

Approved 1-23-89
Date

MINUTES OF THE Senate COMMITTEE ON Federal and State Affairs

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

11:11 a.m./~~p.m.~~ on January 17, 1989 in room 254-E of the Capitol.

All members were present ~~except~~.

Committee staff present:

Mary Ann Torrence, Revisor of Statutes Office
Emalene Correll, Legislative Research
Marty Robison, Secretary

Conferees appearing before the committee:

Art Griggs, Department of Administration

Chairman Reilly called the meeting to order. Senator Morris moved the minutes of the January 11 meeting be approved. Senator Bond seconded the motion and it carried.

Art Griggs appeared before the committee and distributed copies of the proposed capital punishment bill and outline (Attachment 1). Committee members were briefed on the main points of the bill and were told that capital offenses would consist of premeditated murder; killing committed by the offender while engaging in or furthering a major, on-going drug enterprise involving felony acts under the uniform controlled substances act; and killing by the offender of any criminal justice official while engaging in or because of the officer's performance of official duties. In response to a question, committee members were told that a provision for appealing to the Supreme Court is contained in the bill.

Senator Morris moved the bill be introduced. Senator Ehrlich seconded the motion and the motion passed. Senators Daniels, Anderson, and Walker asked to be recorded as a "no" vote.

A discussion regarding the date of the hearings was held. It was decided to have proponents testify on Tuesday, January 24 and opponents on Wednesday, January 25.

The meeting was adjourned at 11:30.

OUTLINE OF DEATH PENALTY BILL

1. Definition of capital offenses.

- a. Premeditated murder;
- b. Killing committed by the offender while engaging in or furthering a major, on-going drug enterprise involving felony acts under the uniform controlled substances act; and
- c. Killing by the offender of any criminal justice official, including correctional, probation and parole officers, while engaging in or because of the officer's performance of official duties.

2. Juries. Sentencing takes place in separate proceedings after determination of guilt has been made. The original jury from the trial proceeding is carried over into the sentencing proceeding to the extent possible, rather than requiring that a new jury be summoned for the sentencing proceeding.

3. Capital crimes defense system. The existing indigent defense system is used for capital offenses. The Board of Indigent's Defense should be required to use counsel experienced in criminal defense and defense of capital cases, to the extent possible.

4. Aggravating and mitigating circumstances. Prior conviction for any felony which involves a violent crime and which resulted in serious injury or death to another is an aggravating circumstance. Seven other aggravating circumstances are listed in Section 6. At least one aggravating circumstance must be found to exist before the death penalty may be imposed.

There are seven examples of mitigating circumstances listed in section 7, but a defendant may present any evidence considered to be of probative value. The jury must find that the aggravating circumstance(s) are not outweighed by any mitigating circumstances found to exist.

5. Early release provisions. If an offender is sentenced to life imprisonment, rather than imposition of the death penalty, minimum parole requirements are 25 years of imprisonment, without deduction of good time credits. Current law provides for a minimum of 15 years imprisonment without deduction of good time credits.

SF & SA
1-17-89
Attachment 1

SENATE BILL NO. _____

By Committee on Federal and State Affairs

AN ACT concerning crimes and punishments and procedures relating thereto; defining and classifying certain crimes; providing for a sentence of death for certain crimes under certain circumstances; concerning the procedure for carrying out a sentence of death; relating to counsel for persons charged with crimes for which a sentence of death is sought or imposed; amending K.S.A. 21-3401, 21-4501, 21-4603, 21-4604, 22-3717, 22-4002, 22-4003, 22-4004, 22-4005, 22-4006, 22-4009, 22-4011, 22-4012, 22-4013, 22-4014, 22-4505, 22-4522, 38-1603 and 75-704 and repealing the existing sections; also repealing K.S.A. 21-4603a, 22-4001, 22-4007, 22-4008 and 22-4010.

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

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:

(1) A human being committed maliciously, willfully, deliberately and with premeditation or;

(2) a criminal justice officer while engaging in or because of the officer's performance or prospective performance of, such officer's official duties, committed by the offender in the perpetration of or attempt to perpetrate any felony or while attempting to avoid apprehension, prosecution or service of a term of imprisonment for a felony; or

(3) a human being committed by the offender in the perpetration of or attempt to perpetrate, or in furtherance of, a felony under the uniform controlled substances act committed by the offender as a part of a continuing series of violations of such act: (A) Undertaken by the offender in concert with five or more other persons with respect to whom the offender occupies a position of organizer, a supervisory position or any other

position of management and (B) from which the offender obtains substantial income or resources.

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

(c) As used in this section, "criminal justice officer" means any law enforcement officer, judge, prosecuting attorney or other officer authorized pursuant to law to conduct or engage in the prevention, investigation, prosecution or adjudication of a crime or in corrections, probation or parole functions.

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.

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

(c) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 3. K.S.A. 21-4501 is hereby amended to read as follows: 21-4501. For the purpose of sentencing, the following classes of felonies and ~~terms---of---imprisonment~~ sentences authorized for each class are established:

(a) Class A, the sentence for which shall be imprisonment for life, except that the sentence for the crime of aggravated murder in the first degree shall be death or imprisonment for life, as provided by sections 4 through 10.

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

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

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

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

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

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

(f) Unclassified felonies, which shall include all crimes declared to be felonies without specification as to class, the sentence for which shall be in accordance with the sentence specified in the statute that defines the crime. If no sentence is provided in the statute, the offender shall be sentenced as for a class E felony.

New Sec. 4. Upon conviction or adjudication of guilt of a defendant of the crime of aggravated murder in the first degree and a finding that the defendant was less than 18 years of age at the time of the commission thereof, the court shall sentence the defendant to imprisonment for life.

New Sec. 5. (1) If a defendant is charged with aggravated murder in the first degree, the county or district attorney shall file written notice if such attorney intends, upon conviction or adjudication of guilt of the defendant, to request a separate sentencing proceeding to determine whether the defendant should be sentenced to death. 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 aggravated murder in the first degree, shall be sentenced to imprisonment for life.

(2) Except as provided in section 4, upon conviction or adjudication of guilt of a defendant of any crime for which a sentence of death may be imposed, the court, upon motion of the county or district attorney, shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death. If the trial jury has been waived, the sentencing proceeding shall be conducted by the court. If the trial was by jury, the jury at the sentencing proceeding may be waived in the manner provided by subsection (1) of K.S.A. 22-3403 and amendments thereto for waiver of a trial jury and, if so waived, the sentencing proceeding shall be conducted by the court. Otherwise, the sentencing proceeding shall be conducted by the trial judge 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 determine the question of the sentence to be imposed. Jury selection procedures, qualifications of jurors and grounds for exemption or challenge of prospective jurors in criminal trials shall be applicable to the selection of such special jury.

(3) In the sentencing proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the aggravating circumstances enumerated in section 6 or any mitigating circumstances. Only such evidence of aggravating circumstances as the state has made known to the defendant prior to the sentencing proceeding shall be admissible, and no evidence

secured in violation of the constitution of the United States or the constitution of the state of Kansas shall be admissible. No testimony by the defendant at the sentencing proceeding shall be admissible against the defendant at any subsequent criminal proceeding other than a prosecution for perjury as defined by K.S.A. 21-3805 and amendments thereto. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument.

(4) At the conclusion of the evidentiary portion of the sentencing proceeding, the court shall provide instructions to the jury orally and in writing to guide its deliberations.

(5) A sentence of death may be imposed if, by unanimous vote, the jury finds beyond a reasonable doubt that: (a) One or more of the aggravating circumstances enumerated in section 6 exist; (b) the existence of such aggravating circumstance or circumstances is not outweighed by any mitigating circumstances which are found to exist; and (c) the defendant personally committed the killing, hired or procured the killing, attempted to commit a killing or intended that a killing take place or that lethal force be used. Otherwise, a sentence of life imprisonment shall be imposed and the defendant shall be committed to the custody of the secretary of corrections. The jury, if its verdict is a unanimous recommendation of a sentence of death, shall designate in writing, signed by the foreman of the jury, any statutory aggravating circumstances which it found beyond a reasonable doubt. If the jury, after a reasonable time for deliberation, is unable to reach a verdict, the judge shall dismiss the jury and impose a sentence of imprisonment for life. In nonjury cases, the court shall follow the requirements of this subsection in determining the sentence to be imposed.

(6) Notwithstanding the verdict of the jury, the trial court shall review any jury verdict imposing a sentence of death to ascertain whether the imposition of such sentence is supported

by the evidence. If the court determines that the imposition of a sentence of death is not supported by the evidence, the court shall modify the sentence to imprisonment for life. The court, whether it enters a judgment upholding or a judgment modifying the sentencing verdict of the jury, shall set forth its reasons for so doing in a written memorandum which shall become part of the record.

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

(1) The defendant was previously convicted of a felony in which the defendant inflicted great bodily harm, disfigurement, dismemberment or death on another.

(2) The defendant knowingly or purposely killed or created a great risk of death to more than one person.

(3) The defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.

(4) The defendant authorized or employed another person to commit the crime.

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

(6) The crime was committed in an especially heinous, atrocious or cruel manner.

(7) The defendant committed the crime while serving a sentence of imprisonment on conviction of a felony.

(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 witness in a criminal proceeding.

New Sec. 7. Mitigating circumstances shall include, but are not limited to, the following:

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

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

(3) The victim was a participant in or consented to the defendant's conduct.

(4) The defendant was an accomplice in the crime committed by another person and the defendant's participation was relatively minor.

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

(6) The capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law was substantially impaired.

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

New Sec. 8. (1) A judgment of conviction resulting in a sentence of death shall be subject to automatic review by and appeal to the supreme court of Kansas. The review and appeal shall be consolidated and shall be expedited in every manner consistent with the proper presentation thereof. It shall be the duty of the court reporter to transcribe the entirety of the trial and sentencing proceedings in the case and to prepare a certified record thereof within 60 days of the rendition of sentence by the court. For good cause shown, the trial court may allow an additional period of 30 days in which the transcript shall be completed. Upon completion of the transcript, the clerk of the trial court shall certify the entire record and transmit the same to the clerk of the supreme court, together with a notice setting forth the title and docket number of the case, the name of the defendant, the name and address of the defendant's attorney and a statement of the offense, the judgment and the punishment prescribed. The briefs of the parties shall be filed in accordance with the rules of the supreme court and the review and appeal shall be given priority for hearing over all other types of cases.

(2) The supreme court of Kansas shall consider the question of sentence as well as any errors asserted in the review and

appeal and shall be authorized to notice unassigned errors appearing of record if the ends of justice would be served thereby.

(3) With regard to the sentence, the court shall make a determination of the following and make specific written findings upon which such determination is based:

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

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

(4) The court shall be authorized to enter such orders as are necessary to effect a proper and complete disposition of the review and appeal.

(5) Unless the supreme court reduces the sentence to imprisonment for life, upon completion of the review and appeal proceedings, the supreme court shall fix the date and time for carrying out the sentence of death and give notice thereof to the secretary of corrections.

New Sec. 9. If the sentence of death or any provision of this act authorizing such sentence is held to be unconstitutional by the supreme court of Kansas or the United States supreme court, the court having jurisdiction over a person previously sentenced to death shall cause such person to be brought before the court and shall sentence such person to imprisonment for life.

New Sec. 10. If any provisions of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

New Sec. 11. Sections 4 through 10 shall be supplemental to

and a part of the Kansas criminal code.

Sec. 12. K.S.A. 21-4603 is hereby amended to read as follows: 21-4603. (1) Whenever any person has been found guilty of a crime and the court finds that an adequate presentence investigation cannot be conducted by resources available within the judicial district, including mental health centers and mental health clinics, the court may require that a presentence investigation be conducted by the state reception and diagnostic center or by the state security hospital. If the offender is sent to the state reception and diagnostic center or the state security hospital for a presentence investigation under this section, the institution center or hospital may keep the offender confined for a maximum of 120 days or until the court calls for the return of the offender. While held at the reception and diagnostic center or the state security hospital the defendant may be treated the same as any person committed to the secretary of corrections or secretary of social and rehabilitation services for purposes of maintaining security and control, discipline, and emergency medical or psychiatric treatment, and general population management except that no such person shall be transferred out of the state or to a federal institution or to any other location unless the transfer is between the reception and diagnostic center and the state security hospital. The state reception and diagnostic center or the state security hospital shall compile a complete mental and physical evaluation of such offender and shall make its finding known to the court in the presentence report.

(2) Whenever any person has been found guilty of a crime other than aggravated murder in the first degree, the court may adjudge any of the following:

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

(b) impose the fine applicable to the offense;

(c) release the defendant on probation subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

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

(e) assign the defendant to a community correctional services program subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(f) assign the defendant to a house arrest program pursuant to K.S.A. 21-4603b and amendments thereto; or

(g) impose any appropriate combination of (a), (b), (c), (d), (e) or (f).

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

The court in committing a defendant to the custody of the secretary of corrections shall fix a maximum term of confinement within the limits provided by law. In those cases where the law does not fix a maximum term of confinement for the crime for which the defendant was convicted, the court shall fix the maximum term of such confinement. In all cases where the defendant is committed to the custody of the secretary of corrections, the court shall fix the minimum term within the limits provided by law.

(3) (a) Except when an appeal is taken and determined adversely to the defendant as provided in subsection (3)(b) or in

cases involving conviction of aggravated murder in the first degree, any time within 120 days after a sentence is imposed or within 120 days after probation or assignment to a community correctional services program has been revoked, the court may modify such sentence, revocation of probation or assignment by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits.

(b) If an appeal is taken and determined adversely to the defendant, such sentence may be modified within 120 days after the receipt by the clerk of the district court of the mandate from the supreme court or court of appeals.

(4) Except in cases involving aggravated murder in the first degree, the court may modify the sentence at any time before the expiration thereof when such modification is recommended by the secretary of corrections and the court is satisfied that the best interests of the public will not be jeopardized and that the welfare of the inmate will be served by such modification. The court shall have the power to impose a less severe penalty upon the inmate, including the power to reduce the minimum below the statutory limit on the minimum term prescribed for the crime of which the inmate has been convicted. The recommendation of the secretary of corrections, the hearing on the recommendation and the order of modification shall be made in open court. Notice of the recommendation of modification of sentence and the time and place of the hearing thereon shall be given by the inmate, or by the inmate's legal counsel, at least 21 days prior to the hearing to the county or district attorney of the county where the inmate was convicted. After receipt of such notice and at least 14 days prior to the hearing, the county or district attorney shall give notice of the recommendation of modification of sentence and the time and place of the hearing thereon to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's next of kin if the next

of kin's address is known to the county or district attorney. Proof of service of each notice required to be given by this subsection shall be filed with the court.

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

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

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

Sec. 13. K.S.A. 21-4604 is hereby amended to read as follows: 21-4604. (1) Whenever a defendant is convicted of a misdemeanor, the court before which the conviction is had may request a presentence investigation by a court services officer. Whenever a defendant is convicted of a felony other than aggravated murder in the first degree, the court shall require that a presentence investigation be conducted by a court services officer or in accordance with K.S.A. 21-4603 and amendments thereto, unless the court finds that adequate and current information is available in a previous presentence investigation report or from other sources.

(2) Whenever a presentence report is requested, the court services officer shall secure, except for good cause shown, information concerning: (a) The circumstances of the offense and

any mitigating or aggravating factors involved in the defendant's behavior; (b) the attitude of the complainant or victim and, if possible in homicide cases, the victim's immediate family; (c) the criminal record, social history and present condition of the defendant; and (d) any other facts or circumstances that may aid the court in sentencing, which may include, but is not limited to, the financial, social, psychological, physical or other harm or loss suffered by victims of the offense and the restitution needs of such victims. Except where specifically prohibited by law, all local governmental and state agencies shall furnish to the officer conducting the presentence investigation any records requested by the officer. If ordered by the court, the presentence investigation shall include a physical and mental examination of the defendant.

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

(4) The judicial administrator of the courts shall confer and consult with the secretary of corrections when considering changes or revisions in the form and content of presentence investigation reports so that the reports will be in such form and contain such information as will be of assistance to the secretary in exercising or performing the secretary's functions, powers and duties.

Sec. 14. K.S.A. 22-3717 is hereby amended to read as follows: 22-3717. (a) Except as otherwise provided by this section, 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) An inmate sentenced for--a to life imprisonment for aggravated murder in the first degree, 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. An inmate sentenced for any other 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 may release on parole those persons confined in institutions who are eligible for parole when: (1) The board believes that the inmate should be released for hospitalization, for deportation or to answer the warrant or other process of a court and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate; or (2) the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a and amendments thereto, or any

revision of such agreement, and the board believes that the inmate is able and willing to fulfill the obligations of a law abiding citizen and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate. Parole shall not be granted as an award of clemency and shall not be considered a reduction of sentence or a pardon.

(f) The Kansas parole board shall hold a parole hearing during the month prior to the month an inmate will be eligible for parole under subsections (a), (b) and (c). If granted parole, the inmate may be released on parole on the date specified by the board, but not earlier than the date the inmate is eligible for parole under subsections (a), (b) and (c). At each parole hearing and, if parole is not granted, at such intervals thereafter as it determines appropriate, the Kansas parole board shall consider:

(1) Whether the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a and amendments thereto, or any revision of such agreement; and (2) all pertinent information regarding such 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.

(g) Within a reasonable time after an inmate is committed to the custody of the secretary of corrections, a member of the Kansas parole board, or a designee of the board, shall hold an initial informational hearing with such inmate and other inmates.

(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. 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 no agreement has been entered into with the inmate under K.S.A. 75-5210a and amendments thereto, the board shall notify the inmate in writing of the specific reasons for not granting parole. If an agreement has been entered under K.S.A. 75-5210a and amendments thereto and the inmate has not satisfactorily completed the programs specified in the agreement, or any revision of such agreement, the board shall notify the inmate in writing of the specific programs the inmate must satisfactorily complete before parole will be granted. If parole is not granted only because of a failure to satisfactorily complete such programs, the board shall grant parole upon the secretary's certification that the inmate has successfully completed such programs. If an agreement has been entered under K.S.A. 75-5210a and amendments thereto and the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by such agreement, or any revision thereof, the board shall not require further program participation. However, if the board determines that other pertinent information regarding the inmate warrants the inmate's not being released on parole, the board shall state in detail the specific reasons for not granting the parole. If parole is denied for an inmate sentenced for a crime other than a class A or class B felony, the board shall hold another parole hearing for the inmate not later than one year after the denial. If parole is denied for an inmate sentenced for a class A or class B felony, the board shall hold another parole hearing for the inmate not later than three years after the denial and shall conduct an annual file review for such inmate. Written notice of such annual file review shall be given to the inmate.

(i) Parolees shall be assigned, upon release, to the appropriate level of supervision pursuant to the criteria established by the secretary of corrections.

(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) An inmate who is allocated regular good time credits as provided in K.S.A. 22-3725 and amendments thereto 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.

New Sec. 15. (1) Subject to the provisions of this act, the mode of carrying out a sentence of death in this state shall be by intravenous injection of a substance or substances in a 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, the sentence of death shall be carried out by hanging.

(3) If the modes of inflicting death as provided in subsections (1) and (2) are held unconstitutional by a court of competent jurisdiction, the sentence of death shall be carried out by electrocution.

(4) The secretary of corrections shall supervise the carrying out of each sentence of death and shall determine the procedures therefor, which shall be consistent with this act and the other laws of the state. The secretary of corrections shall

designate one or more executioners and other persons necessary to assist in carrying out the sentence of death as provided in this section.

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

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

Sec. 16. K.S.A. 22-4002 is hereby amended to read as follows: 22-4002. When any person ~~shall be~~ is sentenced to be hanged--~~such~~ death, the 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 or the director designated by the secretary and in such a manner as to exclude the view of all persons save except those permitted to be present as herein provided in K.S.A. 22-4003 and amendments thereto.

Sec. 17. K.S.A. 22-4003 is hereby amended to read as follows: 22-4003. Besides the warden, ~~the deputy warden~~ secretary of corrections or the director designated by the secretary, the executioner ~~(in case one shall have been appointed by the warden)~~ and his assistants and persons designated pursuant to section 15 to assist in the execution, the following persons,

and none no others, may be present at the execution: The ~~clergyman--in--attendance--upon--the--prisoner;--such--other--persons;--not--exceeding--three--in--number;--as--the--prisoner--may--designate;--and--such--other--persons;--not--exceeding--six--in--number;--as--the--warden~~ may designate member of the clergy attending to the prisoner, not more than three persons designated by the prisoner and not more than six persons designated by the secretary of corrections.

New Sec. 18. (a) A person sentenced to death may make an anatomical gift in the manner and for the purposes provided by the uniform anatomical gift act. To the extent deemed practical by the secretary of corrections, in the discretion of the secretary, a person making such gift shall be executed in such a manner that such gift can be carried out.

(b) The secretary of corrections may adopt procedures in lieu of those provided by K.S.A. 22-4002 and 22-4003 and section 15, and amendments thereto, to implement the provisions of this section.

Sec. 19. K.S.A. 22-4004 is hereby amended to read as follows: 22-4004. ~~Whenever--the--warden--shall--deem~~ If the secretary of corrections considers the presence of a military force necessary to carry into effect the provisions of this ~~chapter;--he~~ act, the secretary shall notify the governor ~~of--the--state;--who--is--hereby--authorized--to~~ thereof. The governor may call out such of the military force of the state as in his the governor's judgment may be necessary for the purpose.

Sec. 20. K.S.A. 22-4005 is hereby amended to read as follows: 22-4005. ~~Whenever--the--warden--shall--infract--the--punishment--of--death--upon--a--convict;--in--obedience--to--the--command--of--the--court;--he--shall--make--return--of--his--proceedings--promptly~~ When a sentence of death has been carried out, the secretary of corrections shall cause written notice thereof to be given to the clerk of the court where the conviction was had rendered, and the clerk shall ~~subjoin--the--return--of~~ file the notice with the record of conviction and sentence.

Sec. 21. K.S.A. 22-4006 is hereby amended to read as follows: 22-4006. (1) At any time prior to execution, a convict under sentence of death shall appear to be insane, such convict's counsel or the director of the correctional institution or sheriff having custody shall forthwith give notice thereof to of such convict may request a determination of the convict's sanity by a district judge of the judicial district in which such convict was tried and sentenced, and the district judge shall at once make such investigation as shall satisfy him or her as to whether a commission ought to be named to examine such convict. If the district judge shall determine determines that there is not sufficient reason for the appointment of a commission, such to believe that the convict is insane, the judge shall so find and refuse to suspend the execution of such convict. (2) If the district judge shall determine that a commission ought to be appointed to examine such convict, such judge 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 superintendents of the Topeka state hospital, the Osawatomie state hospital, the Rainbow mental health facility and the Larned state hospital as a commission to examine such convict. The commission shall examine the convict with a view of determining whether the convict is sane or insane and shall report its findings in writing to such judge within ten (10) days after appointment. If for any reason any of such superintendents cannot serve in such capacity, the district judge shall appoint in his or her 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 determines that there is sufficient reason to believe that the convict is insane, the judge shall suspend the execution and conduct a hearing to determine the sanity of the convict.

(2) At the hearing, the district judge shall determine the

issue of the convict's sanity. The judge shall order a psychiatric or psychological examination of the convict. For that purpose, the court shall appoint two licensed physicians or licensed psychologists, or one of each, qualified by training and practice to make such examination, to examine the convict and report their findings in writing to the judge within 10 days after the order of examination is issued. The convict shall have the right to present evidence and cross-examine any witnesses at the hearing. 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) 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 thereafter, 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 declared 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. 22. 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 notify the administrative judge of the judicial district where the conviction was rendered. Such judge shall designate two licensed physicians to examine the convict to determine if the convict is pregnant. If the convict is pregnant, the execution of the sentence of death shall be postponed. If the convict is not pregnant, the execution shall be carried out as previously ordered.

(2) When the execution of a sentence of death is postponed because of pregnancy, the judge shall wait until the child is born or the pregnancy is otherwise terminated and then the judge shall fix the date for the execution. At any time during the postponement of the execution, the judge may order an examination as provided in this section to determine whether the convict remains pregnant. The costs of each medical examination conducted pursuant to this section shall be paid by the county where the case originated.

Sec. 23. 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 shall escape and shall not be~~ sentenced to death escapes and is not retaken before the time fixed for his execution, it shall be lawful for the ~~warden, or~~ any sheriff or other officer or person, to rearrest ~~such person and return him~~ and return such person to the custody of the ~~warden of the penitentiary, who shall thereupon~~ make return secretary of corrections. Upon such return to custody, the secretary of corrections shall give notice thereof to the governor ~~of the state, and.~~ Upon such notice, the governor shall thereupon issue a warrant fixing and appointing a day for the execution, which shall be carried into effect ~~by the warden~~

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in the same manner as herein provided by statute for the execution of an original sentence of death.

Sec. 24. 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~~ to death, it shall be the duty of the clerk of the court before which ~~said--conviction--was--had--to--issue~~ his the conviction was rendered to issue the clerk's warrant, under the seal of ~~said--court,~~ reciting therein--said the court, which shall recite the conviction and sentence, and be directed to the ~~warden--of--the--penitentiary,~~ commanding him 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, secretary of corrections. The clerk shall deliver the warrant to the sheriff of the county in which conviction was had rendered, and such sheriff shall thereupon ~~forthwith--remove~~ forthwith transport such convicted person to the ~~penitentiary--of--the--state,~~ and there deliver him, ~~together--with~~ said the state correctional institution designated by the secretary of corrections and deliver such convict, together with the warrant, into the custody of the ~~warden~~ director of the designated institution, 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. 25. K.S.A. 22-4013 is hereby amended to read as follows: 22-4013. It shall be the duty of the ~~warden--of--the penitentiary,~~ on 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,~~ secretary of corrections or a director designated by the secretary 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~~ fixed in accordance
with law to execute a sentence of death in the manner prescribed
by this act.

Sec. 26. 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~~ If the supreme court orders a suspension of the execution of sentence, the suspension shall continue until the proceedings are determined; ~~and.~~ If, after determining the same, ~~if--the--sentence--be--confirmed--said--court--shall--appoint--a
day--certain--for--and--order--the--execution--of--said--sentence--the
sentence~~ is confirmed, the supreme court shall order the execution of the sentence of death and shall designate a day therefor. It shall be the duty of the clerk of said the supreme court to issue to said warden ~~his~~ the secretary of corrections a warrant under the seal of said court; ~~e-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~~ provided by this act at the time designated by the court.

Sec. 27. K.S.A. 22-4505 is hereby amended to read as follows: 22-4505. (a) When a defendant has been convicted in the district court of any felony and a sentence of death is not imposed, the court shall inform the defendant of such defendant's right to appeal the conviction to the appellate court having jurisdiction and. When a defendant has been convicted in the district court and a sentence of death has been imposed, the judge shall inform the defendant that the conviction and sentence are subject to automatic review by and appeal to the supreme court as provided by section 8. In all cases when a defendant has

been convicted of a felony, the court shall further inform the defendant that, if the defendant is financially unable to pay the costs of such appeal or review, such defendant may request the court to appoint an attorney to represent the defendant on appeal any review or appeal and to direct that the defendant be supplied with a transcript of the trial record.

(b) If the defendant files an affidavit stating that the defendant intends to take an appeal in the case and or if the conviction is subject to review and appeal pursuant to section 8, the court shall appoint counsel to represent the defendant and to perfect and handle any review and appeal if the court determines, as provided in K.S.A. 22-4504 and amendments thereto, that the defendant is not financially able to employ counsel, ~~the court shall appoint counsel.~~ The appointment shall be made from the panel for indigents' defense services or otherwise in accordance with the applicable system for providing legal defense services for indigent persons prescribed by the state board of indigents' defense services, ~~to represent the defendant and to perfect and handle the appeal.~~ If the defendant files a verified motion for transcript stating that a transcript of the trial record is necessary to enable the defendant to prosecute the review or appeal and that the defendant is not financially able to pay the cost of procuring such transcript, ~~and if the court finds that the statements contained therein are true,~~ the court shall order that such transcript be supplied to the defendant as provided in K.S.A. 22-4509 and amendments thereto and paid for by the state board of indigents' defense services pursuant to claims submitted therefor if the court finds that the statements contained in the motion are true.

(c) Upon an appeal or petition for certiorari addressed to the supreme court of the United States, if the defendant is ~~without means~~ financially unable to pay the cost of making and forwarding the necessary records, the supreme court of Kansas may by order provide for the furnishing of necessary records.

Sec. 28. K.S.A. 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 and amendments thereto;

~~(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. 29. 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.

Sec. 30. K.S.A. 21-3401, 21-4501, 21-4603, 21-4603a, 21-4604, 22-3717, 22-4001 through 22-4014, 22-4505, 22-4522, 38-1603 and 75-704 are hereby repealed.

Sec. 31. This act shall take effect and be in force from and after its publication in the statute book.