

Approved 4-29-87
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Senator Edward F. Reilly, Jr. at
Chairperson

12:00 ~~noon~~ on March 30, 1987 in room 254-E of the Capitol.

All members were present except:

Senator Arasmith and Senator Daniels were excused.

Committee staff present:

Mary Galligan, Legislative Research
Emalene Correll, Legislative Research
Mary Torrence, Assistant Revisor of Statutes
June Windscheffel, Secretary to the Committee

Conferees appearing before the committee:

The Chairman called the Committee to order at 12:00 noon for the purpose of discussion of HB 2062, concerning capital punishment. The Subcommittee Report was before the Committee. Senator Morris made the motion to adopt the Subcommittee Report corrected to retain lines 233 through 237 on pages 6 and 7. Seconded by Senator Vidricksen. There was Committee discussion. The motion carried. (Attachment #1 and #2)

Senator Bond moved, seconded by Senator Hoferer, to go back to the original language on page 6, line 203 to line 208. To reject the balloon language that expands lesser crimes. The motion failed.

Senator Bond said he would make the same motion with regard to the next balloon, in lines 211-216. Seconded by Senator Hoferer. This would go back to the original language which the Subcommittee struck and adopt the language which is in front of the Committee on the balloon. The motion failed.

Before the Committee also was an additional balloon of pages 15 and 16. This would make it possible for the court to appoint qualifying psychologists, physicians, or psychiatrists, or one of each. (Attachment #3) Senator Bond moved the adoption of the amendment. Seconded by Senator Martin. The motion carried.

Another set of proposed amendments was before the Committee. (Attachment #4) These were suggested by Professor Emil Tonkovich. Senator Morris moved that the first 5 technical amendments be adopted. Seconded by Senator Vidricksen. The motion carried.

Another handout before the Committee was suggested changes from Richard Nay. (Attachment #5) Senator Bond moved the adoption of (2) concerning insanity. Seconded by Senator Martin. The motion failed.

Senator Strick moved to keep the two jury system in this bill. Seconded by Senator Martin. The motion failed.

The meeting was adjourned at 2:30 p.m.

3/30/87
Attachment #1

SUBCOMMITTEE REPORT
HOUSE BILL NO. 2062

The Subcommittee chaired by Senator Morris and composed of Senators Martin and Arasmith held three meetings, March 17-19, 1987. Senators Reilly and Fry also attended meetings of the Subcommittee. The Subcommittee received suggestions for amendments to H.B. 2062 from Emil Tonkovich, from the KU School of Law and Jim Florey the Douglas County District Attorney. David Gottlieb of the KU Law School presented written comments to the Subcommittee which also heard testimony from Richary Ney, Chief Public Defender of Sedgwick County and Ben Woods, Chief Appellate Defender.

The Subcommittee makes the following recommendations:

- delete the requirement for a separate sentencing jury and the separate jury standard;
- provide for prosecutorial discretion in seeking the death penalty by requiring the separate sentencing preceding only upon a motion by the state;
- require the prosecutor to declare during arraignment whether the death penalty will be sought in a case;
- delete the provision that would allow a defendant to be represented by counsel of the defendant's choosing with the counsel paid at the same hourly rate as other attorneys of like experience and expertise;
- require that all courts that review the death sentence be required to make specific written findings to support their decisions;
- modify the aggravating circumstances as follows:
 - add rape, aggravated sodomy, kidnapping, robbery, arson, aggravated burglary, and burglary to New Section 8 (1) and (3);
 - include multiple killings; and
 - include killing of judges, prosecutors, police officers, correctional employees and State witnesses.
- Delete as mitigating circumstances the victim's participation in or consent to the defendant's conduct and the defendant's relatively minor participation in the crime;
- add "or purposely" to line 209 after the word knowingly;
- make the capital crimes subject either to the death penalty or to life in prison with eligibility for parole in 25 years;

Attachment #1
FSA 3/30/87 (12:00)

- provide for creation of a capital defender system; and
- require that the Attorney General participate in all appeals of the death penalty when requested to do so by the county or district attorney.

The Subcommittee also discussed at length the issue of proportionality review and was sharply divided on whether the requirement should be left in the bill.



Senator Bill Morris, Chairman



Senator Neil Arasmith



Senator Phil Martin

FSA 3/30/87 (12:00)
Attachment #2

[Amendments Adopted in House Committee of the Whole]

As Amended by House Committee

Session of 1987

HOUSE BILL No. 2062

By Representatives Graeber, Jenkins, Acheson, Apt, Aylward, Bideau, Braden, Bryant, Buehler, Buntin, C. Campbell, Crumbaker, Dillon, Eckert, Empson, Francisco, Freeman, Gatlin, Green, Gross, Harper, Johnson, King, Lacey, Laird, Long, Mead, Neufeld, O'Neal, Ott, Patrick, Peterson, Rezac, Roe, Roenbaugh, Rolfs, Sallec, Schauf, Shallenburger, Shore, Spaniol, Vancrum, Wilbert and Wisdom

1-15

0027 AN ACT concerning crimes and punishments and procedures
0028 relating thereto; ~~[defining and classifying certain crimes;]~~
0029 providing for a sentence of death for certain crimes under
0030 certain circumstances; concerning the procedure for carrying
0031 out a sentence of death; ~~[relating to counsel for persons~~
0032 ~~charged with crimes for which a sentence of death may be~~
0033 ~~imposed;]~~ amending K.S.A. ~~[21-3401,]~~ 22-4002, 22-4003, 22-
0034 4004, 22-4005, 22-4006, 22-4009, 22-4011, 22-4012, 22-4013
0035 ~~and 22-4014~~ and K.S.A. 1986 Supp. 21-4501, 21-4603, 21-4604
0036 ~~and 22-4505~~ and repealing the existing sections; also repeal-
0037 ing K.S.A. 22-4001, 22-4007, 22-4008 and 22-4010. , 22-4014, 38-1603 and 75-704
, 22-3717, 22-4505 and 22-4522

0038 *Be it enacted by the Legislature of the State of Kansas:*
0039 ~~[Section 1. K.S.A. 21-3401 is hereby amended to read as~~
0040 ~~follows: 21-3401. (a) Murder in the first degree is the killing of a~~
0041 ~~human being committed maliciously, willfully, deliberately and~~
0042 ~~with premeditation premeditated murder or the killing of a~~
0043 ~~human being committed in the perpetration of or attempt to~~
0044 ~~perpetrate any felony.~~
0045 ~~[(b) Murder in the first degree is a class A felony.~~
0046 ~~[(c) As used in this section, "premeditated murder" means~~
0047 ~~the killing of a human being committed maliciously, willfully,~~
0048 ~~deliberately and with premeditation.~~
0049 ~~[New Sec. 2. Murder in the commission of kidnapping is the~~

0050 ~~killing of a human being committed in the perpetration of or~~
0051 ~~attempt to perpetrate aggravated kidnapping as defined by~~
0052 ~~K.S.A. 21-3421 and amendments thereto.~~

0053 ~~[Murder in the commission of kidnapping is a class A felony.~~
0054 ~~[New Sec. 3. Murder in the commission of rape or sodomy is~~
0055 ~~the killing of a human being committed in the perpetration of or~~
0056 ~~attempt to perpetrate rape, as defined by K.S.A. 21-3502 and~~
0057 ~~amendments thereto, or aggravated criminal sodomy, as defined~~
0058 ~~by K.S.A. 21-3506 and amendments thereto.~~

0059 ~~[Murder in the commission of rape or sodomy is a class A~~
0060 ~~felony.]~~

Insert sections 1 and 2, attached

0061 ~~Section 1 [Sec. 4]. K.S.A. 1986 Supp. 21-4501 is hereby~~
0062 ~~amended to read as follows: 21-4501. For the purpose of sen-~~
0063 ~~tencing, the following classes of felonies and terms of imprison-~~
0064 ~~ment sentences authorized for each class are established:~~

3

0065 ~~(a) Class A, the sentence for which shall be imprisonment for~~
0066 ~~life, except that the sentence for the crime of murder in the first~~
0067 ~~degree, as defined by K.S.A. 21-3401 and amendments thereto,~~
0068 ~~shall be death or imprisonment for life, as provided by sections~~
0069 ~~3 through 9 [following class A felonies shall be death or impris-~~
0070 ~~onment for life, as provided by sections 6 through 12.~~

(a) Class AA, the sentence for which shall be imprisonment for life unless a sentence of death is imposed pursuant to sections 5 through 11.

0071 ~~[(1) Premeditated murder, as defined by K.S.A. 21-3401 and~~
0072 ~~amendments thereto,~~

0073 ~~[(2) murder in the commission of kidnapping, as defined by~~
0074 ~~section 2, or~~

0075 ~~[(3) murder in the commission of rape or sodomy, as defined~~
0076 ~~by section 3].~~

0077 ~~(b) Class B, the sentence for which shall be an indeterminate~~
0078 ~~term of imprisonment, the minimum of which shall be fixed by~~
0079 ~~the court at not less than five years nor more than 15 years and~~
0080 ~~the maximum of which shall be fixed by the court at not less than~~
0081 ~~20 years nor more than life.~~

(b)

(c)

0082 ~~(c) Class C, the sentence for which shall be an indeterminate~~
0083 ~~term of imprisonment, the minimum of which shall be fixed by~~
0084 ~~the court at not less than three years nor more than five years and~~
0085 ~~the maximum of which shall be fixed by the court at not less than~~
0086 ~~10 years nor more than 20 years.~~

(d)

Section 1. K.S.A. 21-3401 is hereby amended to read as follows: 21-3401. (a) Aggravated murder in the first degree is the killing of a human being committed;

(1) Maliciously, willfully, deliberately and with premeditation or committed;

(2) in the perpetration of or attempt to perpetrate any felony the crime of aggravated kidnapping, as defined by K.S.A. 21-3421 and amendments thereto;

(3) in the perpetration of or attempt to perpetrate the crime of rape, as defined by K.S.A. 21-3502 and amendments thereto; or

(4) in the perpetration of or attempt to perpetrate aggravated criminal sodomy, as defined by K.S.A. 21-3506 and amendments thereto.

(b) Aggravated murder in the first degree is a class A AA felony.

New Sec. 2. (a) Felony murder in the first degree is the killing of a human being committed in the perpetration of or attempt to perpetrate any felony other than the crime of:

(1) Aggravated kidnapping, as defined by K.S.A. 21-3421 and amendments thereto;

(2) rape, as defined by K.S.A. 21-3502 and amendments thereto; or

(3) aggravated criminal sodomy, as defined by K.S.A. 21-3506 and amendments thereto.

(b) Felony murder in the first degree is a class A felony.

0087 ~~(d)~~ Class D, the sentence for which shall be an indeterminate
0088 term of imprisonment fixed by the court as follows:

0089 (1) For a crime specified in article 34, 35 or 36 of chapter 21
0090 of the Kansas Statutes Annotated, a minimum of not less than two
0091 years nor more than three years and a maximum of not less than
0092 five years nor more than 10 years; and

0093 (2) for any other crime, a minimum of not less than one year
0094 nor more than three years and a maximum of not less than five
0095 years nor more than 10 years.

0096 ~~(e)~~ Class E, the sentence for which shall be an indeterminate
0097 term of imprisonment, the minimum of which shall be fixed by
0098 the court at not less than one year and the maximum of which
0099 shall be fixed by the court at not less than two years nor more
0100 than five years.

0101 ~~(f)~~ Unclassified felonies, which shall include all crimes de-
0102 clared to be felonies without specification as to class, the sen-
0103 tence for which shall be in accordance with the sentence speci-
0104 fied in the statute that defines the crime. If no sentence is
0105 provided in the statute, the offender shall be sentenced as for a
0106 class E felony.

0107 New Sec. 2 [5]. (1) In any prosecution for a crime for which a
0108 sentence of death may be imposed ~~(a) At the proceeding to~~
0109 ~~determine the innocence or guilt of the defendant, a prospective~~
0110 ~~juror may not be challenged for cause based on the juror's views~~
0111 ~~regarding capital punishment; and (2) at the sentencing pro-~~
0112 ~~ceeding], a prospective juror may not be challenged for cause~~
0113 based on the juror's views regarding capital punishment unless
0114 those views would prevent or substantially impair the perform-
0115 ance of the juror's duties in accordance with the juror's instruc-
0116 tions and oath.

0117 (2) This section shall be supplemental to and a part of the
0118 Kansas code of criminal procedure.

0119 New Sec. 3 [6]. Upon conviction or adjudication of guilt of a
0120 defendant of ~~any crime for which a sentence of death may be~~
0121 ~~imposed~~ and a finding that the defendant was less than 18 years
0122 of age at the time of the commission thereof, the court shall
0123 sentence the defendant to imprisonment for life.

(e)

(f)

(g)

4

strike

5

a crime which is a class AA felony

of such crime

0124 New Sec. 4 ~~(7)~~ ⁽¹⁾ Except as provided in section 3 ~~(6)~~ ⁵ upon
 0125 conviction or adjudication of guilt of a defendant of any crime for
 0126 which a sentence of death may be imposed, the court shall
 0127 conduct a separate sentencing proceeding to determine whether
 0128 the defendant should be sentenced to death or life imprison-
 0129 ment. The proceeding shall be conducted by the trial judge
 0130 before the trial jury as soon as practicable. If any person who
 0131 served on the trial jury is unable to serve on the jury for the
 0132 sentencing proceedings, the court shall substitute any alternate
 0133 juror who had been empaneled for the trial jury. If there are
 0134 insufficient alternate jurors to replace trial jurors who are unable
 0135 to serve at the sentencing proceeding, the trial judge may sum-
 0136 mon a special jury of 12 persons which shall ~~as soon as practi-~~
 0137 ~~able. The sentencing proceeding shall be before a special jury~~
 0138 ~~of 12 persons, summoned by the trial judge, to~~ determine the
 0139 question of the sentence to be imposed. Jury selection proce-
 0140 dures, qualifications of jurors and grounds for exemption or
 0141 challenge of prospective jurors in criminal trials shall be appli-
 0142 cable to the selection of such special jury. The jury at the
 0143 sentencing proceeding may be waived in the manner provided
 0144 by subsection (1) of K.S.A. 22-3403 and amendments thereto for
 0145 waiver of a trial jury. If the jury at the sentencing proceeding has
 0146 been waived or the trial jury has been waived, the sentencing
 0147 proceeding shall be conducted by the court.

0148 ~~(2)~~ ⁽²⁾ In the sentencing proceeding, evidence may be pre-
 0149 sented concerning any matter that the court deems relevant to
 0150 the question of sentence and shall include matters relating to any
 0151 of the aggravating circumstances enumerated in section 5 ~~(8)~~ ⁷ or
 0152 any mitigating circumstances. The defendant may introduce any
 0153 such evidence which the court deems to have probative value
 0154 regardless of its admissibility under the rules of evidence. Only
 0155 such evidence of aggravating circumstances as the state has
 0156 made known to the defendant prior to the sentencing proceeding
 0157 shall be admissible, and no evidence secured in violation of the
 0158 constitution of the United States or the constitution of the state of
 0159 Kansas shall be admissible. No testimony by the defendant at the
 0160 sentencing proceeding shall be admissible against the defendant

6. (1) If a defendant is charged with a class AA felony, the county or district attorney shall file written notice if such attorney intends, upon conviction of the defendant, to request a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. Such notice shall be filed with the court and served on the defendant or the defendant's attorney at the time of arraignment. If such notice is not filed and served as required by this subsection, the county or district attorney may not request such a sentencing proceeding and the defendant, if convicted of a class AA felony, shall be sentenced to imprisonment for life.

(2)

upon motion of the county or district attorney,

before the trial jury as soon as practicable. If any person who served on the trial jury is unable to serve on the jury for the sentencing proceeding, the court shall substitute any alternate juror who had been empaneled for the trial jury. If there are insufficient alternate jurors to replace trial jurors who are unable to serve at the sentencing proceeding, the trial judge may summon a special jury of 12 persons which shall

(3)*

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0161 at any subsequent criminal proceeding other than a prosecution
 0162 for perjury as defined by K.S.A. 21-3805 and amendments
 0163 thereto. At the conclusion of the evidentiary presentation, the
 0164 court shall allow the parties a reasonable period of time in which
 0165 to present oral argument.

0166 ~~(3)~~ At the conclusion of the evidentiary portion of the sen- (4)
 0167 tencing proceeding, the court shall provide instructions to the
 0168 jury orally and in writing to guide its deliberations.

0169 ~~(4)~~ A sentence of death may be imposed if, by unanimous (5)
 0170 vote, the jury finds beyond a reasonable doubt: (a) That one or
 0171 more of the aggravating circumstances enumerated in section 5

0172 ~~(8)~~ exist; (b) that the existence of such aggravating circumstance 7
 0173 or circumstances is not outweighed by any mitigating circum-
 0174 stances which are found to exist; and (c) if the defendant com-
 0175 mitted the crime while engaged in the perpetration of or attempt
 0176 to perpetrate a felony ~~is being sentenced for murder in the~~
 0177 ~~commission of kidnapping or murder in the commission of rape~~

0178 ~~or sodomy~~, that the defendant personally committed the killing,
 0179 attempted to commit a killing or intended that a killing take
 0180 place or that lethal force be used. Otherwise, a sentence of life
 0181 imprisonment shall be imposed and the defendant shall be
 0182 committed to the custody of the secretary of corrections. The
 0183 jury, if its verdict is a unanimous recommendation of a sentence
 0184 of death, shall designate in writing, signed by the foreman of the
 0185 jury, any statutory aggravating circumstances which it found
 0186 beyond a reasonable doubt. If the jury, after a reasonable time for
 0187 deliberation, is unable to reach a verdict, the judge shall dismiss
 0188 the jury and impose a sentence of imprisonment for life. In
 0189 nonjury cases, the court shall follow the requirements of this
 0190 subsection in determining the sentence to be imposed.

0191 ~~(5)~~ Notwithstanding the verdict of the jury, the trial court (6)
 0192 shall review any jury verdict imposing a sentence of death to
 0193 ascertain whether the imposition of such sentence is supported
 0194 by the evidence. If the court determines that the imposition of a
 0195 sentence of death is not supported by the evidence, the court
 0196 shall modify the sentence to imprisonment for life. Whenever
 0197 the court enters a judgment modifying the sentencing verdict of

is being sentenced for a crime described in subsection (a)(2), (3) or
 (4) of K.S.A. 21-3401 and amendments thereto

0198 the jury, the court shall set forth its reasons for so doing in a
0199 written memorandum which shall become part of the record.
0200 New Sec. 5 [9].⁷ Aggravating circumstances shall be limited
0201 to the following:

0202 (1) The defendant was previously convicted of murder in the
0203 first degree, as defined by K.S.A. 21-3401 and amendments
0204 thereto; ~~murder in the second degree, as defined by K.S.A.
0205 21-3402 and amendments thereto; aggravated kidnapping, as
0206 defined by K.S.A. 21-3421 and amendments thereto; or aggra-
0207 vated robbery, as defined by K.S.A. 21-3427 and amendments
0208 thereto.~~

0209 (2) The defendant knowingly ~~created a great risk of death to~~
0210 more than one person.

0211 (3) The defendant committed the crime ~~while engaged in the
0212 perpetration of or attempt to perpetrate one of the following
0213 crimes and has been convicted of such crime or attempt to
0214 perpetrate such crime: Robbery, as defined by K.S.A. 21-3426
0215 and amendments thereto; or aggravated arson, as defined by
0216 K.S.A. 21-3719 and amendments thereto.~~

0217 (4) The defendant committed the crime for the defendant's
0218 self or another for the purpose of receiving money or any other
0219 thing of monetary value or authorized or employed another
0220 person to commit the crime.

0221 (5) The crime was committed in order to avoid or prevent a
0222 lawful arrest or prosecution or to escape from lawful custody.

0223 (6) The crime was committed in an especially heinous, atro-
0224 cious or cruel manner.

0225 (7) The defendant committed the crime while serving a sen-
0226 tence of imprisonment on conviction of a felony.

0227 New Sec. 6 [9].⁸ Mitigating circumstances shall include, but
0228 are not limited to, the following:

0229 (1) The defendant has no significant history of prior criminal
0230 activity.

0231 (2) The crime was committed while the defendant was under
0232 the influence of extreme mental or emotional disturbances.

0233 ~~(3) The victim was a participant in or consented to the de-~~
0234 ~~fendant's conduct.~~ strike

prior to its amendment by this act; aggravated murder in the first degree,
as defined by K.S.A. 21-3401 and amendments thereto; felony murder in the
first degree, as defined by section 2 and amendments thereto; murder in the
second degree, as defined by K.S.A. 21-3402 and amendments thereto;
kidnapping, as defined by K.S.A. 21-2420 and amendments thereto; aggravated
kidnapping, as defined by K.S.A. 21-3421 and amendments thereto; robbery,
as defined by K.S.A. 21-3426 and amendments thereto; aggravated robbery, as
defined by K.S.A. 21-3427 and amendments thereto; rape, as defined by
K.S.A. 21-3502 and amendments thereto; aggravated criminal sodomy, as
defined by K.S.A. 21-3506 and amendments thereto; burglary, as defined by
K.S.A. 21-3715 and amendments thereto; aggravated burglary, as defined by
K.S.A. 21-3716 and amendments thereto; arson, as defined by K.S.A. 21-3718
and amendments thereto; or aggravated arson, as defined by K.S.A. 21-3719
and amendments thereto

or purposely killed or

described in subsection (a)(1) of K.S.A. 21-3401 and amendments thereto
while engaged in the perpetration of or attempt to perpetrate one of the
following crimes and has been convicted of such crime or attempt to
perpetrate such crime: kidnapping, as defined by K.S.A. 21-2420 and
amendments thereto; aggravated kidnapping, as defined by K.S.A. 21-3421 and
amendments thereto; robbery, as defined by K.S.A. 21-3426 and amendments
thereto; aggravated robbery, as defined by K.S.A. 21-3427 and amendments
thereto; rape, as defined by K.S.A. 21-3502 and amendments thereto;
aggravated criminal sodomy, as defined by K.S.A. 21-3506 and amendments
thereto; burglary, as defined by K.S.A. 21-3715 and amendments thereto;
aggravated burglary, as defined by K.S.A. 21-3716 and amendments thereto;
arson, as defined by K.S.A. 21-3718 and amendments thereto; or aggravated
arson, as defined by K.S.A. 21-3719 and amendments thereto

(8) The victim was killed while engaging in or because of the
victim's performance or prospective performance of the victim's duties as
a: Judge; prosecuting attorney; law enforcement officer; city, county or
state correctional officer or employee; or witness in an administrative or
judicial proceeding.

0235 ~~(4) The defendant was an accomplice in the crime committed~~ strike
0236 ~~by another person and the defendant's participation was rela-~~
0237 ~~tively minor.~~ (3)

0238 ~~(5) The defendant acted under extreme distress or under the~~
0239 ~~substantial domination of another person.~~ (4)

0240 ~~(6) The capacity of the defendant to appreciate the criminal-~~
0241 ~~ity of the defendant's conduct or to conform the defendant's~~
0242 ~~conduct to the requirements of law was substantially impaired.~~ (5)

0243 ~~(7) The age of the defendant at the time of the crime.~~

0244 New Sec. 7 ~~{10}~~ (1) A judgment of conviction resulting in a 9
0245 sentence of death shall be subject to automatic review by and

0246 appeal to the supreme court of Kansas. The review and appeal
0247 shall be consolidated and shall be expedited in every manner
0248 consistent with the proper presentation thereof. It shall be the
0249 duty of the court reporter to transcribe the entirety of the trial
0250 and sentencing proceedings in the case and to prepare a certified
0251 record thereof within 60 days of the rendition of sentence by the
0252 court. For good cause shown, the trial court may allow an
0253 additional period of 30 days in which the transcript shall be
0254 completed. Upon completion of the transcript, the clerk of the
0255 trial court shall certify the entire record and transmit the same to
0256 the clerk of the supreme court, together with a notice setting
0257 forth the title and docket number of the case, the name of the
0258 defendant, the name and address of the defendant's attorney and
0259 a statement of the offense, the judgment and the punishment
0260 prescribed. The briefs of the parties shall be filed in accordance
0261 with the rules of the supreme court and the review and appeal
0262 shall be given priority for hearing over all other types of cases.

0263 (2) The supreme court of Kansas shall consider the question
0264 of sentence as well as any errors asserted in the review and
0265 appeal and shall be authorized to notice unassigned errors ap-
0266 pearing of record if the ends of justice would be served thereby.

0267 (3) With regard to the sentence, the court shall determine: make a determination of the following and make specific written
0268 (a) Whether the sentence of death was imposed under the findings upon which such determination is based

0269 influence of passion, prejudice or any other arbitrary factor;

0270 (b) whether the evidence supports the findings that an ag-
0271 gravating circumstance or circumstances existed and that any

0272 mitigating circumstances were insufficient to outweigh the ag-
0273 gravating circumstances; or

0274 (c) whether the sentence of death is excessive or dispropor-
0275 tionate to the penalty imposed in similar cases, considering both
0276 the crime and the defendant. Similar cases shall include, in
0277 addition to those in which a sentence of death has been imposed
0278 for the particular offense, those in which a defendant has re-
0279 ceived a sentence of life imprisonment.

0280 (4) The court shall be authorized to enter such orders as are
0281 necessary to effect a proper and complete disposition of the
0282 review and appeal. In its decision, the court shall include a
0283 reference to the similar cases which it took into consideration.

0284 (5) Unless the supreme court reduces the sentence to im-
0285 prisonment for life, upon completion of the review and appeal
0286 proceedings, the supreme court shall fix the date and time for
0287 carrying out the sentence of death and give notice thereof to the
0288 secretary of corrections.

0289 New Sec. 8 ~~11~~. In the event the sentence of death or any
0290 provision of this act authorizing such sentence is held to be
0291 unconstitutional by the supreme court of Kansas or the United
0292 States supreme court, the court having jurisdiction over a person
0293 previously sentenced to death shall cause such person to be
0294 brought before the court and shall sentence such person to
0295 imprisonment for life.

0296 New Sec. 9 ~~12~~. If any provisions of this act or the applica-
0297 tion thereof to any person or circumstances is held invalid, the
0298 invalidity shall not affect other provisions or applications of the
0299 act which can be given effect without the invalid provisions or
0300 application, and to this end the provisions of this act are sever-
0301 able.

0302 New Sec. 10 ~~13~~. Sections 3 through 9 ~~2, 3 and 6 through~~
0303 ~~12~~ shall be supplemental to and a part of the Kansas criminal
0304 code.

0305 Sec. 11 ~~14~~, K.S.A. 1986 Supp. 21-4603 is hereby amended
0306 to read as follows: 21-4603. (1) Whenever any person has been
0307 found guilty of a crime and the court finds that an adequate
0308 presentence investigation cannot be conducted by resources

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2 and 5 through 11

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0309 available within the judicial district, including mental health
0310 centers and mental health clinics, the court may require that a
0311 presentence investigation be conducted by the Kansas state
0312 reception and diagnostic center or by the state security hospital.
0313 If the offender is sent to the Kansas state reception and diagnos-
0314 tic center or the state security hospital for a presentence inves-
0315 tigation under this section, the ~~institution~~ center or hospital may
0316 keep the offender confined for a maximum of 120 days or until
0317 the court calls for the return of the offender. While held at the
0318 Kansas reception and diagnostic center or the state security
0319 hospital the defendant may be treated the same as any person
0320 committed to the secretary of corrections or secretary of social
0321 and rehabilitation services for purposes of maintaining security
0322 and control, discipline, and emergency medical or psychiatric
0323 treatment, and general population management except that no
0324 such person shall be transferred out of the state or to a federal
0325 institution or to any other location unless the transfer is between
0326 the Kansas reception and diagnostic center and the state security
0327 hospital. The Kansas state reception and diagnostic center or the
0328 state security hospital shall compile a complete mental and
0329 physical evaluation of such offender and shall make its finding
0330 known to the court in the presentence report.

0331 (2) Whenever any person has been found guilty of a crime,
0332 *other than a crime for which a sentence of death may be*
0333 *imposed*, the court may adjudge any of the following:

0334 (a) Commit the defendant to the custody of the secretary of
0335 corrections or, if confinement is for a term less than one year, to
0336 jail for the term provided by law;

0337 (b) impose the fine applicable to the offense;

0338 (c) release the defendant on probation subject to such condi-
0339 tions as the court may deem appropriate, including orders re-
0340 quiring full or partial restitution;

0341 (d) suspend the imposition of the sentence subject to such
0342 conditions as the court may deem appropriate, including orders
0343 requiring full or partial restitution;

0344 (e) assign the defendant to a community correctional services
0345 program subject to such conditions as the court may deem

0346 appropriate, including orders requiring full or partial restitution;
0347 or

0348 (l) impose any appropriate combination of (a), (b), (c), (d) or
0349 (e).

0350 In imposing a fine the court may authorize the payment
0351 thereof in installments. In releasing a defendant on probation,
0352 the court shall direct that the defendant be under the supervision
0353 of a court services officer. If the court commits the defendant to
0354 the custody of the secretary of corrections or to jail, the court may
0355 specify in its order the amount of restitution to be paid and the
0356 person to whom it shall be paid if restitution is later ordered as a
0357 condition of parole or conditional release.

0358 The court in committing a defendant to the custody of the
0359 secretary of corrections shall fix a maximum term of confinement
0360 within the limits provided by law. In those cases where the law
0361 does not fix a maximum term of confinement for the crime for
0362 which the defendant was convicted, the court shall fix the max-
0363 imum term of such confinement. In all cases where the defend-
0364 ant is committed to the custody of the secretary of corrections,
0365 the court shall fix the minimum term within the limits provided
0366 by law.

0367 (3) *Except in cases involving conviction of a crime for which*
0368 *a sentence of death may be imposed, any time within 120 days*
0369 *after a sentence is imposed or within 120 days after probation or*
0370 *assignment to a community correctional services program has*
0371 *been revoked, the court may modify such sentence, revocation of*
0372 *probation or assignment by directing that a less severe penalty*
0373 *be imposed in lieu of that originally adjudged within statutory*
0374 *limits. If an appeal is taken and determined adversely to the*
0375 *defendant, such sentence may be modified within 120 days after*
0376 *the receipt by the clerk of the district court of the mandate from*
0377 *the supreme court or court of appeals.*

0378 (4) *Upon hearing Except in cases involving conviction of a*
0379 *crime for which a sentence of death may be imposed, the court,*
0380 *upon hearing, may reduce the minimum term of confinement at*
0381 *any time before the expiration thereof when such reduction is*
0382 *recommended by the secretary of corrections and the court is*

0383 satisfied that the best interests of the public will not be jeopar-
0384 dized and that the welfare of the inmate will be served by such
0385 reduction. The power here conferred upon the court includes the
0386 power to reduce the minimum below the statutory limit on the
0387 minimum term prescribed for the crime of which the inmate has
0388 been convicted. The recommendation of the secretary of correc-
0389 tions, the hearing on the recommendation and the order of
0390 reduction shall be made in open court. Notice of the recommen-
0391 dation of reduction of sentence and the time and place of the
0392 hearing thereon shall be given by the inmate, or by the inmate's
0393 legal counsel, at least 21 days prior to the hearing to the county or
0394 district attorney of the county where the inmate was convicted.
0395 After receipt of such notice and at least 14 days prior to the
0396 hearing, the county or district attorney shall give notice of the
0397 recommendation of reduction of sentence and the time and place
0398 of the hearing thereon to any victim of the inmate's crime who is
0399 alive and whose address is known to the county or district
0400 attorney or, if the victim is deceased, to the victim's next of kin if
0401 the next of kin's address is known to the county or district
0402 attorney. Proof of service of each notice required to be given by
0403 this subsection shall be filed with the court.

0404 (5) Dispositions which do not involve commitment to the
0405 custody of the secretary of corrections and commitments which
0406 are revoked within 120 days shall not entail the loss by the
0407 defendant of any civil rights.

0408 (6) This section shall not deprive the court of any authority
0409 conferred by any other Kansas statute to decree a forfeiture of
0410 property, suspend or cancel a license, remove a person from
0411 office, or impose any other civil penalty as a result of conviction
0412 of crime.

0413 (7) An application for or acceptance of probation, suspended
0414 sentence or assignment to a community correctional services
0415 program shall not constitute an acquiescence in the judgment for
0416 purpose of appeal, and any convicted person may appeal from
0417 such conviction, as provided by law, without regard to whether
0418 such person has applied for probation, suspended sentence or
0419 assignment to a community correctional services program.

0420 Sec. 42 ~~H57~~ K.S.A. 1986 Supp. 21-4604 is hereby amended
0421 to read as follows: 21-4604. (1) Whenever a defendant is con-
0422 victed of a misdemeanor, the court before which the conviction
0423 is had may request a presentence investigation by a court ser-
0424 vices officer. Whenever a defendant is convicted of a felony,
0425 *other than a felony for which a sentence of death may be*
0426 *imposed*, the court shall require that a presentence investigation
0427 be conducted by a court services officer or in accordance with
0428 K.S.A. 21-4603 and amendments thereto, unless the court finds
0429 that adequate and current information is available in a previous
0430 presentence investigation report or from other sources.

0431 (2) Whenever a presentence report is requested, the court
0432 services officer shall secure, except for good cause shown, infor-
0433 mation concerning: (a) The circumstances of the offense and any
0434 mitigating or aggravating factors involved in the defendant's
0435 behavior; (b) the attitude of the complainant or victim and, if
0436 possible in homicide cases, the victim's immediate family; (c)
0437 the criminal record, social history and present condition of the
0438 defendant; and (d) any other facts or circumstances that may aid
0439 the court in sentencing, which may include, but is not limited to,
0440 the financial, social, psychological, physical or other harm or loss
0441 suffered by victims of the offense and the restitution needs of
0442 such victims. Except where specifically prohibited by law, all
0443 local governmental and state agencies shall furnish to the officer
0444 conducting the presentence investigation any records requested
0445 by the officer. If ordered by the court, the presentence inves-
0446 tigation shall include a physical and mental examination of the
0447 defendant.

0448 (3) Presentence investigation reports shall be in the form and
0449 contain the information prescribed by rule of the supreme court,
0450 and shall contain any other information prescribed by the district
0451 court.

0452 (4) The judicial administrator of the courts shall confer and
0453 consult with the secretary of corrections when considering
0454 changes or revisions in the form and content of presentence
0455 investigation reports so that the reports will be in such form and
0456 contain such information as will be of assistance to the secretary

0457 in exercising or performing the secretary's functions, powers and
0458 duties. ~~_____~~

Insert section 15, attached

0459 New Sec. 43 [16]. (1) Subject to the provisions of this act, the
0460 mode of carrying out a sentence of death in this state shall be by
0461 intravenous injection of a substance or substances in a quantity
0462 sufficient to cause death.

0463 (2) If the mode of inflicting death as provided in subsection
0464 (1) is held unconstitutional by a court of competent jurisdiction,
0465 the sentence of death shall be carried out by hanging.

0466 (3) If the modes of inflicting death as provided in subsections
0467 (1) and (2) are held unconstitutional by a court of competent
0468 jurisdiction, the sentence of death shall be carried out by elec-
0469 trocution.

0470 (4) The secretary of corrections shall supervise the carrying
0471 out of each sentence of death and shall determine the procedures
0472 therefor, which shall be consistent with this act and the other
0473 laws of the state. The secretary of corrections shall designate one
0474 or more executioners and other persons necessary to assist in
0475 carrying out the sentence of death as provided in this section.

0476 (5) In order to provide the secretary of corrections assistance
0477 in selecting the type of substance or substances to be adminis-
0478 tered in carrying out a sentence of death by intravenous injection
0479 in a swift and humane manner, the secretary shall appoint a
0480 panel of three persons to advise the secretary, one of whom shall
0481 be a pharmacologist, one of whom shall be a toxicologist and one
0482 of whom shall be an anesthesiologist. The panel shall meet upon
0483 the call of the secretary and, for the performance of their official
0484 duties, panel members shall be paid compensation, subsistence
0485 allowances, mileage and other expenses as provided in K.S.A.
0486 75-3223 and amendments thereto.

0487 (6) The secretary of corrections may designate in writing a
0488 director of one of the correctional institutions under the secre-
0489 tary's supervision to perform the duties imposed upon the sec-
0490 retary by this section and by K.S.A. 22-4002, 22-4003, 22-4013
0491 and 22-4014, and amendments thereto.

0492 Sec. 44 [17]. K.S.A. 22-4002 is hereby amended to read as
0493 follows: 22-4002. When any person shall be is sentenced to be

Sec. 15. K.S.A. 1986 Supp. 22-3717 is hereby amended to read as follows: 22-3717. (a) Except as provided in subsection (b), an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) (1) An inmate sentenced to life imprisonment for a class AA felony, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits.

(2) An inmate sentenced for a class A felony, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(c) Except as provided in subsection (d), if an inmate is sentenced to imprisonment for more than one crime and the sentences run consecutively, the inmate shall be eligible for parole after serving the total of:

(1) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608 and amendments thereto, less good time credits for those crimes which are not class A felonies; and

(2) an additional 15 years, without deduction of good time credits, for each crime which is a class A felony.

(d) If an inmate is sentenced to imprisonment for a crime committed while on parole or conditional release, the inmate shall be eligible for parole as provided by subsection (c), except that the Kansas parole board may postpone the inmate's parole eligibility date by assessing a penalty not exceeding the period of time which could have been assessed if the inmate's parole or conditional release had been violated for reasons other than conviction of a crime.

(e) Subject to the provisions of this section, the Kansas parole board shall have power to release on parole those persons

confined in institutions who are eligible for parole when, in the opinion of the board, there is reasonable probability that such persons can be released without detriment to the community or to themselves.

(f) The Kansas parole board shall hold a parole hearing for any inmate who achieves eligibility for parole under subsections (a), (b) and (c).

(g) Prior to each parole hearing and, if parole is not granted, at such intervals thereafter as it determines appropriate, the Kansas parole board shall consider all pertinent information regarding each inmate, including but not limited to the circumstances of the offense of the inmate; the presentence report; the previous social history and criminal record of the inmate; the conduct, employment, and attitude of the inmate in prison; and the reports of such physical and mental examinations as have been made. Within a reasonable time after a defendant is committed to the custody of the secretary of corrections, which time shall not exceed 60 days after the court's jurisdiction to modify the sentence has passed, the Kansas parole board or a member of the board, shall hold an initial informational hearing with the inmate except in cases involving an inmate serving a Kansas sentence in another jurisdiction.

(h) Before ordering the parole of any inmate, the Kansas parole board shall have the inmate appear before it and shall interview the inmate unless impractical because of the inmate's physical or mental condition or absence from the institution. A parole shall be ordered only for the best interest of the inmate and not as an award of clemency. Parole shall not be considered a reduction of sentence or a pardon. An inmate shall be placed on parole only when the Kansas parole board believes that the inmate is able and willing to fulfill the obligations of a law-abiding citizen or that the inmate should be released for hospitalization, deportation or to answer the warrant or other process of a court. Every inmate while on parole shall remain in the legal custody of the secretary of corrections and is subject

to the orders of the secretary. Whenever the Kansas parole board formally considers placing an inmate on parole and does not grant the parole, the board shall notify the inmate in writing of the reasons for not granting the parole.

(i) Any parolee may be placed on intensive supervised parole. Any such parolee shall have a direct meeting at least once each week with an intensive supervising parole officer. Such parolee may be removed from intensive supervised parole when it is determined by the secretary of corrections that such removal will not jeopardize public safety and will be beneficial to the interests of the parolee.

(j) The Kansas parole board shall adopt rules and regulations in accordance with K.S.A. 77-415 et seq., and amendments thereto, not inconsistent with the law and as it may deem proper or necessary, with respect to the conduct of parole hearings, orders of restitution and other conditions to be imposed upon parolees. Whenever an order for parole is issued it shall recite the conditions thereof.

(k) Whenever the Kansas parole board orders the parole of an inmate, the board, unless it finds compelling circumstances which would render a plan of payment unworkable, shall order as a condition of parole that the parolee pay any transportation expenses resulting from returning the parolee to this state to answer criminal charges or a warrant for a violation of a condition of probation, assignment to a community correctional services program, parole or conditional release.

(l) If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole, the Kansas parole board shall order as a condition of parole that the inmate pay restitution in the amount and manner provided in the journal entry unless the board finds compelling circumstances which would render a plan of restitution unworkable. If the parolee was sentenced before July 1, 1986, and the court did not specify at the time of sentencing the amount and the recipient of any

restitution ordered as a condition of parole, the parole board shall order as a condition of parole that the parolee make restitution for the damage or loss caused by the parolee's crime in an amount and manner determined by the board unless the board finds compelling circumstances which would render a plan of restitution unworkable. If the parolee was sentenced on or after July 1, 1986, and the court did not specify at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole, the parole board shall not order restitution as a condition of parole unless the board finds compelling circumstances which justify such an order.

(m) Whenever the Kansas parole board grants the parole of an inmate, the board, within 10 days of the date of the decision to grant parole, shall give written notice of the decision to the county or district attorney of the county where the inmate was sentenced.

(n) An inmate shall be eligible for parole on the date provided by statute at the time the inmate committed the crime for which imprisoned unless subsequent amendment of the statute provides an earlier parole eligibility date.

(o) As used in this section, "good time credits" means credits of one day for every three days served and one month for every year served, awarded on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(p) In addition to authorized good time credits provided in subsection (o), an inmate who is eligible to earn regular good time credits may receive meritorious good time credits in increments of not more than 90 days per meritorious act. These credits may be awarded by the secretary of corrections when an inmate has acted in a heroic or outstanding manner in coming to the assistance of another person in a life threatening situation, preventing injury or death to a person, preventing the destruction of property or taking actions which result in a financial savings to the state.

0494 ~~hanged such death, the punishment shall be inflicted within the~~
0495 walls of the state penitentiary *at Lansing*, or within the yard or
0496 enclosure adjacent thereto, under the supervision of the warden
0497 *secretary of corrections or a director designated pursuant to*
0498 *section 13 [16]* and in such a manner as to exclude the view of all
0499 persons ~~save except~~ those permitted to be present as herein
0500 provided in *K.S.A. 22-4003 and amendments thereto.*

0501 Sec. 15 [18]. K.S.A. 22-4003 is hereby amended to read as
0502 follows: 22-4003. Besides the warden, the deputy warden *secre-*
0503 *tary of corrections or a director designated pursuant to section*
0504 *13 [16]*, the executioner (in case one shall have been appointed
0505 by the warden) and his assistants and persons designated to
0506 assist in the execution pursuant to section 13 [16], the following
0507 persons, and none no others, may be present at the execution:
0508 The clergyman in attendance upon the prisoner; such other
0509 persons; not exceeding three in number, as the prisoner may
0510 designate; and such other persons; not exceeding six in number,
0511 as the warden may designate *member of the clergy attending to*
0512 *the prisoner, not more than three persons designated by the*
0513 *prisoner and not more than six persons designated by the secre-*
0514 *tary of corrections.*

0515 [New Sec. 16 [19]. The secretary of corrections shall pre-
0516 scribe by rules and regulations procedures, in lieu of those
0517 provided by section 1 and K.S.A. 22-4002 and 22-4003, and
0518 amendments thereto, whereby a person sentenced to death may
0519 make an anatomical gift in the manner and for the purposes
0520 provided by the uniform anatomical gift act and be executed in
0521 such a manner that such gift can be carried out.]

0522 Sec. 16 [20]. K.S.A. 22-4004 is hereby amended to read as
0523 follows: 22-4004. ~~Whenever the warden shall deem~~ *If the secre-*
0524 *tary of corrections considers* the presence of a military force
0525 necessary to carry into effect the provisions of this chapter, he
0526 *act, the secretary shall notify the governor of the state, who is*
0527 ~~hereby authorized to thereof.~~ *The governor may call out such of*
0528 the military force of the state as in his *the governor's* judgment
0529 may be necessary for the purpose.

0530 Sec. 17 [21]. K.S.A. 22-4005 is hereby amended to read as

0531 follows: 22-4005. Whenever the warden shall inflict the punish-
0532 ment of death upon a convict, in obedience to the command of
0533 the court, he shall make return of his proceedings promptly
0534 *When a sentence of death has been carried out, the secretary of*
0535 *corrections shall cause written notice thereof to be given to the*
0536 *clerk of the court where the conviction was had rendered, and*
0537 *the clerk shall subjoin the return of file the notice with the*
0538 *record of conviction and sentence.*

0539 Sec. 48 [22]. K.S.A. 22-4006 is hereby amended to read as
0540 follows: 22-4006. (1) *If any At any time prior to execution, a*
0541 *convict under sentence of death shall appear to be insane, such*
0542 *convict's counsel or the director of the correctional institution or*
0543 *sheriff having custody shall forthwith give notice thereof to of*
0544 *such convict may request a determination of the convict's sanity*
0545 *by a district judge of the judicial district in which such convict*
0546 *was tried and sentenced, and the district judge shall at once*
0547 *make such investigation as shall satisfy him or her as to whether*
0548 *a commission ought to be named to examine such convict. If the*
0549 *district judge shall determine determines that there is not suffi-*
0550 *cient reason for the appointment of a commission, such to believe*
0551 *that the convict is insane, the judge shall so find and refuse to*
0552 *suspend the execution of such convict. (2) If the district judge*
0553 *shall determine that a commission ought to be appointed to*
0554 *examine such convict, such judge shall make a finding to that*
0555 *effect and cause it to be entered upon the records of the district*
0556 *court in the county in which such convict was sentenced, and, if*
0557 *necessary determines that there is sufficient reason to believe*
0558 *that the convict is insane, the judge shall suspend the execution*
0559 *and appoint conduct a hearing to determine the sanity of the*
0560 *convict.*

0561 (2) *At a hearing to determine the sanity of the convict, the*
0562 *district judge shall determine the issue of the convict's sanity.*
0563 *The judge may order an examination of the convict by the*
0564 *superintendents of the Topeka state hospital, the Osawatomic*
0565 *state hospital, the Rainbow mental health facility and the Larned*
0566 *state hospital as a commission to examine such convict. The*
0567 *commission. Such superintendents shall examine the convict*

0568 with a view of determining to determine whether the convict is
0569 sane or insane and shall report its their findings in writing to
0570 such the judge within ten (10) days after appointment 10 days
0571 after the order of examination is issued. If for any reason any of
0572 such superintendents cannot serve in such capacity, the district
0573 judge shall appoint in his or her such superintendent's place one
0574 of the assistant superintendents of the hospital or facility. (3) If
0575 three of the members of such commission shall find such convict
0576 insane, the district The convict shall have the right to present
0577 evidence and cross-examine any witnesses at the hearing.

0578 (3) If, at the conclusion of a hearing pursuant to this section,
0579 the judge determines that the convict is sane, the judge shall
0580 enter an order setting a date for the convict's execution, which
0581 shall be carried into effect in the same manner as provided in
0582 the original sentence. A copy of the order shall be sent by mail to
0583 the executioner.

0584 (4) If, at the conclusion of a hearing pursuant to this section,
0585 the judge determines that the convict is insane, the judge shall
0586 suspend the execution until further order. (4) Any time thereaf-
0587 ter, when it shall be made to appear to the district judge that such
0588 convict has become sane, such judge shall appoint a commission
0589 in the manner aforesaid, who shall make another investigation as
0590 to the sanity of such convict, and in case such convict is again
0591 declared insane his or her execution shall be suspended by the
0592 judge until further order, and such proceedings may be had
0593 when the judge has sufficient reason to believe that the convict
0594 has become sane, the judge shall again determine the sanity of
0595 the convict as provided by this section. Proceedings pursuant to
0596 this section may continue to be held at such times as the district
0597 judge shall order orders until it is either determined that such
0598 convict is sane or incurably insane.

0599 Sec. 49 [23]. K.S.A. 22-4009 is hereby amended to read as
0600 follows: 22-4009. (1) If a female convict under sentence of death
0601 shall appear appears to be pregnant, the warden or sheriff shall
0602 in like manner notify the district judge of the county in which
0603 she was sentenced, who shall in all things proceed as in the case
0604 of an insane convict person having custody of the convict shall

0605 *notify the administrative judge of the judicial district where the*
 0606 *conviction was rendered. Such judge shall designate two physi-*
 0607 *cians to examine the convict to determine if the convict is*
 0608 *pregnant. If the convict is pregnant, the execution of the sen-*
 0609 *tence of death shall be postponed. If the convict is not pregnant,*
 0610 *the execution shall be carried out as previously ordered.*

0611 (2) *When the execution of a sentence of death is postponed*
 0612 *because of pregnancy, the judge shall wait until the child is born*
 0613 *or the pregnancy is otherwise terminated and then the judge*
 0614 *shall fix the date for the execution. At any time during the*
 0615 *postponement of the execution, the judge may order an exami-*
 0616 *nation as provided in this section to determine whether the*
 0617 *convict remains pregnant. The costs of each medical examina-*
 0618 *tion conducted pursuant to this section shall be paid by the*
 0619 *county where the conviction was rendered.*

0620 Sec. 20 [24]. K.S.A. 22-4011 is hereby amended to read as
 0621 follows: 22-4011. If any person, who has been convicted of a
 0622 crime punishable by death and sentenced to ~~be hanged~~ shall
 0623 ~~escape and shall death, escapes and is not be~~ retaken before the
 0624 time fixed for ~~his~~ execution, it shall be lawful for the ~~warden,~~ or
 0625 any sheriff or other officer or person; to rearrest ~~such person~~ and
 0626 return ~~him~~ *such person* to the custody of the ~~warden of the~~
 0627 ~~penitentiary,~~ who shall ~~thereupon make return~~ *secretary of cor-*
 0628 *rections. Upon such return to custody, the secretary of correc-*
 0629 *tions shall give notice thereof to the governor of the state, and.*
 0630 *Upon such notice, the governor shall thereupon issue a warrant*
 0631 *fixing and appointing a day for the execution, which shall be*
 0632 *carried into effect by the warden in the same manner as herein*
 0633 *provided by statute for the execution of an original sentence of*
 0634 *death.*

0635 Sec. 24 [25]. K.S.A. 22-4012 is hereby amended to read as
 0636 follows: 22-4012. Whenever any person has been tried and
 0637 convicted before any district court in this state of a crime pun-
 0638 ishable by death; and under said conviction has been sentenced
 0639 by said court to suffer death, it shall be the duty of the clerk of the
 0640 court before which said *the* conviction was had *rendered* to issue
 0641 *his the clerk's* warrant, under the seal of said *the* court, reciting

0642 therein said *which shall recite the conviction and sentence, and*
0643 *be directed to the warden of the penitentiary, commanding him*
0644 *to proceed at the time named in said sentence to carry the same*
0645 *into execution by causing the person so convicted and sentenced*
0646 *to be hanged by the neck until dead; secretary of corrections.*
0647 The clerk shall deliver the warrant to the sheriff of the county in
0648 which conviction was had *rendered*, and such sheriff shall
0649 thereupon forthwith *remove transport* such convicted person to
0650 the penitentiary of the state *correctional institution designated*
0651 *by the secretary of corrections, and there deliver him such*
0652 *convict, together with said the warrant, into the custody of the*
0653 *warden director of the designated institution, who shall receive*
0654 *and safely keep such convict within the penitentiary until the*
0655 *time of execution, or until otherwise ordered by competent*
0656 *authority. The director shall notify the secretary of corrections*
0657 *of the receipt of the convict and warrant.*

0658 Sec. 22 [26]. K.S.A. 22-4013 is hereby amended to read as
0659 follows: 22-4013. It shall be the duty of the warden of the
0660 penitentiary; *on receipt of such warrant, provided the sentence*
0661 *has not been suspended as by law provided, and provided the*
0662 *governor shall not have commuted such sentence, or granted a*
0663 *reprieve or pardon to such convict; secretary of corrections or a*
0664 *director designated pursuant to section 13 [16] to proceed at the*
0665 *time named in said warrant to carry said fixed in accordance with*
0666 *the law to execute each sentence into execution of death in the*
0667 *manner herein provided; and the manner of his executing said*
0668 *warrant, and his doings thereon, he shall forthwith make return*
0669 *to said clerk, who shall cause said warrant and return to be*
0670 *recorded as a part of the records of the case prescribed by this*
0671 *act.*

0672 Sec. 23 [27]. K.S.A. 22-4014 is hereby amended to read as
0673 follows: 22-4014. *In case If* the supreme court, *or any judge*
0674 *thereof, shall order orders* a suspension of the execution of
0675 sentence, the suspension shall continue until the proceedings
0676 are determined; *and. If*, after determining the same, *if the sen-*
0677 *tence be is confirmed, said the supreme court shall order the*
0678 *execution of the sentence of death and shall appoint a day*

0679 certain for and order the execution of said sentence; therefor. It
0680 shall be the duty of the clerk of said the supreme court to issue to
0681 said warden his the secretary of corrections a warrant under the
0682 seal of said the court, commanding him the secretary or a
0683 director designated pursuant to section 13 [16] to proceed to
0684 carry said the sentence into execution; at the time so appointed
0685 by the court, which time shall be stated in said the warrant; and.
0686 Upon receipt of said the warrant it shall be the duty of said
0687 warden the secretary of corrections to cause said the sentence to
0688 be executed as herein provided; by this act and at the time so
0689 appointed by the court; and to make due return of said warrant;
0690 and of his proceedings thereunder; forthwith to the clerk of the
0691 district court before which the conviction was had; who shall
0692 cause the same to be recorded as a part of the records of the case.

0693 [New Sec. 24 [28]. Because the citizens of this state are
0694 fair-minded and do not want to convict or execute an innocent
0695 person, the legislature intends to assure full constitutional rights
0696 for any person charged with a crime for which a sentence of
0697 death may be imposed. Therefore, at the preliminary hearing of
0698 any such person, the judge shall inform the person that the
0699 person has the right to select counsel of the person's own
0700 choosing, admitted to practice in this state, and that, if the person
0701 does not choose to exercise that right at that time, it will be
0702 waived. Notwithstanding any other provision of law to the con-
0703 trary, if the person chooses, at the time of the preliminary
0704 hearing, to exercise that right, the person shall be allowed to
0705 select counsel of the person's own choosing, admitted to practice
0706 in this state, to be paid at the same hourly rate as other attorneys
0707 of like experience and expertise, from the state general fund.]

0708 Sec. 24 [29]. K.S.A. 1986 Supp. 22-4505 is hereby amended
0709 to read as follows: 22-4505. (a) When a defendant has been
0710 convicted in the district court of any felony and a sentence of
0711 death is not imposed, the court shall inform the defendant of
0712 such defendant's right to appeal the conviction to the appellate
0713 court having jurisdiction and. When a defendant has been con-
0714 victed in the district court and a sentence of death has been
0715 imposed, the judge shall inform the defendant that the convic-

— strike

0716 tion and sentence are subject to automatic review by and appeal
 0717 to the supreme court as provided by section 7 ~~[10]~~. In all cases
 0718 when a defendant has been convicted of a felony, the court shall
 0719 further inform the defendant that, if the defendant is financially
 0720 unable to pay the costs of such appeal or review, such defendant
 0721 may request the court to appoint an attorney to represent the
 0722 defendant on appeal any appeal or review and to direct that the
 0723 defendant be supplied with a transcript of the trial record.
 0724 (b) If the defendant files an affidavit stating that the defend-
 0725 ant intends to take an appeal in the case and or if the conviction
 0726 is subject to review and appeal pursuant to section 7 ~~[10]~~, the
 0727 court shall appoint counsel to represent the defendant and to
 0728 perfect and handle any appeal and review if the court deter-
 0729 mines, as provided in K.S.A. 22-4504 and amendments thereto,
 0730 that the defendant is not financially able to employ counsel; the
 0731 court shall appoint counsel. The appointment shall be made
 0732 from the panel for indigents' defense services or otherwise in
 0733 accordance with the applicable system for providing legal de-
 0734 fense services for indigent persons prescribed by the state board
 0735 of indigents' defense services; to represent the defendant and to
 0736 perfect and handle the appeal. If the defendant files a verified
 0737 motion for transcript stating that a transcript of the trial record is
 0738 necessary to enable the defendant to prosecute the appeal or
 0739 review and that the defendant is not financially able to pay the
 0740 cost of procuring such transcript, and if the court finds that the
 0741 statements contained therein are true, the court shall order that
 0742 such transcript be supplied to the defendant as provided in
 0743 K.S.A. 22-4509 and amendments thereto and paid for by the state
 0744 board of indigents' defense services pursuant to claims submit-
 0745 ted therefor if the court finds that the statements contained in
 0746 the motion are true.

0747 (c) Upon an appeal or petition for certiorari addressed to the
 0748 supreme court of the United States, if the defendant is without
 0749 means financially unable to pay the cost of making and forward-
 0750 ing the necessary records, the supreme court of Kansas may by
 0751 order provide for the furnishing of necessary records.

0752 Sec. 25 ~~[30]~~, K.S.A. ~~[21-3401 and] 22-4001 through 22-4014~~

Insert sections 29-31, attached
 , 22-4001 through 22-4014, 38-1603 and 75-704

Sec. 29. K.S.A. 1986 Supp. 22-4522 is hereby amended to read as follows: 22-4522. The state board of indigents' defense services shall:

(a) Provide, supervise and coordinate, in the most efficient and economical manner possible, the constitutionally and statutorily required counsel and related services for each indigent person accused of a felony and for such other indigent persons as prescribed by statute;

(b) establish, in each county or combination of counties designated by the board, a system of appointed counsel, contractual arrangements for providing contract counsel or public defender offices, or any combination thereof, on a full- or part-time basis, for the delivery of legal services for indigent persons accused of felonies;

(c) establish a system of appointed counsel, contractual arrangements for providing contract counsel or a state public defender office, or any combination thereof, on a full- or part-time basis, for the delivery of legal services by counsel experienced in criminal defense and, to the extent possible, experienced in the defense of capital cases, for indigent persons for which a sentence of death is sought or imposed;

(d) approve an annual operating budget for the board and submit that budget as provided in K.S.A. 75-3717;

~~(d)~~ (e) adopt rules and regulations in accordance with K.S.A. 77-415 et seq., and amendments thereto, which are necessary for the operation of the board and the performance of its duties and for the guidance of appointed counsel, contract counsel and public defenders, including but not limited to:

(1) Standards for entitlement to legal representation at public expense;

(2) standards and guidelines for compensation of appointed counsel and investigative, expert and other services within the limits of appropriations;

(3) criteria for employing contract counsel; and

(4) qualifications, standards and guidelines for public defenders, appointed counsel and contract counsel;

~~(e)~~ (f) prepare and submit to the governor and legislature an annual report on the operations of the board; and

~~(f)~~ (g) hold a hearing before changing the system for providing legal services for indigent persons accused of felonies in any county or judicial district if such a hearing is requested by two or more members of the board.

Sec. 30. K.S.A. 38-1603 is hereby amended to read as follows: 38-1603. (a) Proceedings under this code must be commenced within two years after the act giving rise to the proceedings is committed, except that proceedings involving acts committed by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. 21-3401, section 2 or 21-3402, and amendments thereto, may be commenced at any time.

(b) The period within which the proceedings must be commenced shall not include any period in which:

(1) The accused is absent from the state;

(2) the accused is so concealed within the state that process cannot be served upon the accused; or

(3) the fact of the offense is concealed.

Sec. 31. K.S.A. 75-704 is hereby amended to read as follows: 75-704. (a) The attorney general shall consult with and advise district or county attorneys, when requested by them, in all matters pertaining to their official duties.

(b) Upon request of a county or district attorney, the attorney general shall prosecute or defend an appeal in any case in which a sentence of death has been imposed.

(c) The attorney general shall also, when required, give ~~his--or--her~~ the attorney general's opinion in writing, without fee, upon all questions of law submitted to ~~him--or--her~~ the attorney general by the legislature, or either ~~branch~~ house thereof, or by the governor, secretary of state, state treasurer, state board of education, or commissioner of insurance.

0753 and K.S.A. 1986 Supp. 21-4501, 21-4603, 21-4604 and ~~22-4505~~ are
0754 hereby repealed. _____, 22-3717, 22-4505 and 22-4522

0755 Sec. ~~26~~ ~~[21]~~. This act shall take effect and be in force from
0756 and after its publication in the statute book. _____ 33

FSA 3/30/29 (12:00)
Attachment 3

0531 follows: 22-4005. Whenever the warden shall inflict the punish-
0532 ment of death upon a convict, in obedience to the command of
0533 the court, he shall make return of his proceedings promptly
0534 *When a sentence of death has been carried out, the secretary of*
0535 *corrections shall cause written notice thereof to be given to the*
0536 *clerk of the court where the conviction was had rendered, and*
0537 *the clerk shall subjoin the return of file the notice with the*
0538 *record of conviction and sentence.*

0539 Sec. 18 [22]. K.S.A. 22-4006 is hereby amended to read as
0540 follows: 22-4006. (1) If ~~any~~ *At any time prior to execution, a*
0541 *convict under sentence of death shall appear to be insane, such*
0542 *convict's counsel or the director of the correctional institution or*
0543 *sheriff having custody shall forthwith give notice thereof to of*
0544 *such convict may request a determination of the convict's sanity*
0545 *by a district judge of the judicial district in which such convict*
0546 *was tried and sentenced, and the district judge shall at once*
0547 *make such investigation as shall satisfy him or her as to whether*
0548 *a commission ought to be named to examine such convict. If the*
0549 *district judge shall determine determines that there is not suffi-*
0550 *cient reason for the appointment of a commission, such to believe*
0551 *that the convict is insane, the judge shall so find and refuse to*
0552 *suspend the execution of such convict. (2) If the district judge*
0553 *shall determine that a commission ought to be appointed to*
0554 *examine such convict, such judge shall make a finding to that*
0555 *effect and cause it to be entered upon the records of the district*
0556 *court in the county in which such convict was sentenced, and, if*
0557 *necessary determines that there is sufficient reason to believe*
0558 *that the convict is insane, the judge shall suspend the execution*
0559 *and appoint conduct a hearing to determine the sanity of the*
0560 *convict.*

0561 (2) *At a hearing to determine the sanity of the convict, the*
0562 *district judge shall determine the issue of the convict's sanity.*
0563 *The judge ~~may order an examination of the convict by the~~*
0564 *superintendents of the ~~Topoka state hospital, the Osawatomie~~*
0565 *state hospital, the Rainbow mental health facility and the Larned*
0566 *state hospital as a commission to examine such convict. The*
0567 *commission. ~~Such superintendents shall examine the convict~~*

with a view of determining ~~to determine whether the convict is~~
~~sane or insane and shall report its~~ findings in writing to
 such the judge within ten (10) days after appointment 10 days
 after the order of examination is issued. ~~If for any reason any of~~
~~such superintendents cannot serve in such capacity, the district~~
~~judge shall appoint in his or her such superintendent's place one~~
~~of the assistant superintendents of the hospital or facility.~~ (3) If

three of the members of such commission shall find such convict
 insane, the district *The convict shall have the right to present*
evidence and cross-examine any witnesses at the hearing.

(3) *If, at the conclusion of a hearing pursuant to this section,*
the judge determines that the convict is sane, the judge shall
enter an order setting a date for the convict's execution, which
shall be carried into effect in the same manner as provided in
the original sentence. A copy of the order shall be sent by mail to
the executioner.

(4) *If, at the conclusion of a hearing pursuant to this section,*
the judge determines that the convict is insane, the judge shall
suspend the execution until further order. (4) Any time thereaf-
ter, when it shall be made to appear to the district judge that such
convict has become sane, such judge shall appoint a commission
in the manner aforesaid, who shall make another investigation as
to the sanity of such convict; and in case such convict is again
deemed insane his or her execution shall be suspended by the
judge until further order, and such proceedings may be had
when the judge has sufficient reason to believe that the convict
has become sane, the judge shall again determine the sanity of
the convict as provided by this section. Proceedings pursuant to
this section may continue to be held at such times as the district
judge shall order orders until it is either determined that such
convict is sane or incurably insane.

Sec. 49 [23]. K.S.A. 22-4009 is hereby amended to read as
 follows: 22-4009. (1) *If a female convict under sentence of death*
shall appear appears 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

shall order a psychiatric or psychological examination of the convict. For
 that purpose, the court shall appoint two qualified licensed physicians or
 licensed psychologists, or one of each, to examine the convict and

No statement made by the defendant in the course of any examination provided
 for by this section, whether or not the defendant consents to the examination,
 shall be admitted in evidence against the defendant in any criminal proceeding.

3/30/87
Attachment #4

To: Senator Ed Reilly

From: Mary Torrence, Assistant Revisor of Statutes

Re: Suggested changes in death penalty bill, from Professor Emil Tonkovich

Date: March 30, 1987

Morris Vidrickson Motion Carried

Technical

(1) When referring to life imprisonment for a class AA felony specify "life imprisonment for a class AA felony".

(2) On page 4, in lines 145-147, further clarify that if the trial jury is waived the sentencing proceeding is to the court.

(3) In the insert at the top of page 4 of the subcommittee amendments, in the 3rd line, after "conviction", insert "or adjudication of guilt" and in lines 4 and 5, delete "or life imprisonment".

(4) On pages 5 and 6, lines 191 through 199, require written findings as to why trial court does or does not modify the jury verdict.

(5) On pages 6 and 7, lines 211, 217, 221, 223, 225, 231 and 243, change "crime" to "class AA felony".

Substantive

Move on

(1) In new section 2 of subcommittee amendments (attached to page 2 of bill), strike "other than the crime of: (1) Aggravated kidnapping ...; (2) rape ...; or (3) aggravated criminal sodomy..."

Move on

(2) On page 3, line 114, reinsert "or substantially impair"

Move on

(3) On page 6 of the subcommittee amendments, in the insert at the top of the page, at the end of the 4th line, by inserting "voluntary manslaughter...; involuntary manslaughter...;"

Move on

(4) On page 8, by striking lines 274 through 279 and the sentence in lines 282 and 283.

Attachment #4
FSA 3/30/87 (12:00)

Nick Tomasic

3/30/87
Attachment #5

To: Senator Ed Reilly
From: Mary Torrence, Assistant Revisor of Statutes
Re: Suggested changes in death penalty bill, from Richard Nay
Date: March 30, 1987

With respect to the insanity provisions (section 22, pages 15-16):

- (1) Provide for the proceeding to be where the defendant is incarcerated rather than where convicted.
- (2) Change standard from "insanity" to "lacking mental capacity to understand the nature of the death penalty and why it was imposed".

Attachment #5
FSA 3/30/87 (12:00)