

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on Wednesday, January 21, 2004, in Room 123-S of the Capitol.

All members were present except:  
Senator Edward Pugh (E)

Committee staff present:  
Mike Heim, Kansas Legislative Research Department  
Lisa Montgomery, Office of the Revisor Statutes  
Dee Woodson, Committee Secretary

Conferees appearing before the committee: Mike Jennings, Kansas County & District Attorneys' Assn.  
Doug Smith, Kansas Credit Attorney's Assn.  
Senator Derek Schmidt  
March Ralston, Driver Control Bureau Chief, Division of Motor Vehicles  
Randy Hearrell, Kansas Judicial Council  
Jane Rhys, Kansas Council on Developmental Disabilities (written)  
Michael Farmer, Exec. Director, Kansas Catholic Conference  
Tim Emert, former Senator  
Jessica Kunen, Kansas Coalition Against Death Penalty  
Bill Lucero, Kansas Coalition Against Death Penalty  
Donna Schneweis, Kansas Coalition Against Death Penalty  
Richard Ney, Kansas Coalition Against Death Penalty (written)

Others attending:  
See Attached List.

Chairman Vratil called for bill introductions. Senator Janis Lee requested a bill relating to hypnotic exhibition, repealing K.S.A. 21-4007. Senator Goodwin moved to introduce the bill, seconded by Senator Donovan, and the motion carried.

Senator Donovan offered a conceptual bill requested by U.S. Test Laboratory in Wichita that tests bullet proof vests that would allow the company to have a certain type weapon for use in testing purposes, but which are outlawed in Kansas. Senator Goodwin moved to introduce the conceptual bill, seconded by Senator O'Connor, and the motion carried.

Senator Schmidt requested introduction of a bill sponsored by Sen. Vratil and himself regarding amending the Code of Civil Procedure relating to appellate jurisdiction of the supreme court. Senator Schmidt moved that this bill be introduced, seconded by Senator Umbarger, and the motion carried.

Mike Jennings, representing the Kansas County and District Attorneys' Association, requested the Committee to introduce two bills. The first bill requests amendment of K.S.A. 22-3716(b). The Kansas County and District Attorney's Association wants the Court to be required to leave the sentence as it was originally imposed. This change would be accomplished by deleting the words "or any lesser sentence" from the subsection. The second bill would correct K.S.A. 21-4711(c)(2). This statute currently provides that prior DUI convictions will count as person felonies for criminal history purposes only if the crime of conviction is for involuntary manslaughter where the underlying DUI was for alcohol and drugs. The Kansas County and District Attorneys Association asked for the "and" to be deleted, and the phrase "and/or" be added. (Attachment 1) Senator Schmidt moved to introduce the two bills, seconded by Senator Umbarger, and the motion carried.

Doug Smith, representing the Kansas Credit Attorneys' Association, requested introduction of legislation amending K.S.A. 60-2310, which relates to wage garnishment. The Association requested an amendment

## CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:30 a.m. on Wednesday, January 21, 2004, in Room 123-S of the Capitol.

would remove language that prohibits the use of wage garnishment as a method of collection on assigned accounts. (Attachment 2) Senator Schmidt moved to introduce the bill, seconded by Senator Donovan, and the motion carried.

### **SB 291 - Motor vehicles; limitation on definition on moving violation**

Chairman Vratil opened the hearings on **SB 291**. Marcy Ralston, Kansas Division of Motor Vehicles, submitted written testimony for Carmen Alldritt, Director of Motor Vehicles, in support of **SB 291**. The Chairman pointed out that the bill was introduced by the Joint Committee on Administrative Rules and Regulations. (Attachment 3)

Director Alldritt's explained that this bill would make clear what is or is not a moving violation for the purpose of imposing sanctions against driving privileges for repeat offenders of moving violations. She noted that this bill does not contain the recently proposed amendments to K.A.R. 92-52-9, which contains additional violations to be considered as "moving violations". Failure to consider all traffic violations, when determining whether they are to be considered a "moving violation", could lead to certain drivers facing suspension while other drivers would not, for violation of similar infractions. Ms. Alldritt's testimony respectfully suggested the following additional statutes be listed: K.S.A. 8-244; 8-291; 8-1503; 8-1533; 8-1542; 8-1547; 8-1573; 8-1578; 8-1595; 8-1759; 8-1910; and 21-3442, She stated if these additional statutes are listed, the amendment to K.S.A. 8-249 would reflect the current administrative regulation, 92-52-9, which was made effective January 23, 2004.

Chairman Vratil advised Ms. Ralston if the Division of Motor Vehicles has any proposed amendments they wished the Committee to consider regarding this bill, the proposed amendments should be presented to the Committee in a balloon form. If the amendments are not presented by the Division then the Committee will probably not consider them.

There being no other conferees, Chairman Vratil closed the hearing on **SB 291**.

### **SB 297 - Permanent docket fee to fund the Judicial Council**

Chairman Vratil opened the hearing on **SB 297**. Randy Hearrell testified that the Judicial Council supports the recommendation of the Special Committee on the Judiciary that docket fee funding for the Judicial Council be made permanent. Mr. Hearrell stated that in order to keep the funding for the Council and other recipients of docket fees under the statute at current levels, K.S.A. 2003 Supp 28-172a, 59-172a, 59-104, 60-1621 and 60-2001 will need to be amended to remove the phase out of the docket fee increase in those sections. He attached proposed amendments to his written testimony for the Committee's consideration. (Attachment 4)

Jane Rhys, Executive Director, Kansas Council on Developmental Disabilities, submitted written testimony in support of **SB 297**. (Attachment 5)

Having no other conferees, the Chairman closed the hearing on **SB 297**.

### **SB 158 - Moratorium on imposition of death penalty**

Chairman Vratil opened the hearings on **SB 158**. Mike Farmer, Kansas Catholic Conference, spoke in support of the proposed legislation. He stated over the last three decades the National Conference of Catholic Bishops has issued many statements against the death penalty. He told the Committee that Pope John Paul II, while visiting St. Louis in 1999, called capital punishment "cruel and unnecessary" to keep society safe. Mr. Farmer said that a multitude of statistics gives further reason why the death penalty is not a good thing. (Attachment 6)

Former Senator Tim Emert testified in support of **SB 158**. He stated he served in the Senate for eight years and the issue of the death penalty was by far the most difficult issue that he voted on during his tenure. He encouraged passage of this proposed legislation.

Jessica Kunen, Kansas Coalition Against the Death Penalty, testified in support of **SB 158**. She stated the Kansas death penalty statute has significant problems that may take years to resolve in federal court, and a

## CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:30 a.m. on Wednesday, January 21, 2004, in Room 123-S of the Capitol.

moratorium will allow these problems to be resolved before others are sentenced to death under its provisions. She pointed out three problem areas in the state statutes as outlined in her written testimony. (Attachment 7)

Bill Lucero, Kansas Coordinator of Murder Victims' Families for Reconciliation, spoke in favor of **SB 158**. He explained that his organization is part of a web of 5,000 members across the country made up of survivors of family members who were murdered. He stated that healing occurs only when one can address the issue through the loving assistance of friends, family, the community at large and other supportive parties such as ministry or therapy. The death penalty is not the answer to reaching a point of closure. He asked the Committee to keep in mind the plight of future families that can be spared from the turmoil that this death penalty invariably implies. He concluded by stating that any Kansas study must include provision to make sure that all Kansas victim (Attachment 8)

Donna Schneweis, Amnesty International, testified in support of **SB 158**. She talked about the geographic disparity that has arisen as a real concern in regard to the case dispositions in the two counties with the most capital filings, i.e. Sedgwick and Wyandotte, and the need for a study on same. In regards to racial disparity, Ms. Schneweis urged the Committee to read the written testimony submitted by Richard Ney, a capital crimes litigator who could not be in attendance at this meeting. She stated that after reviewing several Kansas cases, he concluded that Kansas was not immune from the very real question of racial disparity. (Attachment 9)

Written testimony was submitted by Richard Ney, Attorney with Ney, Adams, & Sylvester Law Firm, Wichita, KS, in support of **SB 158**. Mr. Ney pointed out that racial inequity has been a constant companion of the death penalty throughout America. He said history shows us that the death penalty in America has always been skewed in its infliction on the poor and on racial minorities. He concluded by stating that questions of racial disparity are yet another reason to stop and carefully study the death penalty in Kansas before moving forward. (Attachment 10)

General questions and discussion followed regarding the two moratoriums included in the bill, one on carrying out the death sentence during the two year period and the other one on imposing the death sentence during the two year period; racial makeup of individuals on death row; and whether there is disparity in regard to income level of defendants which often leads to this penalty.

Pat Scalia, Board of Indigent Defense, submitted written testimony as a neutral conferee on **SB 158**. Her testimony included death penalty case information and statistics. (Attachment 11)

The Chair adjourned the meeting at 10:30 a.m. The next scheduled meeting is January 22, 2004.

## SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Wednesday, Jan. 21, 2004

NAME	REPRESENTING
David Nanson	KS Insur. Assns
KATHY GUEBARA	KS-CURE
Sam Sellers	Sen. Buhler
Travis Weller	
Deann Williams	KS motor Carriers ASSOC
Chris Clarke	Legislative Post Audit
Cher. Froelich	Budget
Karole Bradford	Inter-Faith Ministries
Mike Farmer	Kansas Catholic Conference
Sister Therese Bangert	KS. CATH. CONF.
Danielle Dempsey Swopes	KS African American Affairs Commission
Dunda Harmon	KSC
Julia Butler	KSC
Brooke Robinson	KBA
Mercedez Braughwell	KCADP
Bill Lucero	MVFR of KS
Diane Albert	KDOR - Vehicles
Jennifer Hermann	KDOR - Vehicles
Mary Buzick	KDOR - Vehicles

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Weds., Jan. 21, 2004

NAME	REPRESENTING
Darlene Jarr Stearns	Coalition Against The Death Penalty
KEVIN GRAHAM	K. A. G.
Michael L. White	KCPAA
Mike Jennings	KCPAA
Emily Jacquet	LKM
<del>Jim Smith</del>	<del>KCADP</del>
Donna Bonnewis esq	Amnesty Internat'l
Jesse Sam	KCADP.
Pedro Trigonogary	SECF
Jaime Cox	Capital Appellate Defender
Rebecca Uberman	Capital Appellate Defender
Pat Scalia	BIDS
Joanna Jenkins	San David Harley
Rodney M. Sparrow	K. G. C. C.

Gerald W. Woolwine, President  
Christine Kenney, Vice-President  
Thomas J. Drees, Secretary/Treasurer  
Steve Kearney, Executive Director  
John M. Settle, Past President



Edmond D. Brancart  
Douglas Witteman  
Thomas Stanton  
David Debenham

## Kansas County & District Attorneys Association

1200 S.W. 10th Street  
Topeka, KS 66604  
(785) 232-5822 • FAX (785) 234-2433  
www.kcdaa.org

TO: Chairman Vratil and the Members of the Senate Judiciary Committee

SUBJECT: Amendment of K.S.A. 22-3716(b) to remove authority to lower a probation violator's sentence

DATE: January 21, 2004

Thank you for the opportunity to request the Committee to introduce a bill amending K.S.A. 22-3716(b). At present, K.S.A. 22-3716(b) allows the court to reduce a sentence previously imposed when it revokes probation and sends the probationer to prison. The Kansas County and District Attorney's Association is requesting that the Court be required to leave the sentence as it was originally imposed. This change would be accomplished by deleting the words "or any lesser sentence" from the subsection.

The Association believes that the ability to modify a sentence once imposed is incompatible with the Sentencing Guidelines philosophy of truth in sentencing and is a departure from the presumptive scheme of the Guidelines.

Senate Judiciary

1-21-04  
Attachment 1

## EXAMPLE OF MCGILL'S EFFECT

On 10-5-01, John A. Thoman IV was sentenced to 34 months for Sale of Marijuana in Saline County District Court case number 01CRM1037. Although the defendant was in a presumptive prison category, the judge granted the defendant a dispositional departure and placed him on probation.

On 2-12-02, a probation violation hearing was held. The defendant had tested positive marijuana. The defendant had failed to report. The defendant had failed to submit to urinalysis testing. The defendant violated his curfew. The defendant failed to attend substance abuse treatment. The judge continued the defendant on probation and ordered him to complete an inpatient treatment program.

On 8-19-02, the defendant was sentenced to 18 months for Making a False Writing in Saline County District Court case number 02CRM711. Because this crime was committed while the defendant was on probation, the defendant was not entitled to a presumption of probation. Nevertheless, the judge placed the defendant on probation for 18 months. This case was mandated to run consecutive to the defendant's sentence in 01CRM1037. A probation violation hearing was held in 01CRM1037 due to the defendant's new conviction. The judge continued the defendant on probation.

On 4-14-03, a third probation violation hearing was held. The defendant had tested positive for marijuana. He had been kicked out of the Salina Rescue Mission. He had cut off his electronic monitoring bracelet. He had violated his curfew. He had failed to submit to urinalysis testing. The defendant had been denied admission to Labette. The judge extended the defendant's probation for 24 months.

On 6-23-03, a fourth probation violation hearing was held. The defendant had tested positive for marijuana on four occasions. The defendant had failed to show up for his substance abuse evaluation. The defendant had been kicked out of Job Club. The defendant had violated his curfew. The judge revoked the defendant's probation. Although the defendant was subject to a 52 month sentence, the judge reduced the defendant's sentence to 18 months pursuant to *State v. McGill*, 271 Kan. 150, 22 P.3d 597 (2001).

OFFICERS

Gerald W. Woolwine, President  
Christine Kenney, Vice-President  
Thomas J. Drees, Secretary/Treasurer  
Steve Kearney, Executive Director  
John M. Settle, Past President



*Mike Jennings*  
DIRECTORS

Edmond D. Brancart  
Douglas Witteman  
Thomas Stanton  
David Debenham

## Kansas County & District Attorneys Association

1200 S.W. 10th Street  
Topeka, KS 66604  
(785) 232-5822 • FAX (785) 234-2433  
www.kcdaa.org

TO: Chairman John Vratil and the Members of the Senate Judiciary Committee

SUBJECT: Correction of K.S.A. 21-4711( c)(2) to reflect legislative intent for Involuntary  
Manslaughter based on a DUI

DATE: January 21, 2004

Mr. Chairman, thank you for the opportunity to request the Committee to introduce a bill to correct K.S.A. 21-4711( c)(2). At present, K.S.A. 21-4711( c)(2) provides that prior DUI convictions will count as person felonies for criminal history purposes only if the crime of conviction is for involuntary manslaughter where the underlying DUI was for alcohol and drugs. The Kansas County and District Attorney's Association is requesting that the "and" be deleted and the phrase "and/or" be added.

We believe this correction accurately reflects the legislative intent that any violation of the DUI statute be converted to a person felony when someone with prior DUI's kills another person while committing yet another DUI.



**REQUEST FOR INTRODUCTION OF LEGISLATION**

**SENATE JUDICIARY COMMITTEE**

**JANUARY 21, 2004**

*Chairman Vratil and Members of the Senate Judiciary Committee:*

The Kansas Credit Attorneys Association requests introduction of legislation amending KSA 60-2310. This statute relates to wage garnishment, and we would request an amendment to the statute that deletes subsection (d) and renumbers the remaining sections.

The proposed legislation would remove language that prohibits the use of wage garnishment as a method of collection on assigned accounts. The removal of this subsection would allow individuals or businesses that were not parties to an original action to utilize wage garnishment for the collection of judgements. *(This request would be identical to language contained in Senate Bill No. 136 from the 2001 Legislative Session.)*

We believe that financial and business community in Kansas would support this change. Additionally, this measure would be compatible with the Special Committee on Judiciary's recommendation that a \$5.00 docket fee be added to the filing of a garnishment action. (Senate Bill No. 298.)

Thank you for your consideration of this request for introduction.

Douglas E. Smith  
For Kansas Credit Attorneys Association

Senate Judiciary

1-21-04

Attachment 2



# K A N S A S

JOAN WAGNON, ACTING SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF REVENUE  
DIVISION OF VEHICLES

## TESTIMONY

**TO:** Senator John Vratil, Chairman  
Senate Judiciary Committee Members

**FROM:** Carmen Alldritt, Director of Vehicles

**DATE:** January 21, 2004

**SUBJECT:** Senate Bill 291

Senator Vratil and members of the Senate Judiciary Committee, my name is Carmen Alldritt, and I serve as Director of the Kansas Division of Motor Vehicles. Thank you for the opportunity to provide written testimony today in support of Senate Bill 291.

Senate Bill 291, as introduced, amends K.S.A. 8-249 removing the authority of the Secretary of Revenue to declare rules and regulations defining "moving violations" which are used as a basis for taking action on driving privileges under K.S.A. 8-255. Inserted into K.S.A. 8-249 is new subsection (c) listing the specific convictions that are to be considered "moving violations".

This bill would make clear what is or is not a moving violation for the purpose of imposing sanctions against driving privileges for repeat offenders of moving violations. It is noted that this bill does not contain the recently proposed amendments to K.A.R. 92-52-9, which contains additional violations to be considered as "moving violations". Failure to consider all traffic violations, when determining whether they are to be considered a "moving violation", could lead to certain drivers facing suspension while other drivers would not, for violation of similar infractions. To avoid this scenario we respectfully suggest these additional statutes be listed: K.S.A. 8-244; 8-291; 8-1503; 8-1533; 8-1542; 8-1547; 8-1573; 8-1578; 8-1595; 8-1759; 8-1910 and 21-3442. If these additional statutes are listed the amendment to K.S.A. 8-249 would reflect the current administrative regulation, 92-52-9, which was made effective January 23, 2004.

The effective date of this bill would be July 1, 2004.

The division would appreciate the inclusion of this cleanup measure. We understand, however, that this is a decision for this committee to make. We appreciate your consideration.



## KANSAS JUDICIAL COUNCIL

JUSTICE DONALD L. ALLEGRUCCI, CHAIR, TOPEKA  
JUDGE JERRY G. ELLIOTT, WICHITA  
JUDGE C. FRED LORENTZ, FREDONIA  
JUDGE JEAN F. SHEPHERD, LAWRENCE  
SEN. JOHN VRATIL, LEAWOOD  
REP. MICHAEL R. O'NEAL, HUTCHINSON  
J. NICK BADGEROW, OVERLAND PARK  
GERALD L. GOODELL, TOPEKA  
JOSEPH W. JETER, HAYS  
STEPHEN E. ROBISON, WICHITA

Kansas Judicial Center  
301 S.W. Tenth Street, Suite 262  
Topeka, Kansas 66612-1507

Telephone (785) 296-2498  
Facsimile (785) 296-1035

Judicial.Council@ksjc.state.ks.us  
www.kscourts.org/council

RANDY M. HEARRELL  
EXECUTIVE DIRECTOR  
NANCY J. STROUSE  
RESEARCH ATTORNEY  
JANELLE L. WILLIAMS  
ADMINISTRATIVE ASSISTANT  
MARIAN L. CLINKENBEARD  
ADMINISTRATIVE ASSISTANT

### MEMORANDUM

**TO:** Senate Judiciary Committee

**FROM:** Kansas Judicial Council - Randy M. Hearrell

**DATE:** January 21, 2004

**RE:** Judicial Council Testimony on 2004 SB 297

The Judicial Council supports the recommendation of the Special Committee on the Judiciary that docket fee funding for the Judicial Council be made permanent. Because of the additional flexibility the docket fee funding has provided to the Council, the Council and its advisory committees have held more meetings in the first six months of fiscal year 2004 than were held in all of fiscal year 2003, utilizing the same staff. In FY 2003, the Judicial Council received four assignments from the Legislature and in FY 2004, the Judicial Council received nine such assignments.

At this time last Legislative session Council funding was in doubt and while it was being resolved, two capable staff members accepted other job offers due to the uncertainty of funding of their positions. The passage of SB 297 at this time would remove the possibility of a similar loss of staff next year.

SB 297 makes the docket fee funding for the Judicial Council permanent, but in order to keep the funding for the Council and other recipients of docket fees under the statute at current levels, K.S.A. 2003 Supp 28-172a, 59-104, 60-1621 and 60-2001 will need to be amended to remove the phase out of the docket fee increase in those sections. I have attached proposed amendments making those changes.

admin\cor\_\spon\JC\senate.judiciary.docket.fee.amend

Senate Judiciary

1-21-04

Attachment 4

**28-172a. Docket fee in criminal proceedings; fees and charges in other actions involving violations of state laws.** (a) Except as otherwise provided in this section, whenever the prosecuting witness or defendant is adjudged to pay the costs in a criminal proceeding in any county, a docket fee shall be taxed as follows:

(1) For the period commencing ~~On and after~~ July 1, 2003, ~~and ending June 30, 2005:~~

Murder or manslaughter.....\$164.50  
Other felony..... 147.00  
Misdemeanor..... 112.00  
Forfeited recognizance.....62.50  
Appeals from other courts.....62.50

~~(2) On and after July 1, 2005:~~

~~Murder or manslaughter.....\$164.50  
Other felony..... 146.00  
Misdemeanor..... 111.00  
Forfeited recognizance.....62.50  
Appeals from other courts.....62.50~~

(b) (1) Except as provided in paragraph (2), in actions involving the violation of any of the laws of this state regulating traffic on highways (including those listed in subsection (c) of K.S.A. 8-2118, and amendments thereto), a cigarette or tobacco infraction, any act declared a crime pursuant to the statutes contained in chapter 32 of Kansas Statutes Annotated and amendments thereto or any act declared a crime pursuant to the statutes contained in article 8 of chapter 82a of the Kansas Statutes Annotated, and amendments thereto, whenever the prosecuting witness or defendant is adjudged to pay the costs in the action, a docket fee of \$55 shall be charged ~~during the period commencing July 1, 2003, and ending June 30, 2005, and \$54 shall be charged on or after July 1, 2005.~~ When an action is disposed of under subsections (a) and (b) of K.S.A. 8-2118 or subsection (f) of K.S.A. 79-3393, and amendments thereto, whether by mail or in person, the docket fee to be paid as court costs shall be \$55 ~~during the period commencing July 1, 2003, and ending June 30, 2005, and \$54 on or after July 1, 2005.~~

(2) In actions involving the violation of a moving traffic violation under K.S.A. 8-2118, and amendments thereto, as defined by rules and regulations adopted under K.S.A. 8-249, and amendments thereto, whenever the prosecuting witness or defendant is adjudged to pay the costs in the action, a docket fee of \$55 shall be charged ~~during the period commencing July 1, 2003, and ending June 30, 2005, and \$54 shall be charged on or after July 1, 2005.~~ When an action is disposed of under subsection (a) and (b) of K.S.A. 8-2118, and amendments thereto, whether by mail or in person, the docket fee to be paid as court costs shall be \$55 ~~during the period commencing July 1, 2003, and ending June 30, 2005, and \$54 on or after July 1, 2005.~~

(c) If a conviction is on more than one count, the docket fee shall be the highest one applicable to any one of the counts. The prosecuting witness or defendant, if assessed the costs, shall pay only one fee. Multiple defendants shall each pay one fee.

(d) Statutory charges for law library funds, the law enforcement training center fund, the prosecuting attorneys' training fund, the juvenile detention facilities fund, the judicial branch education fund, the

emergency medical services operating fund and the judiciary technology fund shall be paid from the docket fee; the family violence and child abuse and neglect assistance and prevention fund fee shall be paid from criminal proceedings docket fees. All other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Additional fees shall include, but are not limited to, fees for Kansas bureau of investigation forensic or laboratory analyses, fees for detention facility processing pursuant to K.S.A. 12-16,119, and amendments thereto, fees for the sexual assault evidence collection kit, fees for conducting an examination of a sexual assault victim, fees for service of process outside the state, witness fees, fees for transcripts and depositions, costs from other courts, doctors' fees and examination and evaluation fees. No sheriff in this state shall charge any district court of this state a fee or mileage for serving any paper or process.

(e) In each case charging a violation of the laws relating to parking of motor vehicles on the statehouse grounds or other state-owned or operated property in Shawnee county, Kansas, as specified in K.S.A. 75-4510a, and amendments thereto, or as specified in K.S.A. 75-4508, and amendments thereto, the clerk shall tax a fee of \$2 which shall constitute the entire costs in the case, except that witness fees, mileage and expenses incurred in serving a warrant shall be in addition to the fee. Appearance bond for a parking violation of K.S.A. 75-4508 or 75-4510a, and amendments thereto, shall be \$3, unless a warrant is issued. The judge may order the bond forfeited upon the defendant's failure to appear, and \$2 of any bond so forfeited shall be regarded as court costs.

F:\ADMIN\LEGISLAT\28-172a.wpd

**59-104. Docket fees and court costs.** (a) *Docket fee.* Except as otherwise provided by law, no case shall be filed or docketed in the district court under the provisions of chapter 59 of the Kansas Statutes Annotated or of articles 40 and 52 of chapter 65 of the Kansas Statutes Annotated without payment of an appropriate docket fee as follows:

(1) For the period commencing July 1, 2003, and ending June 30, 2005:

Treatment of mentally ill.....	\$25.50
Treatment of alcoholism or drug abuse.....	25.50
Determination of descent of property.....	40.50
Termination of life estate.....	39.50
Termination of joint tenancy.....	39.50
Refusal to grant letters of administration.....	39.50
Adoption.....	39.50
Filing a will and affidavit under K.S.A. 59-618a.....	39.50
Guardianship.....	60.50
Conservatorship.....	60.50
Trusteeship.....	60.50
Combined guardianship and conservatorship.....	60.50
Certified probate proceedings under K.S.A. 59-213, and amendments thereto.....	14.50
Decrees in probate from another state.....	99.50
Probate of an estate or of a will.....	100.50
Civil commitment under K.S.A. 59-29a01 et seq.....	24.50

~~(2) On and after July 1, 2005:~~

<del>Treatment of mentally ill.....</del>	<del>\$24.50</del>
<del>Treatment of alcoholism or drug abuse.....</del>	<del>24.50</del>
<del>Determination of descent of property.....</del>	<del>39.50</del>
<del>Termination of life estate.....</del>	<del>39.50</del>
<del>Termination of joint tenancy.....</del>	<del>39.50</del>
<del>Refusal to grant letters of administration.....</del>	<del>39.50</del>
<del>Adoption.....</del>	<del>39.50</del>
<del>Filing a will and affidavit under K.S.A. 59-618a.....</del>	<del>39.50</del>
<del>Guardianship.....</del>	<del>59.50</del>
<del>Conservatorship.....</del>	<del>59.50</del>
<del>Trusteeship.....</del>	<del>59.50</del>
<del>Combined guardianship and conservatorship.....</del>	<del>59.50</del>
<del>Certified probate proceedings under K.S.A. 59-213, and amendments thereto.....</del>	<del>14.50</del>
<del>Decrees in probate from another state.....</del>	<del>99.50</del>
<del>Probate of an estate or of a will.....</del>	<del>99.50</del>
<del>Civil commitment under K.S.A. 59-29a01 et seq.....</del>	<del>24.50</del>

(b) *Poverty affidavit in lieu of docket fee and exemptions.* The provisions of subsection (b) of K.S.A. 60-2001 and K.S.A. 60-2005, and amendments thereto, shall apply to probate docket fees prescribed by this section.

(c) *Disposition of docket fee.* Statutory charges for the law library and for the prosecuting attorneys' training fund shall be paid from the docket fee. The remainder of the docket fee shall be paid to the state treasurer in accordance with K.S.A. 20-362, and amendments thereto.

(d) *Additional court costs.* Other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Other fees shall include, but not be limited to, witness fees, appraiser fees, fees for service of process outside the state, fees for depositions, transcripts and publication of legal notice, executor or administrator fees, attorney fees, court costs from other courts and any other fees and expenses required by statute. All additional court costs shall be taxed and billed against the parties or estate as directed by the court. No sheriff in this state shall charge any district court in this state a fee or mileage for serving any paper or process.

F:\ADMIN\LEGISLAT\59-104.wpd

**60-1621. Post-decree motion docket fee.** (a) No post-decree motion petitioning for a change in legal custody, residency, visitation rights or parenting time, or for a modification of child support shall be filed or docketed in the district court without payment of a docket fee in the amount of \$21 ~~during the period commencing July 1, 2003, and ending June 30, 2005, and \$20 on or after July 1, 2005,~~ to the clerk of the district court.

(b) A poverty affidavit may be filed in lieu of a docket fee as established in K.S.A. 60-2001, and amendments thereto.

(c) The docket fee shall be the only costs assessed in each case for services of the clerk of the district court and the sheriff. The docket fee shall be disbursed in accordance with subsection (f) of K.S.A. 20-362, and amendments thereto.

F:\ADMIN\LEGISLAT\60-1621.wpd



**60-2001. Docket fee; additional costs; certain sheriff's charges prohibited.** (a) *Docket fee.* Except as otherwise provided by law, no case shall be filed or docketed in the district court, whether original or appealed, without payment of a docket fee in the amount of \$106 ~~during the period commencing July 1, 2003, and ending June 30, 2005, and \$105 on or after July 1, 2005, to the clerk of the district court.~~

(b) *Poverty affidavit in lieu of docket fee.* (1) *Effect.* In any case where a plaintiff by reason of poverty is unable to pay a docket fee, and an affidavit so stating is filed, no fee will be required. An inmate in the custody of the secretary of corrections may file a poverty affidavit only if the inmate attaches a statement disclosing the average account balance, or the total deposits, whichever is less, in the inmate's trust fund for each month in (A) the six-month period preceding the filing of the action; or (B) the current period of incarceration, whichever is shorter. Such statement shall be certified by the secretary. On receipt of the affidavit and attached statement, the court shall determine the initial fee to be assessed for filing the action and in no event shall the court require an inmate to pay less than \$3. The secretary of corrections is hereby authorized to disburse money from the inmate's account to pay the costs as determined by the court. If the inmate has a zero balance in such inmate's account, the secretary shall debit such account in the amount of \$3 per filing fee as established by the court until money is credited to the account to pay such docket fee. Any initial filing fees assessed pursuant to this subsection shall not prevent the court, pursuant to subsection (d), from taxing that individual for the remainder of the amount required under subsection (a) or this subsection.

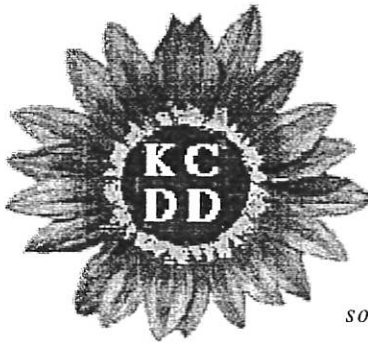
(2) *Form of affidavit.* The affidavit provided for in this subsection shall be in the following form and attached to the petition:

State of Kansas, \_\_\_\_\_ County.

In the district court of the county: I do solemnly swear that the claim set forth in the petition herein is just, and I do further swear that, by reason of my poverty, I am unable to pay a docket fee.

(c) *Disposition of docket fee.* The docket fee shall be the only costs assessed in each case for services of the clerk of the district court and the sheriff. The docket fee shall be disbursed in accordance with K.S.A. 20-362 and amendments thereto.

(d) *Additional court costs.* Other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Other fees shall include, but not be limited to, witness fees, appraiser fees, fees for service of process outside the state, fees for depositions, alternative dispute resolution fees, transcripts and publication, attorney fees, court costs from other courts and any other fees and expenses required by statute. All additional court costs shall be taxed and billed against the parties as directed by the court. No sheriff in this state shall charge any district court in this state a fee or mileage for serving any paper or process.



# ***Kansas Council on Developmental Disabilities***

KATHLEEN SEBELIUS, Governor  
DAVE HEDERSTEDT, Chairperson  
JANE RHYS, Ph. D., Executive Director

Docking State Off. Bldg., Room 141, 915 Harrison  
Topeka, KS 66612-1570  
Phone (785) 296-2608, FAX (785) 296-2861

*"To ensure the opportunity to make choices regarding participation in society and quality of life for individuals with developmental disabilities"*

## **JUDICIARY COMMITTEE**

**January 21, 2004**

**Room 123-S**

Mr. Chairperson, Members of the Committee, my name is Jane Rhys and I represent the Kansas Council on Developmental Disabilities. I am in support of Senate Bill 297, providing a permanent docket fee to fund the Kansas Judicial Council.

The Kansas Council is federally mandated and federally funded under the Developmental Disabilities Assistance and Bill of Rights Act of 2000. We receive no state funds. It is composed of individuals who are appointed by the Governor, including representatives of the major agencies who provide services for individuals with developmental disabilities. At least 60% of the membership is composed of individuals who are persons with developmental disabilities or their immediate relatives. Our mission is to advocate for individuals with developmental disabilities to receive adequate supports to make choices about where they live, work, and learn.

For the past four years, I have served on the Judicial Councils Committee on Guardianship and Conservatorship. This has enabled me to become familiar with the Council and the work they do. This group does intensive study and research on items that have much impact on the citizens of Kansas. Guardianship, the death penalty, and civil procedures are just three examples of which I am familiar. After careful study the Council makes recommendations to you as legislators, recommendations that greatly improve the statutes under which Kansas operates. In order to continue this function, the Council needs to employ qualified staff. The small staff that the Council employs have tremendous responsibilities in seeing that the various committees have all the research, materials, and whatever else is needed to make their recommendations. This bill will provide stability for those staff and assist the Council in maintaining people of the highest quality. Therefore, I urge passage of this bill.

Senate Judiciary

1-21-04

Attachment 5

As always, I greatly appreciate the opportunity to provide you this information and would be happy to answer any questions. My contact information follows.

Jane Rhys, Executive Director  
Kansas Council on Developmental Disabilities  
Docking State Office Building, Room 141  
915 SW Harrison  
Topeka, KS 66612-1570  
785 296-2608  
jrhys@alltel.net



6301 ANTIOCH • MERRIAM, KANSAS 66202 • PHONE/FAX 913-722-6633 • WWW.KSCATHCONF.ORG

### *Testimony in Support of Senate Bill 158*

Chairman Vratil and members of the committee:

Thank you for the opportunity to testify in favor of Senate Bill 158, which places a moratorium on the imposition of the death penalty and creates a commission to study this issue. My name is Mike Farmer and I am the Executive Director of the Kansas Catholic Conference, the public policy office of the Catholic Church in Kansas.

One of the fundamental beliefs in the Catholic Church is that human life is a gift from God, sacred and inviolable. Because we believe every human person is created in the image and likeness of God, we have a duty to defend human life from conception until natural death and in every condition. This belief is weaved into our tradition and into our Catholic social teaching.

Over the last three decades, the National Conference of Catholic Bishops has issued many statements against the death penalty. Bishop Joseph Fiorenza of Galveston-Houston, and former president of the U.S. Conference of Bishops, on the occasion of Timothy McVeigh's execution said:

“In an age when respect for life is threatened in so many ways, we seek to stand for life in all instances. This consistent ethic of life compels us to defend lives even of those who themselves show grave disrespect for life. Our nation has alternative ways to punish offenders and protect society. We call on Catholics and all people of good will – particularly legislators – to reconsider the use of capital punishment.”

Our church's commitment to the value and dignity of all human life is my primary reason for speaking to you today in support of a death penalty moratorium. A multitude of statistics gives further reason why the death penalty is not a good thing. Nationally, 75 men and women sentenced to die in the U.S. in the last 23 years have been exonerated and released. Many more on death row have plausible claims of innocence. As you know an error after a sentence has been carried out has no redress.

While visiting St. Louis in 1999 Pope John Paul II called capital punishment "cruel and unnecessary" to keep society safe. A few months after the Pope's visit, the U.S. Catholic Bishops issued a statement entitled:

MOST REVEREND GEORGE K. FITZSIMONS, D.D.  
DIOCESE OF SALINA

MOST REVEREND JAMES P. KELEHER, S.T.D.  
Chairman of Board  
ARCHDIOCESE OF KANSAS CITY IN KANSAS

MOST REVEREND THOMAS J. OLMSTED, J.C.D., D.D.  
DIOCESE OF WICHITA

MOST REVEREND RONALD M. GILMORE, S.T.L., D.D.  
DIOCESE OF DODGE CITY

MOST REVEREND MARION F. FORST, D.D.  
RETIRED

MICHAEL P. FARMER  
Executive Director

MOST REVEREND EUGENE J. ...  
RE Senate Judiciary  
MOST REVEREND IGNACE ...  
RE 1-21-04  
Attachment 6

**A GOOD FRIDAY APPEAL TO END THE DEATH PENALTY.** The following quote from this document summarizes their rationale.

“We oppose capital punishment not just for what it does to those guilty of horrible crimes but for what it does to all of us as a society. Increasing reliance on the death penalty diminishes us and is a sign of growing disrespect for human life. We cannot overcome crime by simply executing criminals, nor can we restore the lives of the innocent by ending the lives of those convicted of their murders. The death penalty offers the tragic illusion that we can defend life by taking life.”

A majority of nations have abolished the death penalty in law or in practice. Although recent polls such as the Pew Forum on Religion and Public Life (2003) show a majority of the U.S. public still favors capital punishment generally for persons convicted of murder, the number of those indicating that they were “strongly in favor” has declined since 1996 from 43% to 28%. Fortunately Kansas has not had an execution since the death penalty was reinstated in 1994. With more and more education and the increased awareness of needed reform in our criminal justice system there has been a renewed dialogue among people of good will regarding crime and justice. A moratorium and study in Kansas would seem the logical approach to assess a questionable practice and a system shown to have some serious flaws.

As Catholics “We seek both justice and mercy. Working together, we believe our faith calls us to protect public safety, promote the common good, and restore community.” (Responsibility, Rehabilitation, and Restoration, A Statement of the U.S. Catholic Bishops, p.55)

In January 1994 the Bishops of Kansas issued a Pastoral Statement on the Death Penalty (copy attached). In the statement they ask the question “Can the ‘Death Penalty’ be reconciled with the teachings and example of Jesus Christ?”

I will conclude my remarks with their answer:

“God sent His only Son to show His love for all persons. Jesus taught us how we are to live on this earth. It is through His words and example that we must view and judge the world in which we live. He teaches us that His Father’s greatest gift to us is life and, next to life, is love, mercy and forgiveness. Indeed, the very fact that God gave His only Son to us, a sinful people, reveals convincingly the goodness and greatness of God’s mercy and love (Rom. 5:1-11).”

It is our hope that these reflections will add another dimension to your deliberations, and that you will support passage of SB 158.

Thank you.



Michael P. Farmer  
Executive Director

**PASTORAL STATEMENT ON THE DEATH PENALTY**  
**KANSAS CATHOLIC CONFERENCE**

Once again the people of Kansas are debating the "Death Penalty". Once again the reasons for and against this ultimate measure will be argued by our legislators and commented on by the media.

People want less crime -- and they are right. Many people believe that the "Death Penalty" will result in less violent crime. That is yet to be proven. The experience of other states proves this not to be true. Our neighboring States of Missouri, Oklahoma, Colorado have all exceeded our Kansas murder record since they reinstated the "Death Penalty".

There will be arguments about the relative cost of court cases and executions versus the cost of imprisonment for life. Nationally, states spend more money on an execution than on imprisonment of a convicted felon.

There will be tragic stories of bereaved families versus the imprisonment of the murderer of their loved one. And, there will be stories of the tragic deaths of the innocent who have been falsely accused.

**ANOTHER VIEW**

For us, the citizens of Kansas, there is a much more important -- and more compelling question: Can the "Death Penalty" be reconciled with the teachings and example of Jesus Christ?

God sent His only Son to show His love for all persons. Jesus taught us how we are to live on this earth. It is through His words and example that we must view and judge the world in which we live. He teaches us that His Father's greatest gift to us is life and, next to life, is love, mercy and forgiveness. Indeed, the very fact that God gave His only Son to us, a sinful people, reveals convincingly the goodness and greatness of God's mercy and love (Rom. 5:1-11).

We believe firmly that the "Death Penalty" takes us down the wrong road of life. It fuels vengeance, diverts from forgiveness and greatly diminishes respect for all human life.

At the same time, we affirm strongly that the life of every person, and the breath of every person, regardless of the status or condition of that person, is in the hands of God.

We affirm that each person created in the image and likeness of God, is of inestimable dignity and shares in the "Death Penalty" of Jesus on Calvary.

We affirm that the divine and human law forbidding the taking of innocent human life is universally valid: it obliges each and everyone, always and everywhere.

We affirm that this suffering must not lead to vengeance, but to a firm resolve that help be given to the victims of crime and that justice be done fairly and swiftly.

We oppose the "Death Penalty" to follow the example of Jesus, who taught justice and lived the forgiveness of injustice.

We oppose the "Death Penalty". We wish to join Kansans in sending a message that we can break the cycle of violence ... that we need not take life for life.

We also oppose the "Death Penalty" because of difficulties in its use:

- \* The death penalty involves the possibility of innocent persons being executed.
- \* The death penalty in our society involves a long and costly process.
- \* The death penalty is often motivated by vengeance.
- \* The death penalty does not deter the direct taking of innocent human life!
- \* The death penalty denies the possibility for conversion, reconciliation, and reparation for the evil done.

Pastoral Statement  
Death Penalty

-3-

We urge our brothers and sisters in Christ to remember the life and teachings of Jesus, who called us to be reconciled with those who have injured us (Mt. 5:43-45). In the Lord's prayer we pray: "... forgive us our sins as we forgive those who have sinned against us" (Mt. 6:12).

We call all Christians and all people of good will to meditate on the crucified Christ who set before us the supreme example of forgiveness and the triumph of compassionate love!

Signed: Kansas Catholic Conference

+Most Reverend James P. Keleher, S.T.D.  
Archdiocese of Kansas City in Kansas

+Most Reverend George K. Fitzsimons, D.D.  
Diocese of Salina

+Most Reverend Eugene J. Gerber, D.D.  
Diocese of Wichita

+Most Reverend Stanley G. Schlarman, D.D.  
Diocese of Dodge City

+Most Reverend Ignatius J. Strecker, S.T.D.  
Archdiocese of Kansas City in Kansas

+Most Reverend Marion F. Forst, D.D.  
Archdiocese of Kansas City in Kansas

January 1994



TESTIMONY OF JESSICA R. KUNEN, Board Member, Kansas Coalition Against the Death Penalty. Before the Kansas Senate Judiciary Committee, regarding SB 158, calling for a moratorium of the death penalty. January 21, 2004.

**THE KANSAS DEATH PENALTY STATUTE HAS SIGNIFICANT PROBLEMS THAT MAY TAKE YEARS TO RESOLVE IN FEDERAL COURT. A MORATORIUM WILL ALLOW THESE PROBLEMS TO BE RESOLVED BEFORE OTHERS ARE SENTENCED TO DEATH UNDER ITS PROVISIONS.**

**A. Because the weighing equation of the Kansas death penalty is unconstitutional when applied, all defendants sentenced to death under its provisions will have their sentences set aside. A moratorium will prevent the state from seeking to reimpose the death penalty in those cases, as it has in the Kleypas case.**

1. In *State v. Kleypas*, 272 Kan. \_\_\_\_, 40 P.3d 139, 209-211 (2001), the Kansas Supreme Court held that K.S.A. 21-4624(e) as applied was unconstitutional.
2. All defendants (Marsh, Scott and Elms) sentenced to death under the provisions of the death penalty statute before the *Kleypas* decision will have their death sentences set aside.
3. If the state seeks to reimpose the death penalty in these cases, the defendants will, in all likelihood, challenge the state's power to do so in federal court, as Mr. Kleypas has.
4. K.S.A.21-4629 codifies the legislative intent, that no statutory provision that has been held to be unconstitutional, and later is interpreted in a constitutional manner by the courts, shall be applied retroactively to a defendant who was originally sentenced under its unconstitutional provisions.

**B. Because the state fails to allege the aggravating factors in the document charging capital murder, all defendants sentenced to death will challenge this in federal court pursuant to *Ring v. Arizona*, 536 U.S. 584, 609, 122 S. Ct. 2428, 2433, 153 L.Ed.2d 556, 577 (2002). A moratorium will allow the federal court to resolve this issue before others are sentenced to death.**

1. In *Ring v. Arizona*, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002) the United States Supreme Court held that aggravating factors, (which must be found for the death penalty to be impose), are the functional equivalents of elements of an offense.
2. Kansas has enacted a statutory scheme that requires the elements of an offense to be alleged in the charging document. K.S.A. 22-2301(a); K.S.A. 22-3201. See generally *State v. Thompkins*, 263 Kan. 602, 618, 952 P.2d 1332 (1998).
3. However, the Kansas Death Penalty statutes fails to require that the state allege aggravating factors in the charging document. K.S.A. 21-4624(a).

4. Several federal courts to consider the issue since *Ring v. Arizona*, have held that indictment must allege the aggravating factors which justify the imposition of the death penalty. See generally *United States v. Cotton*, U.S. , 12 S.Ct. 1781, 1783 (2002); see also *United States v. Fell*, 217 F. Supp. 2d 469, 483-84 (D. Vt. 2002). This issue has been raised in the federal district court in the *Kleypas* case and will be raised in all death penalty cases. If successful, all pending death sentences will be set aside.

**C. Because the death penalty statute fails to impose the rules of evidence during the penalty phase of a capital trial, all defendants sentenced under its provisions will challenge the constitutionality of its provisions in federal court. A moratorium would allow this issue to be resolved before others are sentenced to death.**

1. *Ring* holds that aggravating factors are elements of the crime of capital murder. Due process of law requires that the state prove the aggravating factors according to the rules of evidence. See *United States v. Fell*, 217 F. Supp. 2d 469 (D. Vt. 2002).
2. The Kansas Death Penalty statute does not require that the rules of evidence apply to the penalty phase of a death penalty trial. K.S.A. 21-4624(c).
3. This issue has been raised in federal court in the *Kleypas* case. If successful, all pending death sentences should be set aside.

# **MURDER VICTIMS' FAMILIES for RECONCILIATION**

**1176 SW Warren Ave.  
Topeka Kansas 66604-1646  
785-232-2272**

**mvfrks@earthlink.net**

## **Testimony to the Senate Judiciary Committee In favor of SB 158**

**21 January 2004**

Mr. Chairman and Members of the Committee:

I am Bill Lucero, Kansas Coordinator of Murder Victims' Families for Reconciliation. We are part of a web of 5000 members across the country, made up of survivors of family members who were murdered. Each of us has been personally confronted as to how to cope with such a murder and this much we hold unanimously in common: The death penalty is not the answer!

On 19 December 2003, Jerod Maag of the Attorney General's Office testified at the Joint Committee on Legislative Post Audit that murder victims' families need justice from the state in order to reach a point of "closure". As logical as that may sound to the public, the road from victimhood to survivorship cannot be attained through any legal process. Healing occurs only when one can address the issue through the loving assistance of friends, family, the community at large and other supportive parties such as ministry or therapy.

Ironically, the complicated legal process typically is counter productive in the recovery process. Years of appeals invariably generate the family becoming a public spectacle with continuous interviews from the media, having to repeat and relive the tragic details that are so traumatic.

Since this bill was filed, the national office of Murder Victim Families for Reconciliation has issued a report, "*Dignity Denied*" which outlined disparate treatment of victim families by some prosecutor offices. The disparate treatment

Senate Judiciary

1-21-04

Attachment 8

arose when victim families opposed the prosecutor's intentions to seek death. This harsh response by some prosecutors only added to the pain of victim families. I am providing a copy of this report for each Judiciary member.

I want to keep my testimony short today. I will ask you to please realize that this long process of the death penalty will be a tremendous ordeal for all victims' families regardless of their personal viewpoint of capital punishment. Gary Kleypas was convicted of murdering Carrie Williams in 1996. Most likely he would be the first individual to be executed by the state. Yet he, as well as at least three other defendants, will have to be retried from the beginning. Their executions could be decades from now. Are we doing anything for their victims' families or those of any future murders by the extraordinary length of time in this process?

In closing, I beg you, when considering this legislation before you today, please keep in mind the plight of future families that can be spared from the turmoil that this death penalty invariably implies. Any Kansas study must include provision to make sure that all Kansas victim families are treated equally regardless of their views on a death penalty. Keep this in mind when you enact this much needed moratorium.



**SB 158**  
**Testimony to Senate Judiciary Committee**  
**January 21, 2004**

Mr. Chairman and Members of the Committee:

My name is Donna Schneweis CSJ. I represent Kansas members of Amnesty International, a worldwide human rights organization. We support SB 158.

Since its resumption nine and one half years ago, **geographic disparity** has arisen as a real concern in regard to the case dispositions in the two counties with the most capital filings. As of January 1, 2004,

Sedgwick County

- \* Nine capital filings
- \* Eight cases completed, with six via trial
- \* A "completed via capital trial rate" of 75%

Wyandotte County

- \* Fifteen capital filings
- \* Thirteen cases completed, with three via trial
- \* A "completed via capital trial rate" of less than 25%

How is it that Sedgwick County has a "to trial rate" that is three times higher than Wyandotte County? What variables account for the disparity ?

It would also be good to look at how similar types of capital murder cases (i.e. law enforcement deaths, homicide of a rape victim, multiple victim cases, etc) are handled in the various counties across Kansas. Not all law enforcement deaths have gone to trial, nor have all multiple victim cases. In light of the questions above, we believe that studying "...*(C) whether capital murder cases are handled similarly in all areas of the state, or does disparity exist;...*" is very much needed.

In regards to **racial disparity**, I urge the Members of this Committee to read the testimony submitted by Richard Ney. Mr. Ney is a capitol litigator who cannot be here this morning due to a court conflict. After reviewing several Kansas cases, he concludes that Kansas is not immune from the very real question of racial disparity.

Donna Schneweis CSJ, State Death Penalty Abolition Coordinator  
827 SW Tyler, Apt. 21, Topeka, KS 66612 785-234-3061 dms2@mindspring.com

**Innocence:** SB 158 has as one of its study components "...*(D) whether changes are needed in the laws or in the processing of capital murder cases to ensure that no innocent person is ever sentenced to death in this state;....*" Amnesty believes that Kansas must review all components involved in the capital sentencing system from this vantage point.

The case of Gentry Bolton, Wyandotte County, would be a good starting point to look at this issue.

\* Charged with capital murder for two homicides in/near convenience stores occurring 2 days apart in late December 1997. Victims were Shane Brees and Rodney Brody.

\* Days before May 1998 preliminary hearing, it was revealed that different weapons were used.

\* Also just prior to preliminary hearing it was learned that an eye witness had phoned the local hotline even before Bolton was arrested. She had identified two different men as responsible for one of the homicides.

\* Later in May 1998, the DA's office dropped the capital charges and instead filed a first degree homicide charge against Bolton in the death of Mr. Brees.

This case raises real questions about how case information was handled, how justice was sought, and the additional question of whether or not the case met capital criteria with the homicides being two days apart.

When Illinois conducted its death penalty study, it discovered a whole variety of changes in process that were needed if the system was to reduce the risk of sentencing innocent persons to death. We believe that if a similar study were done in Kansas, it would show additional protections are needed in our system. The risk of wrongful conviction is real as is shown by the 112 releases nationally of persons with evidence of innocence, including releases in Missouri, Oklahoma and Nebraska.

**In light of the Post Audit study showing a far higher cost for death penalty cases, in light of the real questions of disparity and risk to the innocent, we believe that at a minimum, the Kansas Legislature must pass SB 158 and enact a moratorium on the death penalty. There simply are too many credible questions about Kansas' capital punishment system for it to go on without additional review. Absent a moratorium, the only other prudent response would be abolition of the death penalty.**

Testimony of Richard Ney  
Ney, Adams & Sylvester  
200 N. Broadway, Suite 300  
Wichita, Kansas 672202  
(316) 264-0100

Senate Judiciary Committee  
January 21, 2004  
In support of Senate Bill 158

Mr. Chairman, Senators. I submit this testimony in favor of the bill before you which would impose a moratorium on the death penalty in the State of Kansas. You will hear today many reasons for moratorium, including the cost, geographical arbitrariness of the death penalty, and the inherent risk of executing the innocent. I wish to present to you one more: the racial disparity already being seen in the application of capital punishment in Kansas.

Racial inequity has been a constant companion of the death penalty throughout America. As of October 1, 2003, 58 percent of the inmates on death row in this country were persons of color. (45.5 percent African-American; 10 percent Hispanic and 2.5 percent other non-white.) However, 80.6 percent of the victims of those on death row were white. Amnesty International, in its report on racial disparity in the imposition of the death penalty. *Killing With Prejudice: Race and the Death Penalty in the USA*, noted that, of the 18,000 people legally executed in the United States from the inception of this nation to 1990, only 30 were white people convicted of killing African-Americans.

This bias is not limited to the so-called Southern death belt. The Administrative Office of the Courts in New Jersey found that jurors there are 10 times more likely to sentence a black man

to death than a white defendant. The federal death penalty is no better. Some 75 percent of those authorized by the U.S. attorney general for capital prosecution have been non-white. The question is: will Kansas be immune from the systemic racism which has plagued the death penalty in every other jurisdiction? Our state's recent experience would say no.

In 1998, in a case in which I was counsel for one of the defendants, the State of Kansas tried two African-Americans, Virgil Bradford and Robert Verge, for capital murder in Dickinson County. The defendants in the case offered to plead guilty and stipulate to two life sentences with a mandatory 40 years on each. The Attorney General rejected the offer, indicating that nothing other than the defendants' death would be acceptable to the State. That plea rejection was inconsistent with other plea agreements previously entered into by the Kansas Attorney General's Office in other Kansas capital cases with white defendants.

In Saline County, Alan White pled guilty to personally killing two elderly women and a young child. The Attorney General allowed White plead guilty to three life sentences and was spared the death penalty. White is Caucasian.

The Attorney General's Office also had previously allowed James Martin to plead to a life sentence in Pottawatomie County. Martin raped, murdered and dismembered a woman. Martin is Caucasian.

Douglas Winter and David Spain were both allowed to plead guilty for life sentences in the murder of a Haskell County jail guard during an escape. Winter received a 25-year life sentence and Spain a 40-year life sentence. Winter and Spain are both Caucasian.

In Doniphan County, the Kansas Attorney General prosecuted a capital case against William Irwin. Irwin was charged with the rape and murder of a young woman. The Attorney



General allowed a plea of guilty and a life sentence in that case. Irwin is Caucasian.

Why Verge and Bradford were refused the ability to plead to a sentence less than death while an number of white defendant's were allowed to do so begs explanation and certainly raises the question of race.

Additionally, in Sedgwick County, three of the six persons put on trial for their lives there have been African-Americans, and no one has been sentenced to death in Kansas for the murder of a non-white, although non-whites constitute a significant percentage of homicide victims.

History shows us that the death penalty in America has always been skewed in its infliction on the poor and on racial minorities. The mounting record in Kansas does not foretell that the experience here will be any different. These questions of racial disparity are yet another reason to stop and carefully study the death penalty in Kansas before moving forward.

Thank you.



**BOARD OF INDIGENTS' DEFENSE SERVICES**

**JAYHAWK WALK  
714 SW JACKSON, SUITE 200  
TOPEKA, KANSAS 66603-3714**

**(785) 296-4505**

Senate Judiciary Hearing  
SB 158  
January 21, 2004

- Since reenactment of the death penalty, there have been 81 cases filed that were potential death penalty cases- average of nine cases per fiscal year.
- One case is currently pending and awaiting a decision from the district attorney on whether the case will be a death penalty case.
- Five cases are currently proceeding to trial: Stallings, Wy Co; Harris, Wy Co; Belt, Sg Co; Beckham, BB Co; Hill, Mg Co.
- One case is currently proceeding to retrial: Kleypas, Cr Co
- All seven cases in which a death sentence has been imposed are on appeal in some form. At least three of those additional cases will have to be retried.
- Completion of any case through all stages of appeal is expected to take about 10 years.
- The Legislative Post Audit Report advises that the cost of a death penalty case is about 70% more than a non-death penalty case. In light of their findings, our fiscal note would change significantly from that submitted last year.

Senate Judiciary

1-21-04

Attachment 11