

Approved: February 23, 1998
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Garry Boston at 1:30 p.m. on February 10, 1998 in Room 519-S of the Capitol.

All members were present except: Representative Annie Keuther, Excused
Representative Thomas Klein, Excused
Representative Steve Lloyd, Excused
Representative Ralph Tanner, Excused

Committee staff present: Mary Galligan, Legislative Research Department
Jill Wolters, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Representative Doug Mays
Carla Stovall, Attorney General
Pastor Robert R. Keller
Donna Schneweis, Amnesty International, USA
Ronald E. Wurtz, Chief Attorney, Kansas Death Penalty Defense Unit

Others attending: See attached list

The Chairperson opened the meeting and stated that Minutes were before the Committee and would be brought up at the end of the meeting and asked if there were any bill introductions?

Representative Vickrey moved and Representative Ballou seconded introduction of legislation concerning the regulation and ordinances to sport shooting ranges and providing civil immunity to persons who operate or use such ranges. The motion carried.

Representative Boston moved and Representative Crow seconded introduction of legislation concerning educational funding which increases money that was in the Governor's State of the State Address. The motion carried.

HB 2463 - Intentional and premeditated killing of a child under 14 would be included in the definition of capital murder.

The Chairperson opened the hearing on **HB 2463**.

Jill Wolters, Revisor of Statutes Office, gave a briefing on **HB 2463**, stating this deals with the capital murder statute and defines those people that could be put to death if they are convicted of doing one of 7 things. Under current law in order to be sentenced to capital murder you would have to intentionally and premeditated killing a child under the age of 14 in the commission of kidnapping or aggravated kidnapping was committed with intent to commit a sex offense upon or with the child or with intent that the child commit or submit to a sex offense. The sex offense means rape, aggravated criminal sodomy, promoting prostitution or sexual exploitation of a child. This would allow a capital murder prosecution to go forward if the only parameters were you intentionally and premeditated killed a child under 14. There would not have to be admission of a kidnapping or a sexual offense.

Representative Doug Mays testified as a proponent to **HB 2463**, stated this bill removes that a murder must occur during the commission of a kidnapping and the kidnapping must be committed with the intent to commit at least one of several defined sex offenses.

Representative Mays said he would be willing to delete one of the other six specified offenses that are capital crimes as a trade-off for passing this bill. (Attachment 1)

Attorney General Carla J. Stovall, testified as a proponent to **HB 2463**, stating protection of children in

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE FEDERAL AND STATE AFFAIRS, Room 519-S
Statehouse, at 1:30 p.m. on February 10, 1998.

Kansas is important. A Child shouldn't have to be kidnapped for a sexual act for it to be reprehensible enough to qualify for the death penalty. (Attachment 2)

Pastor Robert R. Keller, an opponent to HB 2463, testified that his 12 year-old daughter was murdered in 1991. Reverend Keller stated the execution of the killer would not help the victim's family to heal. The only way to make the healing begin is to give up the idea of making the killer suffer. Reverend Keller stated he was not sure how long is long enough. He would favor a hard 50, a hard 60, or even a 1,000 year sentence in prison for the murder of a child. There should never be hope for release, except for one reason, that would be if sometime in the future, evidence came to light showing innocence. Other than that, give a child killer life...life in prison. (Attachment 3)

Donna Schneweis, C.S.I., Kansas Death Penalty Abolition Coordinator, Amnesty International, U.S.A., testified as an opponent to HB 2463, stating Amnesty shares their concern for the safety of the children of Kansas. Ms. Schneweis stated it was horrible for the state to follow the senseless, tragic death of a young child with more death. To make the parents of another person suffer the death of their child, for no matter the age the perpetrator they do remain the child of parents somewhere. Once a child is dead it is too late and believe the answer would be in talking about preventing murder. (Attachment 4)

Ronald E. Wurtz, Chief Attorney, Kansas Death Penalty Defense Unit, testified regarding the costs of defending capital cases. The costs involve investigation, prosecution, defense and court. The source of funds for the case is a mix of state and local. The judge and staff are paid by the state, but their resources such as office space, etc., are funded by the county. The indigent accused's defense is also funded by the state. The remainder of the cases costs must be taken from local coffers. There are 29 death penalty cases pending since the law has been passed. The annual budget for the Death Penalty Defense Unit is \$1.2M and this amount has never been spent. (Attachment 5)

Representative Gilbert moved and Representative Crow seconded the approval of the minutes of February 3, 4, and 5. The motion carried.

The meeting adjourned at 2:50 p.m

The next meeting is scheduled for February 11, 1998.

FEDERAL & STATE AFFAIRS COMMITTEE

DATE: February 10, 1998

NAME	REPRESENTING
Donna Scheweis CST	Amnesty International
Marcy Kinding	SWU of Kansas
Alma Weber	Fr. Herbert Lehting
	MVFR
Bob Keller	Self
Hana Snowball	Self
Ken Snowball	Self
Sister Therese Bargent	Ks. Coalition Against the DP
Cleta Renyer	Right to Life of Ks.
Kelly Kuetala	City of Overland Park
Ronald E. Wray	BIDS / Death Penalty / Defense Unit
Glynn Gruber	Governors Office
Jane Crawford	University of Washburn - SW
Andrea Sattler	University of Washburn SW
Scott Hanno	Riley and Kents United Methodist Churches
Lowell Windland	Ks. Interfaith Impact
Sally Sakruthold	KS Interfaith Impact
John Gardner	" " "
Sam Wuysskens	Inter-Faith Ministries - Wichita
Bill Reese	Project Freedom Family & Youth Coal.
Harold Plimvot	KS Interfaith Impact
Debra Jean Stearns	Liaison of Women Voters - KS
David Weber	Attorney General
Carole Thom	Attorney General
Wayne Finley	Ks Interfaith Impact
William Weber	" " "
Ann Duckes	DOB



TOPEKA

HOUSE OF
REPRESENTATIVES

ASSISTANT MAJORITY LEADER

House Bill 2463**Testimony of Representative Doug Mays**

Alas! regardless of their doom,
The little victims play!
No sense have they of ills to come
Nor care beyond today.

--Thomas Grey

House Bill 2992 deals with the definition of capital murder in Kansas, specifically with the intentional and premeditated killing of a child. Our present capital murder statute, KSA 21-3439, provides seven sets of circumstances, all requiring intent and premeditation, in which a murder becomes a capital crime, including:

- Murder during a kidnapping for ransom
- Contract murder
- Murder by an inmate or prisoner
- Murder of a law enforcement officer
- Murder in the commission of rape or criminal sodomy
- Murder of more than one person at a time

With regard to the killing of children, the existing statute is Byzantine. In order to qualify for capital status, in addition to being intentional and premeditated, the murder must:

- 1) Occur during the commission of a kidnapping, and
- 2) The kidnapping must be committed with the intent to commit at least one of several defined sex offenses.

Under the existing statute, the aggravating circumstances under which, for example, the killing of a two year old could qualify as a capital crime, would be virtually impossible to prove.

HB2463 removes these conditions, and recognizes that the intentional and premeditated murder of a child, any child regardless of circumstances, is a heinous act that should be a classified as a capital crime. This bill proposes to accord the same level of importance to our children as inmates, police officers, and the victims of contract murder.

COMMITTEE ASSIGNMENT
VICE CHAIRMAN - SHAWNEE COUNTY DELEGATION
MEMBER - TAXATION
FEDERAL & STATE AFFAIRS
JUDICIARY
LEGISLATIVE POST AUDIT
RULES AND JOURNAL

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Fed & State
2-10-98
Atch #1



State of Kansas

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STATEMENT OF
ATTORNEY GENERAL ATTORNEY GENERAL CARLA J. STOVALL
BEFORE THE HOUSE FEDERAL & STATE AFFAIRS COMMITTEE
RE: HOUSE BILL 2463
FEBRUARY 10, 1998

Mr. Chairperson and Members of the Committee:

I appear before you today to ask for your support of House Bill 2463. This bill recognizes the heightened protection society should afford children under the age of 14 allowing the death penalty to be an eligible sentence for someone who intentionally murders a child under 14. Currently, to be eligible for murdering a child the killer must have first kidnaped the child for the purpose of committing a sex crime.

As the law currently stands, seven acts qualify for consideration of charges of capital murder. They are the intentional and premeditated killing of: 1) any person in the commission of kidnaping; 2) any person pursuant to a contract or agreement; 3) any person by an inmate or prisoner; 4) the victim of a rape or sodomy; 5) a law enforcement officer; 6) more than one person; and 7) a child under the age of 14 in the commission of a kidnaping with the intent to commit a sex offense.

The seventh qualifier, as currently worded, provides no additional protection to children under the age of 14. The intentional and premeditated killing of any person during the commission of any kidnaping is eligible for consideration of a charge of capital murder under subsection 1. In subsection 7, the statute tacitly acknowledges the heightened protection society should afford such children, but actually sets a higher threshold of abuse before their murderers can be held accountable. Not only must the child be killed during a kidnaping (as prescribed in subsection 1), but the kidnaping must have been for the purpose of committing a sex offense against the child.

The legislature has recognized that a child under the age of 14 should receive heightened protection by the State and criminals whose chosen victims are young should be more severely punished. *See, for example*, K.S.A. 21-3106 (time limitations expanded for child victims); 21-3502 (rape); 21-3504 (aggravated indecent liberties); 21-3506 (aggravated criminal sodomy); and 21-3511 (aggravated indecent solicitation). The same should apply to that rarified class of cold-blooded, premeditated killers who intentionally kill a young child.

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The proposed change in the statute would allow juries to hold accountable those individuals who intentionally and with premeditation choose to kill a child; who premeditate before killing a child. The proposed legislation will reaffirm Kansas' commitment to the protection of children and provide prosecutors with the option of filing capital murder charges against society's most callous and despicable killers.

I would urge your favorable consideration of House Bill 2463.

Testimony in Opposition to House Bill 2463

Pastor Robert R. Keller
Father of Child Murder Victim
13442 SW 57th Street
Topeka, Kansas 66610

February 10, 1998

DOES THE DEATH PENALTY HELP HEAL VICTIM'S FAMILIES?

In order for you to know where I am going with this today, I think it would be helpful to know who I am and where I am coming from. First, I am a father. I have two sons, one who is 21 and in college, the other who is 16 and in high school. I also have a daughter. She is now living on the other side. That's how I like best to describe her current situation. Living on the other side. My daughter's name is Brenda. At the time of her death she was a cute 12 year old girl on the way to becoming a gorgeous red-headed young woman. Her body is buried in the cemetery located just outside of a little village called Dover, Kansas. And that cemetery is just about a quarter of a mile from where she was murdered in October, on a Saturday afternoon in 1991.

It's been a little over 6 years since that horrible day when I lost my daughter. And since that occasion I have had plenty of time to ponder the death penalty issue. For several years now I have spoken against the death penalty.

Some think I am soft on crime, naive and too idealistic. I've been told that it's a hard world out there and for every mushy guy like me there needs to be someone who is tough & practical. A guy who isn't afraid to push the buttons and pull the trigger. Someone who will do the dirty work face up to the bad guys. But the more I look at this thing, the more I see that the death penalty debate is not a matter of conservative vs. liberal. It is not Republican vs. Democrat. Nor is it necessarily a matter of spiritual vs. unspiritual.

What it is is a deeply sensitive issue. It touches our lives in profound ways. I have for the past five years been involved in a group called Parents of Murdered Children. It's a support group for families and friends of murder victims. As a group we cannot endorse these issues one way or the other. So I'm not speaking for them today. But one of the things I noticed as we sat together and as talked, and sometimes cried. Sometimes we expressed our anger, our rage. Our frustrations, our fears. Whatever our position on the death penalty, as survivors who have lost loved ones to murder, we have a bond. We are brought together in our suffering, and in our grief. So as I offer my thoughts today, I do so with the utmost respect for those who disagree.

Having said that, **I'd like you all to consider the role the death penalty plays in the healing process.** Often people will argue for the death penalty by saying, "Think of the family of the victim. Let's give them closure. Let's give them the satisfaction of knowing that the one who killed their loved one has paid the ultimate penalty." **Does the death penalty help the victim's family and friends heal?**

Any time death visits a family, that family will face difficulties. When murder takes a family member, it multiplies the difficulties. I'm not trying to measure or compare people's grief. I just saying, there are so many complications that come with murder.

There's rarely if ever time to say good-by. There's the violence of it all. Your loved one's body is often mutilated. And there's the horror of thinking of those last violent moments. There's the media. There's the police. There's the system of justice. We could go on and on. If the killer is caught, it appears that he or she gets all the protection of the state. Defense attorneys are available, for free, if necessary. And sometimes an effort is made put the blame on the victim. Horrible things can be said in a courtroom. Things that will never be forgotten. And this can drag on for months. For years for some people.

In our situation. The young man who killed our daughter was charged with rape, sodomy, kidnapping and murder. There was a plea bargain. He pled guilty to all four charges and received what in essence is a hard 40. If he'd taken it to court and lost...he could have received the hard 40

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for the murder, and much more. As it is he will be eligible for parole in the year 2031. At the time there was no death penalty in Kansas. But if the laws were the same then as now, it is very possible that this man could be on death row. Because of the plea, our time in court was very limited. There was no trial. There was no day after day grind. And yet just those few days with TV cameras, with statements made by the defense attorney, with sitting face to face with the accused, and listening to a video-taped confession as the accused described in detail what he did. I tell you it was hell. It was the hardest thing I have ever done.

We became acquainted with a family who's 9 year old daughter was murdered. This was a family from Alaska. Somehow they heard of our loss and wrote to us. They lost their daughter a month before we did. And it took a year before they even came to trial. There was no plea bargain. The mother and father sat through the whole thing. All the gruesome details. Pictures. Everything. The mother went insane. She attempted suicide a number of times.

Their daughter's killer was not on trial for his life. But suppose there had been a "death penalty" involved. Add to their trauma the fact that the execution will not take place for who knows how many years. Add to it the fact that those years will be constantly peppered with news of appeals, and media attention. Add to it the final frenzy that occurs in the weeks leading up to the execution, and even if the surviving family members are in favor of the death penalty, consider the cost to them.

On the surface it might seem that it would be "comforting" to these family members to know that the one who took their loved one's life will pay the ultimate penalty. But at what cost? To string out what is already difficult. To add years to it. **I just don't see how healing for the family can occur.**

People have asked me. "How can you be satisfied with just 40 years in prison? How can you put a price in terms of years for a murder?" I wonder, "How long is long enough? How much suffering is enough? Will he suffer deeply enough? How much suffering is enough to pay for the crime? How many times will he have to die to make up for all the suffering he has caused? I confess to you, I have thought of some very creative ways to make Brenda's killer suffer (Never acted upon I assure you.). But ultimately, I face the hard reality that his crime is so heinous, so depraved, there is no way he can pay for what he has done to Brenda, to my wife, to me, to my sons, to the grandparents, to her friends, to our community. I am convinced that the only way for healing to begin, is for me to give up the urge to make him suffer, and to begin taking steps toward forgiveness. To choose little by little, through the pain, and the hurt, the grief, to release the bitterness, and release the rage, and to put the killer into the hands of God. I'm not saying this is easy. Nor am I saying that I have this "forgiveness" business all wired. But I am convinced that it is essential to healing.

Now as lawmakers you have a tremendous responsibility. To protect our children, by making laws that say, "Don't harm our children. Don't hurt our little boys and girls." You want laws that have teeth and bring terrible consequences on those who would harm our precious children. So do I. **I would favor a hard 50, a hard 60, I would favor a 1,000 year sentence in prison for the murder of a child. I don't think there should ever be hope for release, except for one reason, that would be if sometime in the future, evidence came to light showing innocence. Other than that, give a child killer life...life in prison.**



AMNESTY
INTERNATIONAL
USA

Donna Schneeweis CSJ, Kansas Death Penalty Abolition Coordinator
827 SW Tyler, #21, Topeka, KS 66612 (913) 234-3061

February 10, 1998

**Testimony on HB 2463
Federal and State Affairs Committee**

Representative Boston and members of the Committee, I appear today on behalf of Amnesty International USA to speak in opposition to this bill. Amnesty as you know is a worldwide, politically non-partisan, human rights movement that is based on the Universal Declaration of Human Rights.

First, I wish to address the common ground between Amnesty and Rep. Mays and the other sponsors. Amnesty shares their concern for the safety of the children of Kansas. We too want all Kansas children to be safe so they can live productive lives. We too want a state with a decreased crime rate.

In years past, Rep. Mays has advocated for this type of bill asking why we should make one child's death capital and another not. I stand before you today to plead that no child's death be left with a legacy of more death! What a horrible thing for the state to follow the senseless, tragic death of a young child with more death! To make the parents of another person suffer the death of their child, for no matter the age of the perpetrator they do remain the child of parents somewhere!

We do the parents of child murder victims no favor when we drag them through the capital process. No number of deaths of the perpetrator will bring their loved child back. Old wounds are dug up time and again. In fact, we demean the dead child when we say that their death is somehow 'paid for' by the execution of the offender. Better that their legacy be one in which society refused to respond with more killing!

Secondly, from a public safety perspective, we believe the focus of this legislation is in the wrong place. Once a child is dead it is too late! We should be talking about how to PREVENT murder! We have enough experience to know the common factors that appear in the lives of persons who kill. The *Topeka Capital Journal* in an editorial of January 31, 1998, called for 'slowing the flow' of persons into the criminal justice system. They correctly recognized that factors such as parenting and education play a vital role in forming young people into law abiding adults. They called for a juvenile justice system that truly rehabilitates after the first offense. So, why are we spending so much time with this bill talking about executions, when there is such need for efforts on prevention? Take a cue from healthcare, prevention is much better for all of us, than trying to fix the damage that has already taken place!

Amnesty International is an independent worldwide movement working impartially for the release of all prisoners of conscience, fair and prompt trials for political prisoners, and an end to torture and executions. It is funded by donations from its members and supporters throughout the world.

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Finally, Representative Boston, we urge that this bill be rejected in committee because of the world's growing recognition that the death penalty is wrong. We were not surprised when people all over the world were discomfited by Karla Faye Tucker's death in Texas. Ms. Tucker, while having admitted to committing horrible murders, confronted us with the reality that she remained a human being who we were making a deliberate choice to kill. Columnist Kathleen Parker put it this way:

"I don't want to know people who pickax other people to death. But she came into my house, told me her story, and then lay down (smiling, they said) while I killed her. I didn't personally inject her with poison, but I participated all the same. If it's a horror to kill someone, it is also horrible to watch someone being killed. Now Karla Faye and I have something in common, except that when Tucker killed, she was a young, drug-crazed, street prostitute. I'm a married, middle-aged mother cooking noodles in my kitchen. She killed in a moment of personal havoc, while I killed vicariously, calmly and methodically, right there in the midst of my ordinary life. That's what bothers me."

We echo the words of Kansas City Archbishop James Keleher who has just written in religious language a corollary to the human rights belief in the fundamental human dignity of the person regardless of their moral rectitude:

"Let us recommit ourselves to our cherished belief that every individual is created in the image and likeness of God, and therefore sacred, and to our efforts to abolish the practice of capital punishment." (emphases mine)

Please, heed the call. Focus your efforts instead on the issue of prevention--one dead child is too many! State resources should not be used to expand the death penalty, even for the murders of children! More death is not a suitable legacy in the tragic death of a little child!

attachments:

Topeka Capital Journal editorial of January 31

Kathleen Parker column of February 8

Letter of Archbishop Keleher published February 6



THE TOPEKA
CAPITAL-JOURNAL

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EDITORIALS

PRISONS AND JAILS

Slowing the flow

When you've got a high-powered hose flying out of control, it makes sense to try to grab it. It makes even more sense to shut off the water.

This country's prison and jail populations have been whipping out of control in recent decades. The nation's prison and jail population was up 6 percent last fiscal year — mostly because of a 9.4 percent jump in local jail numbers.

Trends indicate states are increasingly handing off inmates to counties. Indeed, the Shawnee County Jail is being expanded even now. And the Sedgwick County Jail in Wichita often is at twice its official capacity. Meanwhile, inmates are shuttled back and forth among counties, increasing costs and heightening risk.

Daily, law enforcers and corrections officials are grasping for the nozzle. Isn't it time we turned down the water? To do that, we've got to turn two valves at once:

■ We've got to slow the flow of abused and neglected kids into the criminal justice system. That means more education and more and better

■ **Years after the flow of souls to prison went out of control, we're searching for the shutoff valve.**

parenting in the first few years of life. Kids who are loved, cared for and shown the way rarely turn bad.

■ We've got to fashion a juvenile justice system that's effective in rehabilitating kids after the first offense.

Some encouraging signs: The state is starting to pay more attention to the needs of kids — through such things as privatizing foster care and beefing up intervention programs such as Parents as Teachers.

And spurred by juvenile justice reform laws, communities around the state are devising their own plans for dealing with juvenile offenders. Shawnee County has hired a consultant to help create its plan.

For an increasing number of lost souls in incarceration, such desperately needed common sense and local planning comes years too late.

But at least it's coming.

Execution makes us feel like murderers

So here I am, standing in my kitchen, stirring wide egg noodles, watching CNN. It's 7:14 p.m. EST Tuesday and I'm waiting to find out whether Karla Faye



**Kathleen
Parker**

**In search
of sense**

Tucker will die for murdering two people with a pickax more than a dozen years ago.

Suddenly, the crowd on television cheers. The Supreme Court won't halt Tucker's execution, a reporter tells me. My 13-year-old son comes in the kitchen to scrounge for food. "What are you watching?" he asks, adding, "Oh, yeah, that woman, what's her name? I'm glad they're going to kill her." He grabs a handful of chips; a pizza deliver

ery man weaves his way through the TV crowd.

Earlier in the day, my sister said she wasn't turning on the television. She didn't want to hear about it. Good for her. I can't turn mine off. I'm both mesmerized and repulsed by the drama and the spectacle, by the juxtaposition of my ordinary life progressing along its usual patterns while a woman somewhere else is being prepared for death. Right this minute, in real time.

I'm also surprised by my feelings. Why do I care if Karla Faye Tucker dies? She hacked two people to death with a pickax, for heaven's sake. Do we need monsters like that in our world? If anyone deserves to die for her crime, doesn't she?

For weeks, I've listened to the discussions, heard the gender debates. We wouldn't be interested in this murderer were she named "Karl," they say. I agree. If Tucker were a man — even one as attractive, articulate and telegenic as the born-again Tucker — we wouldn't give him a second glance. A man guilty of the same crime wouldn't evoke the same sympathies, no matter what the degree of his religious conversion. So why is this bothering me?

My husband comes into the kitchen, just home from work. One of our four dogs sneaks through the door, wet and looking like a sewer rat. Scramble for the dog, back outside, check the noodles. The reporter describes how Karla Faye Tucker will die.

"She'll be unconscious within seconds, he says, then dead within two minutes. "So what's for dinner?" my husband asks. Texas Governor George W. Bush appears on the screen, looking tired and pinched. He won't give Tucker the 30 days discretionary clemency. He was elected to enforce the law, he says, and this is the law. Tucker will die as scheduled.

Already, she's 20 minutes late for her appointment. It's 7:30 by the time witnesses file into the building housing the death chamber. What's going on inside? We'll tell you in just a minute, says the anchor, but first this word from our sponsors. Who sponsors death these days? I can't remember.

Twenty more minutes pass before the witnesses leave the building. It's 7:50 p.m. Several witnesses approach the lectern and a mound of microphones. One recounts Tucker's final words. She asked forgiveness and ended with "I love you all." Then she coughed twice, gave a soft groan, went silent.

That's a wrap. And now for the latest development in the alleged affair between former White House intern Monica Lewinsky and President Clinton. ...

Several days later, Tucker's still dead and I'm still bothered. Not because I ever felt sorry for Tucker. I didn't. I was unmoved by the light in her eyes, her Christian love songs, her born-again dance routines that aired over and over during the days preceding her execution. Frankly, she gave me the creeps.

What bothers me is that Karla Faye Tucker came uninvited into my life. I don't want to know people who pickax other people to death. But she came into my house, told me her story, and then lay down (smiling, they said) while I killed her. I didn't personally inject her with poison, but I participated all the same. If it's a horror to kill someone, it is also horrible to watch someone being killed.

Now Karla Faye and I have something in common, except that when Tucker killed, she was a young, drug-crazed, street prostitute. I'm a married, middle-aged mother cooking noodles in my kitchen. She killed in a moment of personal havoc, while I killed vicariously, calmly and methodically, right there in the midst of my ordinary life. That's what bothers me.

Tribune Media Services

Tepeka CJ 2/8/98

Eradicate capital punishment

Dear friends,

On this sad occasion of the recent execution of Karla Faye Tucker in Texas Feb. 4, I want to join Pope John Paul II in lamenting the decision to exercise the death penalty in this case. But



**Archbishop
Keleher**

more importantly, I want to take this opportunity to ask you to join me and our Holy Father in the efforts of the Catholic Church and others to eradicate capital punishment in the United States and throughout the world.

Let us recommit ourselves to our cherished belief that every individual is created in the image and likeness of God, and therefore sacred, and to our efforts to abolish the practice of capital punishment.

Your brother in Christ,

+ James P. Keleher

+JAMES P. KELEHER
*Archbishop of Kansas City
in Kansas*

The Leaven 2/6/98

The Cost of HB 2463

Testimony before the House Federal and State Affairs Committee

February 10, 1998

by

Ronald E. Wurtz

Chief Attorney

Kansas Death Penalty Defense Unit

112 SW 6th Street, Suite 302

Topeka, KS 66603

(785) 296-6555

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The costs of trial of any criminal case involve _____ components: Investigation, Prosecution, Defense and Court. The source of funds for the case is a mix of state and local. The judge and staff are paid by the state, but their resources such as office space, etc., are funded by the county. The indigent accused's defense is also funded by the state. The remainder of the case costs must be taken from local coffers.

The two capital cases tried to date provide examples of the defense costs of a single capital case. The defense costs alone, not including attorney and Death Penalty Defense Unit support staff time, to date is \$307,446 (Kleypas) and \$75,015 (Marsh). The difference in defense costs between the two cases is the criticality of expert testimony in the Kleypas case. Two defense attorneys are assigned to each case along with a mitigation expert, an investigator and a legal assistant. In Marsh, which involved a two-month trial. The lead attorney has put in over 1,200 actual hours to date, so with co-counsel's hours, attorney hours will easily top 2,000 before the appeal is begun.

The Board of Indigent Defense Services (BIDS) has established a Death Penalty Defense Unit in an attempt to provide counsel qualified to handle complex death penalty cases. As the BIDS fiscal note to this bill indicates, the hourly attorney cost is \$74 per hour. This includes overhead of offices, staffing, supplies, travel, etc. Thus attorney costs will approach \$148,000 in each tried case bringing defense trial costs to \$223,000 in the Marsh case. While exact attorney time is not available in the Kleypas case, we are confident that significantly more hours have been spent by attorneys assigned to that case.

To trial defense costs one must add costs of prosecution and court expenses which are borne primarily by the county. Prosecutor time is the first cost. In nearly every case, two full-time prosecutors have been assigned to each capital prosecution. The Kleypas trial lasted one month and the Marsh trial (partly because it spanned the Thanksgiving and Christmas holidays) lasted two months. Thus the entire time of two prosecutors is taken. Add the rest of the prosecution team, including the case detective's or agent's full attention during trial, and costs are obvious, if not quantifiable by this speaker. Then come jury costs, with 500 jurors summoned in each case, paid mileage and \$10.00 per day of attendance. In the Kleypas case, the expense of housing prosecutors and court personnel due to venue change added significantly to the county's expense.

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Following trial there is the appellate process, which is estimated to range between \$151,900 to half a million. It is notable that between 1976 and 1983 Federal Appellate Courts ruled in favor of the condemned inmate in 73.2% of the capital habeas appeals heard compared with only 6.5% of the decisions in non-capital cases.¹ As the premier North Carolina cost study² points out, the \$163,000 trial cost leads to \$2,160,000 per execution when the cost of those overturned or unsuccessful attempts at a death sentence is added.

It is always difficult to determine how many of these cases will be charged as capital murder, but the Child Death Review Board discloses that there were 25 child homicides in 1995 (11 under age 7; 12 aged 12-17). Between 7/1/93 and 7/31/97 the Board reports 87 child homicides (22 per year). If we assume half are over age 14, there are 11 potential homicide charges for killing children under age 14. While not all of these will likely support capital murder with its requirement of premeditated and intentional killing, odds are good that at least one of those will be charged as capital murder each year.

Another consideration may be necessary in determining the fiscal impact of this amendment. In this speaker's experience, child homicide cases are less likely to settle short of trial, and jurors, with the sympathy and anger they experience from the killing of a defenseless child, are more likely to convict. Additionally, child homicide trials generally see battles of experts, in psychological defenses and forensic pathology. This, too, drives up costs.

Four of the 11 1995 child homicides involved abuse by a boyfriend of the child's mother. Thus the mother is likely to be charged as an aider and abettor to the crime, thus necessitating additional counsel to represent the co-defendant.

Assuming only one case is charged each year, the cost of a trial will easily reach \$200,000 per year.³ As convictions occur, appeal and post-conviction actions will add to the cost per year as time passes. This amendment will clearly be expensive. Precision is not possible, but no study presently on record establishes otherwise where capital litigation is involved. The most recent study, by the Judiciary Committee of the Nebraska Legislature, concluded:

Adjudication of capital cases incurs additional costs that are significantly greater than the savings in incarceration costs realized from execution as opposed to life imprisonment. Accordingly, having the death penalty available as a sentencing option is more expensive to taxpayers than not having such available.

It follows that this amendment will be more expensive to Kansas taxpayers.

¹Mello, *Facing Death Alone: The Post-Conviction Attorney Crisis on Death Row*, 37 Am. U.L. Rev. 513, 521 (1988).

²P.J. Cook & D.B. Slawson, *The Costs of Processing Murder Cases in North Carolina* (1993)

³ BIDS Fiscal Note estimates \$173,000.