

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35a.m. on Wednesday, February 11, 2004, in Room 123-S of the Capitol.

All members were present except:  
Senator David Haley (E)

Committee staff present:  
Mike Heim, Kansas Legislative Research Department  
Jill Wolters, Office of the Revisor Statutes  
Helen Pedigo, Office of the Revisor Statutes  
Dee Woodson, Committee Secretary

Conferees appearing before the committee:  
Randy Hearrell, Kansas Judicial Council  
Senator Stephen Morris  
Kevin O'Connor, Sedgwick County District Attorney's Office  
Donna Schneewis, Amnesty International  
Chris Clark, Legislative Division of Post Audit

Others attending: See attached list.

**SB 421 - Eminent domain; filing the appraisers' report within 45 days after entry of order, current law 20 days**

Chairman Vratil opened the hearing on **SB 421**. The Chair explained the proposed legislation which he had drafted and introduced. He said in an eminent domain action, current law requires the court appointed appraiser's report to be submitted within 20 days after the appraiser is appointed. He stated that in every case he had been involved in, or know of, it was routine to get an extension. The extension requires the attorney to file a motion, and get the judge to sign an order extending the deadline for the report. Senator Vratil said this bill changes the 20 days to 45 days. It was an attempt to be more realistic and efficient in processing eminent domain.

No other conferees appeared on **SB 421**. During Committee discussion, Senator Donovan stated that this was a narrowly defined bill, and suggested that it be put on the Consent Calendar. Chairman Vratil closed the hearing on **SB 421**.

Senator Donovan made a motion to pass SB 421 favorably, and have it placed on the Consent Calendar. The motion was seconded by Senator Goodwin, and the motion carried.

**SB 422 - Capital murder, if sentence of death not imposed, imprisonment for life without the possibility of parole**

Chairman Vratil opened the hearing on **SB 422**. The Chairman explained the bill involved capital murder, and if a death sentence was not imposed, then imprisonment for life without the possibility of parole was an alternative.

Randy Hearrell, Kansas Judicial Council, testified in support of **SB 422**. Mr. Hearrell said the Legislature requested the Judicial Council to study costs in death penalty cases last spring. The Council appointed a Committee to conduct the study. A list of the members was attached to the written testimony. The Council completed the study. One recommendation was that if a defendant is found guilty of capital murder and the death penalty is not imposed, then the alternative sentence of life without the possibility of parole could be imposed. He revealed that in the Legislative Post Audit's report, it was recognized that such a change could potentially help contain costs in death penalty cases. (Attachment 1)

Mr. Hearrell shared that of the 38 states that have capital punishment, 35 states have life without parole. He added that of the 12 states that do not have a death penalty, only Alaska does not have life without parole. He explained that containing death penalty costs associated with trials is accomplished because prosecutors were less like to seek the death penalty if a plea would result in a sentence of life without

## CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35a.m. on Wednesday, February 11, 2004, in Room 123-S of the Capitol.

possibility of parole. It eliminated both trial and appeal costs. Mr. Hearrell pointed out that even if prosecutors continue to seek the death penalty, there is some evidence that jurors are less likely to impose the death penalty if life without parole is an option.

In conclusion, Mr. Hearrell stated that currently in Kansas if a defendant is convicted of capital murder and the jury decides not to impose the death penalty, the defendant is sentenced by the judge to either life in prison with parole eligibility in 25 years or to life in prison with parole eligibility in 50 years. He explained in practice, every defendant in Kansas that has thus far been convicted of capital murder but spared the death penalty has been sentenced to the "hard-50" or its predecessor the "hard 40". As a result, Mr. Hearrell stated the default sentence is in practical effect already life without the possibility of parole. However, he said because even the "hard 50" sentence is not a "true" life sentence, and further is not automatically imposed, jurors are left with uncertainty as to when the defendant might become eligible for parole. He concluded that establishing life without parole as the alternative sentence should end such uncertainty.

Committee questions and discussion followed regarding who drafted the proposed legislation, new jury instructions, and the number of capital convictions in Kansas since the reinstatement of the death penalty. Senator Goodwin inquired regarding Section 2, relating to when a juvenile is tried as an adult and given a sentence of life without parole in lieu of capital punishment, if that meant the juvenile stayed in the Kansas prison system until the juvenile was no longer alive. Mr. Hearrell responded affirmatively, and that would be his interpretation. He did not recall discussion on the subject during the study committee's deliberations.

Senator O'Connor asked about a bill passed during the last legislative session regarding terminally ill or close to death inmates who are released to go home to die, would Section (b) have prohibited that from occurring? Mr. Hearrell replied that he had not thought about that situation, but would check on that particular issue and report back to the Committee his findings.

Senator Stephen Morris, who served on the Judicial Council study committee on this issue, testified as a proponent on **SB 422**. He stated that currently if a jury does not return a verdict of death, the penalty is decided by the trial judge. He felt that the change would give juries a better "feeling" for their deliberations with an option on the pending phase of the trial. (Attachment 2)

Committee questions and discussion followed. Senator Donovan asked if the proposed procedure was adopted, would it do away with the "hard 50"? Senator Morris replied it would not. Chairman Vratil explained that the "hard 50" was still in the bill, and that it would be another available alternative. Senator Morris stated that it was the intent of the study committee to give juries some flexibility.

Senator Oleen asked if there had been a recent Supreme Court ruling with regard to juveniles. She suggested that the Committee study the juvenile questions further when looking at the classification of offenders.

Chairman Vratil requested the Revisor, Jill Wolters. To explain how the bill was drafted. Ms. Wolters said it was drafted to provide the option of life without the possibility of parole if a person is sentenced under capital murder and not sentenced to death. She stated there would no longer be a "hard 50" sentence. She explained that she included Sub Section 2 because she had not received any direction regarding juveniles. Currently a juvenile cannot be sentenced to death. They can receive the "hard 50" or "hard 40" depending on when they committed a crime. The Legislature should determine whether or not it wants a juvenile to get life without the possibility of parole.

Kevin O'Connor, Sedgwick County District Attorney's Office, testified in support of **SB 422**. Mr. O'Connor apologized for not providing written testimony, but stated that it would be submitted later. He said that in his jurisdiction more people are sent to death row than in any other jurisdiction in Kansas. Mr. O'Connor stated that the State of Kansas had written a good, conservative death penalty law, and he had no opposition to having a jury decide the sentencing issue. He disclosed that the bill does not have anything to do with mental retardation issues. He spoke briefly about the issue of accepting a plea, and he

## CONTINUATION SHEET

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wanted to inform the Committee that it would be unethical for a prosecutor to use the death penalty as a negotiating tool. He stated that decisions relative to this issue need to be made by a jury. Mr. O'Connor commented that he would furnish copies of all jury instructions for the Committee.

Donna Schneweis, Amnesty International, spoke in opposition to **SB 422**. She explained that Amnesty International took no position on the majority of the bill, but did oppose Section 2 relating to juvenile cases, which provides for the sentence of life imprisonment without parole for those juveniles adjudicated as adults when charged with capital murder. She said in Kansas the law does not allow certain behaviors to be legal until the age of 18, i.e. marry without guardian consent, serve on a jury, possess tobacco or cigarettes, or vote. She urged the Committee to remove Section 2 of **SB 422**, and juvenile offenders not be subjected to life imprisonment without parole. (Attachment 3)

Chris Clark, Legislative Division of Post Audit, submitted written testimony as a neutral conferee. In the written testimony he listed two ways which potentially could reduce costs when having the option of life without parole: (1) Prosecutors might not be inclined to seek the death penalty in as many cases if they know a conviction will result in the defendant being locked away forever. This would avoid the extra expense of death penalty trials; and (2) Jurors might be more likely to impose a life sentence rather than death, which could reduce appeal costs. Non-death sentences have fewer issues on appeal, which would save appellate costs. (Attachment 4)

The Chair closed the hearing on **SB 422**.

Chairman Vratil announced that there was one bill introduction. Senator Betts asked for introduction of a conceptual bill relating to racial profiling and creation of a misdemeanor violation, civil cause for action, and requirements of law enforcement agencies. Senator O'Connor made a motion to have the conceptual bill drafted and introduced, seconded by Senator Donovan, and the motion carried.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is February 12, 2004.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Weds, Feb. 11, 2004

NAME	REPRESENTING
Smully Jacquet	LKM
Dr. Lynn Hearreel	KAC
Donna Schneeweis	Amnesty International
Bill Lucas	Murder Victims' Families for Reconciliation
Leo Hafner	Legislative Post Audit
Chris Clarke	"
Brenda Harmon	KSC
Julia Butler	KSC
Patricia Biggs	KSC
Michael White	KCDAA
Kevin O'Connor	District Attorney's Office, Sedgewick Cty.
Jim FRAZIER	JTA
Elizabeth Reimer	OJA
Chris Meckler	OJA
Carole Bradford	Inter-Faith Ministries
JEREMY S BARCLAY	KDOC
Diane Albert	KDOK
Erik Sartorius	City of Overland Park
KEVIN GRAHAM	ATTY. GEN.





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### MEMORANDUM

**TO:** Senate Judiciary Committee  
**FROM:** Judicial Council - Randy M. Hearrell  
**DATE:** February 11, 2004  
**RE:** SB 422 Relating to Life Without the Possibility of Parole

#### BACKGROUND

Last spring, the Legislature requested that the Judicial Council study costs in death penalty cases. The Judicial Council appointed a Committee to conduct the study and a list of the members of the Committee is attached. The Council has completed the study and one of its recommendations is that if the defendant is found guilty of capital murder and the death penalty is not imposed, that the alternative sentence be life without the possibility of parole. In its Performance Audit Report of "Costs Incurred for Death Penalty Cases" (December, 2003) Legislative Post Audit recognized that such a change could potentially help contain costs in death penalty cases.

Of the 38 states that have capital punishment (Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, Wyoming), 35 have life without parole, (Kansas, New Mexico and Texas do not). Of the 12 states that do not have a death penalty, only Alaska does not have life without parole.

#### POSSIBILITY OF PLEA

The imposition of life in prison without the possibility of parole as the sentence to be given if death is not imposed has the potential to contain death penalty costs associated with trials, in that

prosecutors might be less likely to seek the death penalty if a plea would result in a sentence of life without possibility of parole. This would eliminate both trial and appeal costs.

Examples supporting this position are:

- Ron Evans, a member of the Judicial Council Committee, stated that in plea negotiations prosecutors have told him they could not take the risk that the defendant would ever threaten society again. It is his opinion that if the option of life without the possibility of parole had been available he may have been able to plead rather than try some cases.
- Cathie Abookire, a spokeswoman for Philadelphia District Attorney Lynne M. Abraham, noted: "When someone wants to plead guilty to the crime of murder, and we know that life means life in Pennsylvania, then we are all for it. It gives the family some peace of mind, because it is over. There are not going to be 20 years of appeals." (Associated Press, October 3, 2003)
- The number of death sentences pursued in Pima County, Arizona has decreased by a third. "We've made a conscious effort to limit the death notices to the worst cases. We have a fuller discussion about can we - and should we - pursue death. It's a more thoughtful process," said prosecutor Rick Unklesbay. The policy shift was embraced by victim advocate Gail Leland, who stated, "I think the process and the options that we have now regarding sentencing have really been improved." (Associated Press, October 5, 2003)

### **JURY LESS LIKELY TO IMPOSE DEATH**

Further, even if prosecutors continue to seek the death penalty in such cases, there is some evidence that jurors are less likely to impose the death penalty if life without parole is an option.

- "There are two factors, however, that more than anything else may help explain the decline in death-penalty sentences. One is the increasing availability of life without parole as an option, which all but three death-penalty states now offer. In polls, three fourths of Americans say they believe in the death penalty. But when asked whether they'd support capital punishment if life without parole was an option, the number is reduced to half." (Alex Kotlowitz, New York Times Magazine, July 6, 2003).
- "The Texas Senate recently rejected legislation to provide juries with the sentencing option of life in prison without the possibility of parole. Passage was opposed by some prosecutors who feared the sentencing option would discourage juries from giving death sentences." (Houston Chronicle, April 23, 2003)

- The following finding is based on interviews completed with 916 jurors from 257 capital trials in 11 states as a part of the Capital Jury Project<sup>1</sup>:

"The empirical evidence, especially the accounts jurors give of their own punishment decision-making, reveals that the absence (real or imagined) of an LWOP option figured prominently in the decisions of many jurors to impose death. Jurors explained that they voted for the death penalty because the available alternative did not rule out parole; they chose the death penalty not because they thought it was the most appropriate punishment, but because it was preferable to what they believed the alternative would be. The jurors imposed death not as the appropriate, but as the least inappropriate of the available punishment options. In such cases, defendants are sentenced to death and executed because their jurors believe they cannot impose the punishment they deem most appropriate." (Death by Default: An Empirical Demonstration of False and Forced Choices in Capital Sentencing, William J. Bowers and Benjamin D. Steiner, 77 Tex. L. Rev. 605, February, 1999.)

## CONCLUSION

Currently, in Kansas, if a defendant is convicted of capital murder and the jury decides not to impose the death penalty, the defendant is sentenced by the judge to either life in prison with parole eligibility in 25 years ("life in prison") or to life in prison with parole eligibility in 50 years ("the hard-50"). In practice, every defendant in Kansas that has thus far been convicted of capital murder but spared the death penalty has been sentenced to the "hard-50" or its predecessor the "hard 40" (life with parole eligibility in 40 years).

As a result, the default sentence is in practical effect already life without the possibility of parole. However, because even the "hard 50" sentence is not a "true" life sentence, and further is not automatically imposed, jurors are left with uncertainty as to when the defendant might become eligible for parole. Establishing life without parole as the alternative sentence should end this uncertainty.

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<sup>1</sup>The Capital Jury Project was a national study of capital jurors' sentencing decisions in fifteen states. Capital jurors were selected for interviews in a three-stage sampling procedure: (1) fifteen states were chosen to reflect the principal variations in guided discretion capital statutes; (2) within each state, 20-30 full capital trials conducted since 1987 were selected to represent both life and death sentencing outcomes; and (3) for each trial a target sample of four jurors were systematically selected for three to four hour personal interviews. This research was initiated in 1990 with funding from the Law and Social Sciences Program of the National Science Foundation.



**JUDICIAL COUNCIL DEATH PENALTY**

**ADVISORY COMMITTEE**

The Kansas Judicial Council appointed the following persons to serve on its Death Penalty Advisory Committee:

**Stephen E. Robison**, Chairman, Wichita, practicing lawyer in Wichita, Kansas and member of the Kansas Judicial Council.

**Ron Evans**, Topeka, Chief Defender, Kansas Death Penalty Defense Unit.

**Jeffrey D. Jackson**, Lawrence, consultant on death penalty issues to the Kansas Supreme Court.

**Michael Kaye**, Topeka, Professor at Washburn University School of Law.

**Stephen Morris**, Hugoton, State Senator from the 39th district and Chair of the Senate Ways and Means Committee.

**Donald R. Noland**, Pittsburg, District Court Judge in 11th Judicial District.

**Steven Obermeier**, Olathe, Assistant district attorney in Johnson County.

**Kim T. Parker**, Wichita, Assistant district attorney in Sedgwick County.

**Rick Rehorn**, Kansas City, practicing attorney in Wyandotte County and State Representative from the 32nd district.

**Fred N. Six**, Lawrence, retired Kansas Supreme Court Justice.

**Ron Wurtz**, Topeka, Deputy Federal Public Defender. Previously Chief Defender, Kansas Death Penalty Defense Unit.

STATE OF KANSAS



TOPEKA

SENATE CHAMBER

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VICE-CHAIRMAN: LEGISLATIVE BUDGET  
STATE BUILDING CONSTRUCTION

MEMBER: AGRICULTURE  
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CO-CHAIR: COUNCIL OF STATE GOVERNMENTS  
AGRICULTURE TASK FORCE

VICE-CHAIRMAN: NATIONAL CONFERENCE OF STATE  
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Testimony  
by  
Senator Stephen R. Morris  
to  
Senate Judiciary Committee  
Wednesday, February 11, 2004

Regarding: SB 422

Chairman Vratil and members of the Senate Judiciary Committee. Thank you for giving me the chance to visit with you about the importance of SB 422. This bill is being recommended by the Judicial Council Committee that studied several aspects of our death penalty law. One of the most important recommendations from this committee is to change the death penalty statute to allow juries in death penalty cases the option of choosing life without parole or the actual death penalty. Currently, if the jury does not return a verdict of death, the penalty is then decided by the trial judge. I feel this change will give juries a better "feeling" on their deliberations with an option on the pending phase of the trial.

Thank you for your consideration.

Senate Judiciary  
2-11-04  
Attachment 2



**SB 422**  
**Testimony to Senate Judiciary Committee**

**February 11, 2004**

Chairman Vratil and Members of the Committee, I am Donna Schneweis, CSJ, and I appear on behalf of Amnesty International, a worldwide human rights organization. Our organization's mandate is based on the Universal Declaration of Human Rights and other international human rights treaties.

Amnesty International takes no position on the majority of this bill: the question of life in prison without parole for adults who are convicted of capital murder. We do however, oppose Section 2, which provides for the sentence of life imprisonment without parole for those juveniles adjudicated as adults when charged with capital murder.

The United Nations Convention on the Rights of the Child was adopted and opened for signature in 1989. It entered into force in September 1990. The Convention recognizes that children are in need of "special care and assistance", recognizing the reality of "physical and mental immaturity" (both in Preamble). Article 37 of the Convention explicitly bans the use of the death penalty and life in prison without parole for those persons who were juveniles at the time of their offense. The United States has signed but not yet ratified this treaty. In light of the US signature to the Convention it makes sense to consider the ban contained in Article 37.

In addition, I call your attention to the growing body of literature which addresses new understandings regarding brain development. Dr. Ruben C. Gur, Director of Neuropsychology at the University of Pennsylvania Health Center submitted an Affidavit in *Patterson v. Texas*. In it he noted, "The evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable...." [*This affidavit is available online at [www.abanet.org/crimjust/juvjus/patterson.html](http://www.abanet.org/crimjust/juvjus/patterson.html).*]

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

**Amnesty International is a worldwide grassroots movement that promotes** Senate Judiciary

2-11-04  
Attachment 3

In Kansas, the law does not allow certain behaviors to be legal until the person is age 18. It is a reflection of our understanding that a "minor" lacks the capacity to engage in these behaviors in a mature and fully responsible fashion. Kansas law does not deem juveniles mature enough to vote, marry without guardian consent, serve on a jury, or possess tobacco or cigarettes when they are under eighteen years of age.

Amnesty International does not minimize the violence that juvenile offenders can cause, but we believe that for all the above reasons it is inappropriate to hold juvenile capital offenders to the same level of culpability as adults charged with capital murder. Amnesty International urges that when you work this bill, that Section 2 be removed and juvenile offenders not be subjected to life imprisonment without parole.

Thank you.



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**Information for the Senate Judiciary Committee on SB 422**

Chris Clarke, Legislative Post Audit

February 11, 2004

Mr. Chairman and members of the Committee, thank you for allowing me to appear before you to provide information on SB 422. This bill addresses an issue raised in our performance audit, *Costs Incurred for Death Penalty Cases: A K-GOAL Audit of the Department of Corrections*. Our audit identified a number of potential cost saving measures that related to death penalty cases.

One idea was to have life without possibility of parole as an alternative to a death sentence. The literature we reviewed as part of that audit suggests that prosecutors and juries are most concerned about ensuring that those who commit capital murder can no longer be a threat to the public safety. Having the option of life without parole, potentially could reduce costs in 2 ways:

- Prosecutors might not be inclined to seek the death penalty in as many cases if they know a conviction will result in the defendant being locked away forever. This would avoid the extra expense of death penalty trials.
- Jurors might be more likely to impose a life sentence rather than death, which could reduce appeal costs. Literature suggests that if jurors think there's even a possibility the defendant will eventually be released from prison (no matter how old they'll be) they're more likely to impose a death sentence. Non-death sentences have fewer issues on appeal, which would save appellate costs.

Opponents of this option say the current Hard 50 is basically a life sentence.

Of the 38 states that currently have the death penalty, 35 have life without the possibility of parole as an alternative to death.

Senate Judiciary  
2-11-04  
Attachment 4



# **PERFORMANCE AUDIT REPORT**

## **Costs Incurred for Death Penalty Cases: A K-GOAL Audit of the Department of Corrections**

**A Report to the Legislative Post Audit Committee  
By the Legislative Division of Post Audit  
State of Kansas  
December 2003**

reports about the case or by people they may talk to. When juries are sequestered, the government has to pick up the cost of feeding and housing them. Although Kansas judges have the authority to order jurors sequestered during the trial or deliberations, our data showed juries have been sequestered in only one death penalty case, and then only during deliberations.

- The Kansas Supreme Court doesn't conduct proportionality reviews— These reviews involve the states' Supreme Court justices comparing the death sentence in the case before them to the sentences given in other cases involving similar crimes, to make certain the death sentence isn't excessive. Of the 38 states that currently have the death penalty, 21 states authorize the state Supreme Court to compare sentences. Kansas doesn't.

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***Certain Changes to Kansas Law Could Potentially Reduce Costs Associated With the Death Penalty***

We identified several actions requiring statutory changes that potentially could help contain the costs related to the death penalty—having a true life sentence without the possibility of parole, and removing or clarifying a statutory provision that makes the Supreme Court responsible for “extra” review. Each is described below:

**Having a true life sentence without the possibility of parole could potentially reduce costs in 2 ways.** Current Kansas law sets the punishment for those convicted of capital murder at either death, or prison with eligibility for parole set at either 25 or 50 years.

The literature we reviewed suggests that prosecutors and juries are most concerned about ensuring that those who commit capital murder can no longer be a threat to the public safety. Having the option of imposing life in prison without parole could reduce costs in 2 ways.

- Prosecutors might not be inclined to seek the death penalty in as many cases if they know a conviction will result in the defendant being locked away forever. That means all the costs associated with the bifurcated trial, screening jurors for biases related to the death penalty, automatic appeals to the State Supreme Court, and other associated costs could be avoided.
- Jurors might be more likely to impose a life sentence rather than death, which could reduce appeal costs. Even though Kansas' law provides for long-term incarceration if the death penalty isn't imposed, the literature suggests that if jurors think there's even a possibility the offender will be released from prison, they are more likely to impose the death penalty than a prison sentence. That's because jurors don't want some defendants to be released no matter what their age may be at the time of release. Our review also showed that defendants with non-death sentences have fewer issues on appeal, which would save appellate costs.

Opponents of life without parole say a “Hard 50” sentence is basically a life sentence because most offenders won’t be eligible for parole until after they have died in prison. However, of the 38 states that have the death penalty, 35 also offer a life without parole option. Of the 12 states that don’t have the death penalty, 11 have life without parole as the mandatory sentence for 1<sup>st</sup> degree murder, and 1 allows the judge to set the number of years.

**Deleting statutory provisions that authorize the Supreme Court to look for trial errors beyond those raised on appeal could further reduce appeal costs.** State law (K.S.A. 21-4627) says:

“The supreme court of Kansas shall consider the question of sentence as well as any errors asserted in the review and appeal and shall be authorized to notice unassigned errors appearing of record if the ends of justice would be served thereby.” (underscoring added)

- The Supreme Court’s research attorney told us this provision requires him to review the entire record for trial errors that may have occurred, whether or not those issues were raised in the appeal briefs filed by the defense attorneys. Court records in death penalty cases can be very voluminous. For example, in the Kleypas appeal the record consisted of more than 10,000 pages of documents, which the Supreme Court’s research attorney had to review and digest for the Court. In all, he estimated he spent about 2,500 hours preparing that case for the Court to review. We can’t say how much time this statutory provision added, but it’s likely to be significant.

Clearly, this provision provides a safeguard to help ensure that errors aren’t overlooked that could result in an innocent person being convicted. But neither the federal government nor any of the other 3 states we reviewed had such a provision.

**Because Kansas already imposes the death penalty for fewer crimes than other states we looked at, we didn’t see opportunity for savings there.** In Kansas, the death penalty can be sought only in cases of pre-meditated intentional killing of another person in which at least 1 of 7 qualifying circumstances also is present.

As noted earlier, about 80 crimes committed in Kansas since July 1994 have involved one or more of these qualifying factors. Only 53 of those cases were actually charged with capital murder. *Table II-1* shows summarized information for those cases.