problems with Section 1, line 24, because premeditation is never defined. Rep. Frey pointed out that it is well defined within the instructions.

It was moved by Rep. Augustine that HB 2236, as amended, be recommended favorably. Motion was seconded by Rep. Whitaker. After considerable discussion, Rep. Baker offered a substitute motion that the bill be reported without recommendation. Motion was seconded by Rep. Martin. Rep. Stites urged that after all of the hearings, he feels the committee would not be doing its duty to send it out without recommendation because he felt everyone knew perfectly well their feelings about the matter. The Chairman noted that he knew the committee was quite divided in their feelings but urged that the House should have an opportunity to start with a bill that is sound because the subject is certainly going to be debated. Upon vote, the substitute motion lost. Representatives Whitaker, Frey, Augustine, Stites and Foster asked to be recorded as voting in opposition. The committee returned to the original motion, and upon vote, the count was tied nine to nine.

Rep. Foster moved that the committee reconsider its action and that the bill be reported without recommendation. Motion was seconded by Rep. Roth. Rep. Hoagland stated that a motion to reconsider must lay over for a day. The Chairman ruled that in this case, a layover was not necessary. Rep. Hoagland appealed the ruling by the Chairman, and the vote to uphold the ruling was tied 7 to 7. The Chairman voted yes, and Rep. Hoagland asked that Rep. Martin, Chairman of the Rules Committee, make a ruling. Rep. Martin stated that upon appeal of a ruling, if the vote is tied, the Chair is upheld. Upon vote of the original motion, the motion lost, 6 yes to 9 no.

The meeting was adjourned.

JUDICIARY Committee
1-12-78

Name	Address	Organization
Don Murphy Ketch Groves Rita Miller	5th + Jackson Topeka 3734 S. Long St.	K.P.O.A. XXXXX
Jan Price	112 W 6th Suite 203 Columbian Bldg	Am. Civil Liberties Union of KS
Lg Stearns	112 Woodlawn	CCO N
Ardie Maganor	Salina	Marymount College.
Paul Leone	Salina	Marymount College.
JENNIFER VETMAN	Salina	Marymount College
S. James McKenna	Salina	Marymount College
Steve Starr	Topeka	T.P.O.

*Amendment by
Dwight
1-12*

PROPOSED AMENDMENTS TO H.B. 2236

1. On page 3, in line 96, following the period, by inserting "The jury at the sentencing proceeding may be waived in the manner provided by subsection (1) of K.S.A. 22-3403 for waiver of the trial jury."; also in line 96, following "If", by inserting "The jury at the sentencing proceeding or"; in lines 97 and 98, by striking "in accordance with subsection (1) of K.S.A. 22-3403"
2. On page 3, in line 109, by striking "defendant's trial" and inserting "sentencing proceeding"

Amendment by
Brewster
1-12

PROPOSED AMENDMENT TO H.B. 2236

On page 1, in line 28, by striking "9" and inserting "11";

On page 3, in line 87, before "upon", by inserting "Except as provided in section 11,";

On page 7, following line 230, by inserting the following:

"New Sec. 11. Upon conviction or adjudication of guilt of a defendant of murder in the first degree, as defined by K.S.A. 21-3401 and amendments thereto, and a finding that the defendant was less than eighteen (18) years of age at the time of the commission thereof, the court shall sentence the defendant to imprisonment for life.";

Also on page 7, by renumbering sections 11 to 14, inclusive, as sections 12 to 15, inclusive; in line 237, by striking "11" and inserting "12"

Phil
1-12

PROPOSED AMENDMENTS TO H.B. 2236

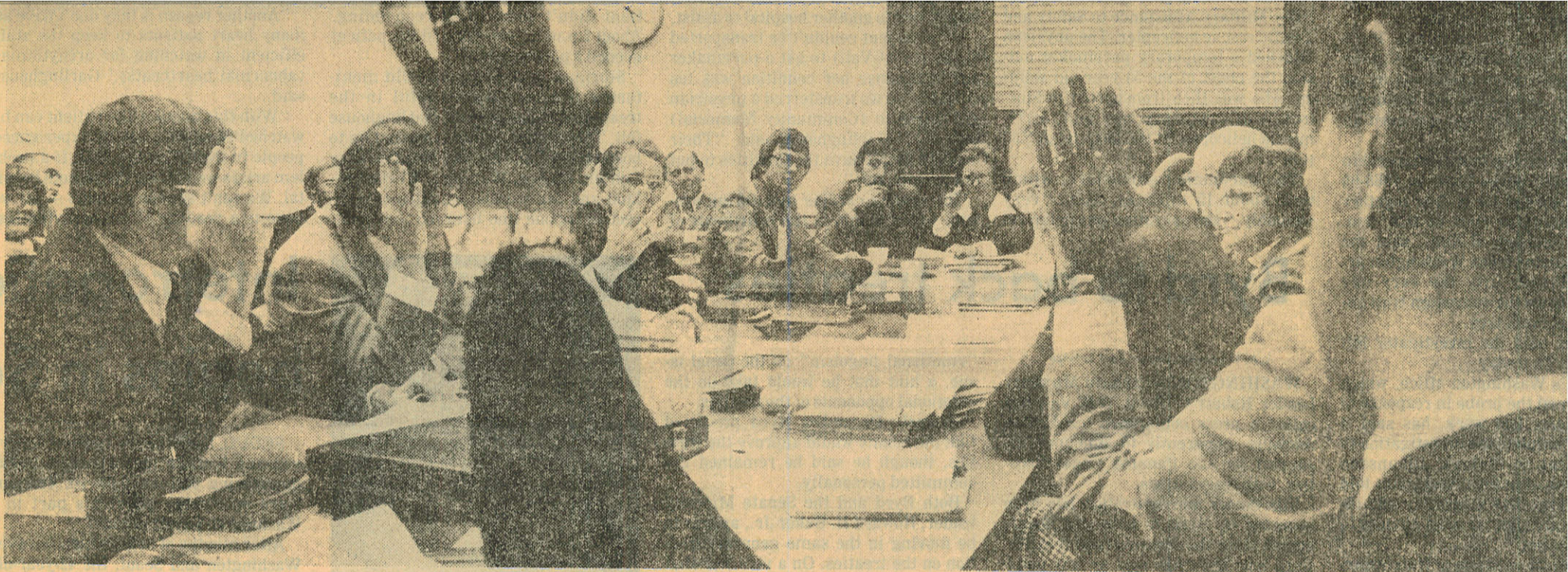
On page 7, following line 238, by inserting the following:

"Sec. 13. K.S.A. 1977 Supp. 22-4501 is hereby amended to read as follows: 22-4501. The judge or judges of the district court of each ~~county~~ judicial district shall prepare, and file in the office of the clerk of the district court, a list of attorneys who are eligible for assignment to represent indigent persons accused of crimes, such list to be known as the panel to aid indigent defendants. Each member of the panel to aid indigent defendants shall be available to represent indigent defendants upon the appointment of any judge of the district court of the judicial district in which such member maintains an office for the practice of law, or any adjacent judicial district. When a defendant is charged with murder in the first degree, as defined by K.S.A. 21-3401 and amendments thereto, a judge of the district court may appoint an attorney who is a member of the panel to aid indigent defendants of a county other than the county where the case is pending. When a defendant is charged with any other crime, a judge of the district court may appoint an attorney who is a member of the panel to aid indigent defendants of a county other than the county where the case is pending only after that no member county wher represent may

indigent persons charged with crimes in such cases and under such circumstances as may be required by law."

Also on page 7, by renumbering sections 13 and 14 as sections 14 and 15; in line 140, before "are", by inserting "and K.S.A. 1977 Supp. 22-4501"

In the title, in line 15 by striking "amending and supplementing the Kansas criminal code" and inserting "concerning crimes and punishments and procedures relating thereto"; in line 18, after "21-4501", by inserting "and K.S.A. 1977 Supp. 22-4501"



— Staff photo by Phi

Members of the Kansas House Judiciary Committee voted a 9-9 tie Thursday on whether to send a death penalty bill to the House

floor for debate. The tie vote resulted in committee failure to send the bill to the House. Committee Chairman Richard Brewster,

D-Topeka, center with hand on chin, watched as the failed to endorse the bill he had introduced.

Panel sidetracks death penalty bill

By **MARTIN HAWVER**
Legislative Writer

A balky House Judiciary Committee, after two days of testimony on a bill to reinstate capital punishment in Kansas, refused Thursday to send the bill to the House floor for debate.

Action came after parliamentary shuffling and against a deadline of Thursday for completion of committee action on the bill set by chairman Richard Brewster, D-Topeka, the author.

Brewster was clearly upset after curtly adjourning the meeting.

"It looks to me like there will be a circus on the House floor when someone tries to tack a death penalty bill on some other measure," Brewster said.

The committee first made several amendments to the bill which would

Additional legislative stories on Page 5

allow, after a two-part trial in which both guilt and punishment would be separately determined, the death penalty.

The bill calls for the possibility of capital punishment for persons convicted of premeditated murder.

A motion to report the bill to the full House for debate failed. A substitute motion to report the bill with no recommendation on whether the committee felt it should be passed or not, failed. A motion to reconsider passed, and an-

other motion to take action on it Thursday failed.

Brewster said he doesn't know just what will happen to the bill.

Asked if he may make a motion on the House floor to amend the committee bill into another measure himself, he was unsure.

"I'll have to think about it. But don't foreclose on the idea," he said.

The House Judiciary Committee last session passed out a death penalty bill, which later was approved by the full House and de-capitalized by the Senate in floor debate. When the Senate finished with the bill, death was no longer a possibility, and a 30-year mandatory sentence was to be Kansas's supreme penalty.

Gov. Robert F. Bennett, who has made reinstatement of capital punishment part of his legislative platform this year, vetoed the 30-year bill last year, calling it a sham and dereliction of responsibility.

Brewster said the next possible committee action on the bill will be Monday. "And I really don't know what will happen then, but it's pretty obvious we don't have the votes to send it out today," Brewster said.

Brewster told the committee the bill "is as constitutional and technically sound as we can make it, and that's our responsibility. We are here to give the House as good a product as possible, and we've done that," Brewster said.

The committee heard from ministers, murderers, civil libertarians, police and others during more than three hours of hearings on the measure which has faced the Legislature several times in the past sessions.

Brewster had hoped to report the bill out of committee, have it debated on the floor, and either killed or sent to the Senate quickly this session. House Speaker John Carlin, S-Smolan, said Tuesday he had asked Brewster for speedy action on the measure, noting that "there's nothing new about it."

As the bill is now, persons who were less than 18 years of age at the time they committed a first-degree murder would be exempted from the possibility of the death sentence, instead serving life imprisonment.

Brewster added that amendment "to completely eliminate the possibility that persons under 18 would be executed in Kansas."

The committee refused to deal with a series of amendments to the measure by Rep. Kent Roth, D-Ellinwood, a 25-year-old Washburn University School of Law student, who proposed that capital punishment be inflicted by "lethal intervenous injection."

The committee also didn't take up a proposal by Roth that persons who become insane after being sentenced to death be executed anyway, having already exhausted their insanity defense in their previous trial.

An aide to the committee said practice would be not to execute an insane person, instead to treat them for the insanity until such a time as they would be sane enough for execution.

Explanation of Death by Injection:

By Representative Roth

My amendment does not alter the text of House Bill No. 2236, but speaks to the mode of inflicting death.

Section 1: Amends statute providing for death by hanging to death by lethal intravenous injection. If intravenous injections are ruled unconstitutional, the alternative modes are hanging first and firing squad second. The Secretary of Corrections supervises the execution and may designate an executioner.

Section 2,3,4,5,7,8,9, and 10: Clean up.

Section 6: Provides for the postponement of execution in the event of pregnancy.

Section 11: Repeals substantive law in addition to the amended provisions. K.S.A. 22-4006 is repealed outright. This statute provides for the postponement of execution in the event the convict appears insane. I propose it repealed because the convict has the opportunity to plead innocent by reason of insanity. The jury's finding of sanity beyond a reasonable doubt should foreclose further litigation and delay on this issue.

22-4006. Procedure when convict appears to be insane. If any convict under sentence of death shall appear to be insane, the warden or sheriff having him in custody shall forthwith give notice thereof to a judge of the district court of the judicial district in which said convict was tried and sentenced, and said judge shall at once make such investigation as shall satisfy him as to whether a commission ought to be named to examine said convict. If he shall determine that there is not sufficient reason for the appointment of a commission, he shall so find and refuse to suspend the execution of said convict.

If the judge shall determine that a commission ought to be appointed to examine such convict, he shall make a finding to that effect and cause it to be entered upon the records of the district court in the county in which such convict was sentenced, and, if necessary, the judge shall suspend the execution and appoint the three superintendents of the state hospitals for the insane at Topeka, Osawatomie and Larned as a commission to examine such convict. The commission shall examine the convict with a view of determining whether he is sane or insane and shall report its findings in writing to said judge within ten (10) days after appointment. If for any reason any of said superintendents cannot serve in such capacity, said judge shall appoint in his place one of the assistant superintendents of said hospital. If two of said commission shall find said convict insane, said judge shall suspend his execution until further order.

Any time thereafter, when it shall be made to appear to said judge that said convict has

become sane, he shall appoint a commission in the manner aforesaid, who shall make another investigation as to the sanity of said convict, and in case said convict is again declared insane his execution shall be suspended by the judge until further order, and such proceedings may be had at such times as said judge shall order until it is either determined that said convict is sane or incurably insane. [L. 1970, ch. 129, § 22-4006; July 1.]

Source or prior law: 62-2406.

22-4007. Finding of sanity; execution day. In case said judge has suspended the execution of said convict pending an investigation as to his sanity, and said convict shall be found to be sane, said judge shall appoint a day for his execution, which shall be carried into effect in the same manner as provided in the original sentence, a certified copy of which shall be transmitted by mail to the executioner. [L. 1970, ch. 129, § 22-4007; July 1.]

Source or prior law: 62-2407.

22-4008. Cost of commissioners. The members of said commission shall each receive mileage at the rate prescribed by K. S. A. 75-3203 for each mile actually and necessarily traveled in reaching and returning from the place where said convict is confined and examined, and it is hereby made the duty of said commission to act in this capacity without compensation other than that already provided for them by law. All of the findings and orders aforesaid shall be entered in the district court records of the county wherein said convict was originally tried and sentenced and the cost therefor, including those providing for the mileage of the members of said commission, shall be allowed and paid in the usual manner by the county in which said convict was tried and sentenced to death. [L. 1970, ch. 129, § 22-4008; July 1.]

Source or prior law: 62-2408.

Death by injection has several advantages over death by hanging such as : 1) death is nearly instantaneous, 2) the corpse is not mutilated, 3) the method is economical, and 4) most importantly, the method is humane.

KSA 47-1401 et. seq. provides for the humane slaughter of livestock whereby the animal is rendered insensible to pain in a rapid and effective manner. Certainly convicts should be subject to no less than a humane mode of inflicting death.

HOUSE BILL NO. _____

By Representative Roth

AN ACT relating to the death penalty; concerning the procedure for carrying out a sentence of death; amending K.S.A. 22-4001 to 22-4005, inclusive, 22-4011 to 22-4014, inclusive, and K.S.A. 1977 Supp. 22-4009 and repealing the existing sections; also repealing K.S.A. 22-4007, 22-4008 and 22-4010 and K.S.A. 1977 Supp. 22-4006.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 22-4001 is hereby amended to read as follows: 22-4001. (1) Subject to the provisions of this act, the mode of inflicting the punishment of death, in all cases in this state, shall be by ~~hanging by the neck until such convicted person is dead.~~

~~The warden of the state penitentiary, and in case of his death, sickness, absence or inability to act, then the deputy warden, shall be the executioner. Provided, The warden may, in writing, specially designate and appoint a suitable and competent person to act for him, and under his direction, as executioner in any particular case. Provided, Nothing contained in the provisions of this section shall apply to a crime committed at any time before the day when this section shall take effect.~~

~~Such crime shall be punished according to the provisions of law existing when it is committed, in the same manner as if this section had not been passed, and the provisions of law for the infliction of the penalty of death upon convicted criminals in existence on the day prior to the passage of this section are continued in existence and are applicable to all crimes punishable by death which have been or may be committed before the time when this section takes effect.~~

~~A crime punishable by death committed on or after the taking~~

~~effect of this act must be punished according to the provisions herein made and not otherwise.~~ intravenous injection of a substance or substances in a lethal quantity sufficient to cause death.

(2) If the mode of inflicting death as provided in subsection (1) is held unconstitutional by a court of competent jurisdiction, then the sentence of death shall be carried out by hanging.

(3) If the mode of inflicting death as provided in subsections (1) and (2) is held unconstitutional by a court of competent jurisdiction, then the sentence of death shall be carried out by firing squad.

(4) The secretary of corrections shall supervise all executions and shall determine procedures, not inconsistent with this act or other laws of the state, for carrying out the same. The secretary of corrections shall designate one or more executioners and other persons necessary to assist in carrying out the death penalty as provided in this section.

Sec. 2. K.S.A. 22-4002 is hereby amended to read as follows: 22-4002. When any person shall be sentenced to ~~be hanged~~ death, such punishment shall be inflicted within the walls of the state penitentiary at Lansing, or within the yard or enclosure adjacent thereto, under the supervision of the ~~warden~~ secretary of corrections and in such a manner as to exclude the view of all persons save those permitted to be present as herein provided.

Sec. 3. K.S.A. 22-4003 is hereby amended to read as follows: 22-4003. Besides the ~~warden, the deputy warden, the secretary of corrections,~~ the executioner (in case one shall have been appointed by the warden) and his assistants and persons designated pursuant to K.S.A. 22-4001, as amended, to assist in the execution, the following persons, and none others, may be present at the execution: The clergyman in attendance upon the executioner; such other persons, not exceeding three in number, as the executioner may designate; and such other persons, not exceeding three in number, as the ~~warden~~ secretary of corrections may designate.

nate.

Sec. 4. K.S.A. 22-4004 is hereby amended to read as follows: 22-4004. Whenever the ~~warden~~ secretary of corrections shall deem the presence of a military force necessary to carry into effect the provisions of this ~~chapter~~ article, ~~he~~ the secretary shall notify the governor of the state, who is hereby authorized to call out such of the military force of the state as in ~~his~~ the governor's judgment may be necessary for the purpose.

Sec. 5. K.S.A. 22-4005 is hereby amended to read as follows: 22-4005. ~~Whenever the warden shall inflict the punishment of death upon a convict, in obedience to the command of the court, he shall make return of his proceedings promptly~~ When an execution is carried out, the secretary of corrections shall give notice thereof in writing to the clerk of the court where the conviction was ~~had~~ rendered, and the clerk shall ~~submit the return of~~ file the notice with the record of conviction and sentence.

Sec. 6. K.S.A. 1977 Supp. 22-4009 is hereby amended to read as follows: 22-4009. If a female convict under sentence of death shall appear to be pregnant, the ~~warden or sheriff shall in like manner notify the district judge of the county in which she was sentenced, who shall in all things proceed as in the case of an insane convict~~ person having custody of the convict shall notify the administrative judge of the judicial district where the conviction was rendered. Such judge shall designate two physicians to examine the convict to determine if she is pregnant. In the event she is pregnant, the execution shall be postponed, otherwise the execution shall be carried out as previously ordered. When an execution is postponed because of pregnancy, the judge shall wait until the child is born or the pregnancy is otherwise terminated after which the judge shall fix the date for the execution. At any time during the postponement of the of the execution, the judge may order an examination as hereinbefore provided to determine whether the convict remains pregnant. Costs of an examination pursuant to this section shall be paid by

the county where the conviction was rendered.

Sec. 7. K.S.A. 22-4011 is hereby amended to read as follows: 22-4011. If any person who has been convicted of a crime punishable by death and sentenced to ~~be hanged~~ death shall escape and shall not be retaken before the time fixed for his or her execution, it shall be lawful for ~~the warden, or~~ any sheriff or other officer or person, to rearrest such person and return him or her to the custody of the ~~warden of the penitentiary~~ secretary of corrections, who shall thereupon ~~make--return~~ give notice thereof to the governor of the state, and the governor shall thereupon issue a warrant fixing and appointing a day for the execution, which shall be carried into effect ~~by the warden~~ in the same manner as herein provided for the execution of an original sentence of death.

Sec. 8. K.S.A. 22-4012 is hereby amended to read as follows: 22-4012. Whenever any person has been tried and convicted before any district court in this state of a crime punishable by death, and under said conviction has been sentenced by said court to suffer death, it shall be the duty of the clerk of the court before which said conviction was had to issue his or her warrant, under the seal of said court, reciting therein said conviction and sentence, directed to the ~~warden of the penitentiary~~ secretary of corrections, commanding ~~him~~ the secretary to proceed at the time named in said sentence to carry the same into execution ~~by causing the person so convicted and sentenced to be hanged by the neck until dead.~~ The clerk shall deliver the warrant to the sheriff of the county in which conviction was had, and such sheriff shall thereupon forthwith remove such convicted person to the state penitentiary of the state at Lansing, and there deliver ~~him~~ the defendant, together with said warrant, into the custody of the ~~warden~~ director of such penitentiary, who shall receive and safely keep such convict within the penitentiary until the time of execution, or until otherwise ordered by competent authority. The director shall notify the secretary of corrections of the receipt of the convict and warrant.

Sec. 9. K.S.A. 22-4013 is hereby amended to read as follows: 22-4013. Unless the sentence has been suspended as provided by law or the governor has commuted the sentence or granted a reprieve or pardon to the convict as provided by law, it shall be the duty of the ~~warden of the penitentiary, or~~ secretary of corrections, upon notice of the receipt of such warrant, ~~provided the sentence has not been suspended as by law provided, and provided the governor shall not have commuted such sentence, or granted a reprieve or pardon to such convict,~~ to proceed at the time named in said warrant to carry said sentence into execution in the manner herein provided, ~~and the manner of his executing said warrant, and his doings thereon, he shall forthwith make return to said clerk, who shall cause said warrant and return to be recorded as a part of the records of the case by law.~~

Sec. 10. K.S.A. 22-4014 is hereby amended to read as follows: 22-4014. In case the supreme court, or any judge thereof, shall order a suspension of the execution of sentence, the suspension shall continue until the proceedings are determined, and after determining the same, if the sentence be confirmed, said court shall appoint a day certain for and order the execution of said sentence. It shall be the duty of the clerk of said court to issue to ~~said warden his~~ the secretary of corrections a warrant under the seal of said court, commanding ~~him~~ the secretary to proceed to carry said sentence into execution, at the time so appointed by the court, which time shall be stated in said warrant, ~~and~~. Upon receipt of said warrant it shall be the duty of said ~~warden~~ secretary to cause said sentence to be executed as herein provided, by law at the time so appointed by the court, ~~and to make due return of said warrant, and of his proceedings thereunder, forthwith to the clerk of the district court before which the conviction was had, who shall cause the same to be recorded as a part of the records of the case.~~

Sec. 11. K.S.A. 22-4001 to 22-4005, inclusive, 22-4007, 22-4008, 22-4010 to 22-4014, inclusive, and K.S.A. 1977 Supp. 22-4006 and 22-4009 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.