

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Thomas C. (Tim) Owens at 9:37 a.m. on February 27, 2009, in Room 545-N of the Capitol.

All members were present.

Committee staff present:

Jill Wolters, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Jerry Donaldson, Kansas Legislative Research Department
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Pat Scalia, Board of Indigent Defense
Ron Evans, Chief, Death Penalty Defense Unit
Kris Ailslieger, Assistant Solicitor General, Office of the Attorney General
Steve Howe, Johnson County District Attorney, Kansas District

Others attending:

See attached list.

The Chairman reopened the hearing on **SB 208 - Abolishing the death penalty.**

Pat Scalia appeared in support providing the committee with a review of the costs to her agency associated with defending indigent death penalty offenders. Since the re-enactment of the death penalty 107 cases have been under the death penalty statute at a cost of nearly \$20 million dollars. This year the agency will have a budget shortfall of \$995,248 for the defense of capital cases. Enactment of **SB 208** will save millions of dollars and an insufficient use of State funds. (Attachment 1)

Senator Vratil distributed additional documents from the State Board of Indigents; Defense Services regarding data on capital cases. (Attachment 2)

Ron Evans spoke in support and provided the Committee insight to the differences and extraordinary requirements needed when defending a capital punishment case and explains the high cost of defending such offenders. (Attachment 3)

Kris Ailslieger testified in opposition stating the Attorney General's Office and prosecutors across the state view the death penalty as a matter of justice. Kansas has one of the most responsible and limited death penalty statutes in the nation reserved for the worst, most heinous and cruel murders. Defendants are treated fairly by law enforcement and their constitutional rights are protected including an automatic appeal to the Kansas Supreme Court. The argument that abolition of the death penalty will save the State money is questionable since the actual cost figures for death penalty and non-death penalty cases in Kansas do not exist. The *2003 Legislative Post Audit* study states very clearly it "is not a study of whether is more costly for Kansas to have the death penalty than not to have it." There are many inaccurate and /or misleading elements to the report and is a flawed tool for assessing the cost of the death penalty in Kansas. The State will not see significant savings with enactment of **SB 208**, and would be inappreciable compared to the costs suffered by our communities as a result of capital murder and the sense of justice that demands the death penalty. (Attachment 4)

Steve Howe appeared in opposition indicating prosecutors throughout Kansas have been very selective in requests for the death penalty. The fiscal note on this bill indicates additional costs are associated with death penalty cases. Justice should never be controlled merely by costs, and elimination of the death penalty will not guarantee savings. Also to be considered is the leverage provided to prosecutors to obtain capital murder convictions. Mr. Howe referred to two separate instances where prosecutors obtained pleas to capital murder without parole charges due to the possibility of the death sentence thus saving the cost of lengthy, costly trials. (Attachment 5)

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:37 a.m. on February 27, 2009, in Room 545-N of the Capitol.

Written testimony in support of **SB 208** was submitted by:

Forrest Swall, Former Member, Kansas House of Representatives (Attachment 6)
Donna Schneweis, State Death Penalty Abolition Coordinator (Attachment 7)
Bill Lucero, Kansas Coordinator, Murder Victims' Families for Reconciliation (Attachment 8)
Paige A. Nichols, Kansas Association of Criminal Defense Lawyers (Attachment 9)
Bill Kurtis (Attachment 10)

Written testimony in opposition of **SB 208** was submitted by:

Wes Jordan, Chief, Johnson County Police Chiefs & Sheriff's Association (Attachment 11)
Megan Heyka DiGiovanni (Attachment 12)
Larry Heyka (Attachment 13)
Amy Scott (Attachment 14)

There being no further conferees, the hearing on **SB 208** was closed.

The next meeting is scheduled for February 28, 2009.

The meeting was adjourned at 10:30 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE:

2-27-09

NAME	REPRESENTING
KEVIN CHAFIN	ACLU VOLUNTEER
Donnie Morehouse	Assoc. Dir., ACLU of Kansas; W.M.O.
BRIAN NORTH	GUEST SENATOR Lynd
Elizabeth (Heyka) Daily	Family of Brad Heyka
Megan Heyka Digiwanni	Family of Brad Heyka
Catherine Johnson	DRC
Holly Smith	Kansas Liberty
Sarah Weber	Southern Hills Mennonite Church
Rosanne Siemens	Southern Hills Mennonite Church
DeSimone	D. Schmidt
JOSEPH MOLINA	Ks Bar Ass.
PATRICIA SCALD	BIDS
Ron Evans	BIDS
Steve Howe	Johnson County D.A.
Doana Acheweis	Amnesty International
Barbara Gibson	Episcopal Diocese of Kansas
Erin McHenry	Washburn University SW Grad student
Jennifer Sannan	Washburn SW student

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-27-09

NAME	REPRESENTING
Beatrice Swoopes	KANSAS CATHOLIC CONF
Bill Lucas	MVF.R of KS
Rebecca Uderman	CAPITAL AFFAIRS / ADVISORY PROF. RESEARCH / UNIVERSITY LAW CENTER
Justin Smith	Guest of Sen. Lynn
Ryan Tothman	Guest of Sen Lynn
Andrew Birkinsha	Guest of Sen Lynn
Keri North	Guest of sen. lynn

TESTIMONY

STATE BOARD OF INDIGENTS' DEFENSE SERVICES SUPPORTING SENATE BILL 208

The State Board of Indigents' Defense Services is charged with the statutory duty of providing the 6th Amendment right to counsel, as required by the Constitution, to poor persons accused of felonies.

With the re-enactment of the death penalty, our statutory duty expanded to providing the right to counsel for persons who might face the ultimate punishment. As the United States Supreme Court said, "Death is different". Providing the defense of death penalty cases is more complex and therefore more costly than defending a similar case in which the death penalty is not charged. The study conducted just a few years ago by Legislation Post Audit determined that a case in which the death penalty is sought costs 70% more than a similar case in which the death penalty is not sought. As yet, no death penalty case has completed the legal process leading up to execution in order to determine if the percentage cited in the audit is correct but from our cost experience thus far, we believe that it is.

Since the re-enactment of the death penalty, 108 cases have been filed with charges that made that case eligible for the death penalty. Of those, 107 cases were in fact filed under the capital murder statute. The notice filed by the prosecution seeking the death penalty was filed in 61 cases and the death penalty was not sought in 46 cases. To date, 26 death penalty trials have been completed and juries decided for the death penalty in 12 of those cases. Of those 12, 2 have been settled on appeal to life in prison without the possibility of parole. The remaining 10 cases continue through the legal process.

The cost for just the defense of those cases through February 23, 2009 is \$19,910,798.65. In the current fiscal year, the Board has run out of money to provide the necessary expert services for death penalty defense. We are transferring funds and asking for a Governor's Budget Amendment to meet the demands of the current cases. We expect a shortfall of funds totaling \$995,248 for the defense of 20 capital cases this fiscal year. We cannot fail to provide a Constitutionally required right.

The proposed legislation will not resolve the shortfall this fiscal year. But this legislation will save costs next year for expert services and conflict attorneys of about \$600,000, for rent and utilities if we are able to break two leases, of \$107,380 and \$15,752 in salary reduction for a total savings as noted in the fiscal impact statement of \$723,132 for FY 2010.

For future years, this bill would save many millions of dollars. Cases would be completed and the cost fixed at two – three years of work rather than the 15 years plus of death penalty defense work. By way of example the retrial of the 1995 Kleypas case has just completed and the second round of appeals is just beginning, fourteen years later. Defense costs mounts over all those years on each of these cases.

This Senate Bill is a fiscal necessity for the Board of Indigents' Defense Services and we ask you to vote favorably on this bill.

Senate Judiciary
2-27-09
Attachment 1

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

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FAX: 785-291-3082



KATHLEEN SEBELIUS, GOVERNOR

PATRICIA A. SCALIA, EXECUTIVE DIRECTOR

STATE BOARD OF INDIGENTS' DEFENSE SERVICES

February 24, 2009

Senator John L. Vratil
State Capitol, Room 281-E
300 SW 10th Ave
Topeka, KS 66612

Re: Capital Murder case statistics

Dear Senator Vratil:

Attached to this letter is the report that I maintain in my position as State Director for the Board of Indigents' Defense Services. I have held this position since February 1, 1998.

The data on the attached list is compiled from the information and complaint filed against the defendants under the capital murder statute and the defense services provided to them by this agency. I have copies of the information or complaint on almost every one of these 108 cases.

The data reveals the following: Since the reenactment of the death penalty, 108 cases have been filed in Kansas that were death penalty eligible. Of those, 107 cases were filed under the capital murder statute.

The notice seeking the death penalty pursuant to K.S.A. 21-7624 was filed in 61 cases, among which were 4 cases brought by grand jury indictment. The number of death penalty eligible cases where the notice seeking the death penalty was not filed is 46.

If I may provide anything further, please do not hesitate to call upon me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia A. Scalia".

Patricia A. Scalia
State Director

PAS:bc

Senate Judiciary

2-27-09

Attachment 2

KANSAS CAPITAL CASES BY FISCAL YEAR

State Board of Indigent Defense Services

DRAFT 02/23/09

Client Gender RACE COUNTY
 Criminal Case Number
 date crime committed
 Sub-section of capital Murder Statute Charge

Sentence
 Victim's Gender
 Victim's Race
 Victim's Age

NOTICE SEEKING DEATH PENALTY

2-2

FY #	FY	DPDU #	CLIENT NAME	G	R	CO.	CR #	CRIME DATE	21-3499	COUNSEL	END DATE	PLED/TRIAL	SENTENCE	V.G	V.R	V.AGE	COMMENTS	NOTICE FILED
	FY95		10 new cases;															SEEK DEATH
1	1995	1	Pelirano, Ronald	M	W	SA	94CRM1230	09/17/94	6	DPDU, Wurtz, DeZago	01/23/95	Pled	Hard 40, 49 mos	f, f	w, w	3, 2		Y
2	1995	2	Brady, Joseph	M	W	WY	95CR100	01/07/95	6	DPDU, Wurtz, Sachse	07/13/95	Pled	Hard 40	f, m	w, w	51, 50		Y
3	1995	3	Tillman, Marshall	M	B	LV	9502CR130	01/14/95	4	DPDU, Wurtz	04/09/04	Trial	125 mos- MH Eval	f	b	12		N
4	1995	4	Young, Chano (Everitt)	M	W	GE	95CR271	03/20/95	6	Ambrosio	01/09/96	Pled	Life	co-def	co-def	mother, so		N
5	1995	5	Everitt, Christopher	M	W	GE	95CR273	03/20/95	6	PD, DeZago	06/09/95	Pled	Life	f, m	w, w	mother, so		N
6	1995	6	Spain, David	M	W	HS	96CR50	03/17/95	5	DPDU, Wurtz, mc	05/25/96	Trial	Hard 40	m	w	48		Y
7	1995	7	Winter, Douglas (Spain)	M	W	HS	96CR51	03/17/95	5	PD, O'Neil	04/16/97	Pled	Hard 25	co-def	co-def	48		N
8	1995	8	Amos, Dawn (Spain)	F	W	HS	97CR19/95CR14	03/17/95	5	Rathbun, Olson	04/28/98	Pled	194m	co-def	co-def	48		N
9	1995	9	Wilson, Kristy	F	W	SG	95CR994	04/30/95	1	DPDU, Wurtz, mc	11/09/95	Pled	Life	m	h	15		N
10	1995	10	Barnes, Gordon (Wilson)	M	A	SG	95CR894	04/30/95	1	Rathbun, me	04/16/96	Trial	Hard 40, 178 mos	co-def	co-def	15		N
	FY96		4 new cases;															
1	1996	11	Shively, Stephen	M	W	SN	95CR3764	10/12/95	5	DPDU, Moots, bw	04/24/96	Trial	Aquittal/36 mos	m	w	31		Y
2	1996	12	KLEYPAS, Gary W	M	W	CR	96CR240G	03/30/96	4	DPDU, Wood, jm	03/11/98	Trial, capital	Death	f	w	20	re. 02-21-07	Y
3	1996	-13	Green, Debora J	F	W	JO	95CR538 (95CR387)	10/24/95	6	Moore, Moriarty	05/30/96	Pled	Hard 40	m, f	w, w	13, 6		N
4	1996	14	MARSH, Michael L	M	W	SG	96CR1157	06/17/96	6	DPDU, Wurtz, jm	04/16/98	Trial, capital	Death	f, f	w, w	22, 1		Y
	FY97		14 new cases;															
1	1997	15	Irwin, William O	M	W	DP	96CR183	08/08/96	4	Cornwell	03/28/97	Pled	Hard 40	f	w	39		N
2	1997	16	SCOTT, Gavin D	M	W	SG	96CR1748	09/13/96	6	DPDU, Wurtz, jm	08/13/99	Trial, capital	Death (retry 2 phase, Evans)	m, f	w, w	35, 35		Y
3	1997	17	Wakefield, Jason (Scott)	M	W	SG	96CR1748	09/13/96	6	Ney	05/06/97	Trial	Life	co-def	co-def	35, 35		N
4	1997	18	Standford, Russell	M	B	SN	96CR03193	09/10/96	6	DPDU, Wurtz, me	03/08/97	Pled	2 Hard 40's (deceased)	f, f	b, b	41, 14		N
5	1997	19	Gillespie, Eddie L	M	B	SG	96CR02103	11/01/96	6	DPDU, Wurtz, jm	02/13/97	Pled	Hard 40	m, m	w, w	41, 38		N
6	1997	20	White, Alan E	M	W	SA	96CR1371	07/21/96	4	DPDU, Wood, jm	04/10/98	Pled	Life, 153 yrs	f, f, m	w, w, w	80, 55, 5		Y
7	1997	21	Watson, James R	M	W	JO	96CR3558	11/14/96	6	DPDU, Barte, me	02/19/98	Pled	Hard 40	f, f	w, w	16, 21		Y
8	1997	22	Jones, Lorenzo M	M	B	HS	97CR18	02/14/97	4	DPDU, Diepenbrock	01/14/98	Trial	Hard 10	f	w	22		N
9	1997	23	Martin, James N	M	W	PT	97CR44	02/21/97	4	DPDU, Wurtz, tb	02/04/98	Pled	Hard 40	f	w	66		N
10	1997	24	Verge, Robert L (Bradford)	M	B	DK	97CR107	02/17/97	6	Ney, Sylvester	02/04/98	Trial, capital	Life; Resentenced 01/02	co-def	co-def	31, 33		Y
11	1997	25	Bradford, Virgil S	M	B	DK	97CR114	02/17/97	6	DPDU, Barte, cr	02/23/99	Trial, capital	Life (Hard 40); Resentenced 01/02	m, f	w, w	31, 33		Y
12	1997	26	Penn, Samuel E	M	B	SG	97CR776	04/18/97	5	DPDU, Wurtz	06/26/98	Dismissed	deceased while in jail	m	w	48		N
13	1997	27	Gill, Raymond E	M	B	CR	97CR266G	05/17/97	4	DPDU, M. Evans, tb	04/15/98	Pled	Hard 10	f	w	24		N
14	1997	28	Adams, Terry L.	M	B	WY	97CR1036	05/23/97	6	DPDU, Evans, Jb, Cornwell	04/28/00	Pled	122 months	f, m	b, b	??		Y
	FY98		11 new cases;															
1	1998	29	Jamison, Chester R	M	B	SG	97CR2097	10/06/97	6	DPDU, Wurtz, me	05/28/98	Trial	2 life	m, m	b, b	24		N
2	1998	30	Harper, Brandon	M	B	WY	97CR2446	12/10/97	6	None on record	01/09/98	Dismissed	NA	m, m	w, h	??		N
3	1998	31	Bolton, Gentry E	M	B	WY	97CR2581	12/28/97	6	DPDU, Barte, bw, mm	02/19/99	Trial	Hard 25, 89 mos	m, m	w, w	19, 47		N
4	1998	32	Law, Robert E	M	B	WY	98CR125	01/18/98	4	DPDU, Moots, bw	03/23/99	Pled	Hard 25, 334 mos	f	b	?		N
5	1998	33	Manis, Brian E	M	W	SN	98CR1292	05/11/98	4	DPDU, Wurtz	12/18/98	Pled	Life, 10 mos	f	w	24		N
6	1998	34	Powell, Richard	M	B	WY	98CR2384	02/05/98	6	Sachse	08/27/99	Trial	Life; MH Eval.	m, m	b, b	??		Y
7	1998	35	Silveria, Robert	M	W	EW	96CR43	07/28/95	3401	DPDU, Wurtz	05/21/98	Pled	Hard 40	m	w	46		N
8	1998	36	Williams, LeMarco E	M	B	WY	98CR680	04/03/98	6	DPDU, Barte, rw	09/24/99	Pled	Hard 40, 15 years	f, f	b, b	??		Y
9	1998	37	Markee, Tracy A	M	W	WY	98CR1123A	06/11/98	5	DPDU, Moots, bw, mm	01/07/00	Pled	460 mos	m	w	?		Y
10	1998	38	Rails, Carl D	M	W	JO	98CR2158	04/26/98	4	DPDU, Wood, jm	08/27/99	Pled	Hard 40, 924 mos	f	w	32		Y
11	1998	39	Henry, Rodney W (Rails)	M	W	JO	98CR1093	04/26/98	4	Cornwell	05/09/03	Trial/Re-trial	206 mos	co-def	co-def	32		Y
	FY99		8 new cases;															
1	1999	40	Livingston, Pamela J	F	W	CK	98CR96	01/29/98	2	DPDU, Moots, Barte	12/10/98	Pled	Hard 25*	m	w	42		N
2	1999	41	Deiterman, Frank (Livingston)	M	W	CK	98CR99	01/29/98	2	Fielschaker	07/01/99	Trial	Life; Hard 40	co-def	co-def	42		N
3	1999	42	ELMS, Stanley M	M	W	SG	98CR1706	05/04/98	4	DPDU, Greeno	02/10/00	Trial, capital	Death	f	w	29		Y
4	1999	43	Noyce, David A	M	W	SG	98CR2058	09/14/98	6	DPDU, Wurtz, jm, re	03/05/99	Pled	2 Hard 40's, 51 mos	f, m	w, w	27, 2		Y
5	1999	44	Almaguer, Rodney J (Aguilar)	M	W	WY	98CR1984A	10/03/98	6	DPDU, Moots, Wood	09/10/99	Pled	46 months	co-def	co-def	??		N
6	1999	45	Aguilar, Carsey Littlewood	M	H	WY	98CR1984B	10/03/98	6	Bath	03/30/00	Pled	263 mos	m, m	h, h	??		N
7	1999	46	Hargrove, Demetris (Trotter?)	M	B	WY	99CR308	02/19/98	6	DPDU, Redmond	02/19/98	Recharge pd	Federal incarceration	m, f	w, w	??		Y
8	1999	47	Martis, Gordon	M	B	WY	99CR1091	05/19/99	6	Bath, Vader	06/29/01	Trial, capital	Life	m, m	b, b	??		Y
	FY00		13 new cases;															
1	2000	48	Cobb, Artis	M	B	GE	99CR1809	10/24/94	6	Dinkel	03/20/00	Trial	98 mos	f, f	b, b	18, 11mths		N
2	2000	49	Hill, Donta (Diaz)	M	B	WY	99CR1974A	09/22/99	8	Coqas	03/09/00	Dismissed	NA	co-def	co-def	??		N
3	2000	50	Diaz, Robert	M	H	WY	99CR1974B	09/22/99	6	DPDU, Evans, cz, Dent	03/09/00	Dismissed	NA, deceased, murdered	f, f	b, b	??		N

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FY #	FY	DPDU #	CLIENT NAME	G	R	CO.	CR #	CRIME DATE	21-3435	COUNSEL	END DATE	PLED/TRIAL	SENTENCE	V G	V R	V AGE	COMMENTS	NOTICE FILED
4	2000	51	Douglas, Romain	M	B	SG	99CR2636	10/03/99	6	Ney	10/10/00	Trial	Life, 161 mos	m, m	h, h	32,33		SEEK DEATH
5	2000	52	Jones, Christopher	M	W	MP	99CR181	10/06/99	6	DPDU, Evans, lb, kr	07/05/00	Pled	3 Hard 50's	m,m,f	w,w,w	7,5,2		Y
6	2000	53	Bledsoe, Thomas	M	W	JF	99CR318	11/05/99	4	DPDU, Evans, Hayes	11/15/99	Dismissed	NA	f	w			Y
7	2000	54	Hebert, Jeffery	M	W	CY	99CR102	11/16/99	5	DPDU, Evans, lb, kr	03/13/01	Trial, capital	Life	m	w	64		Y
8	2000	55	Dalton, John	M	W	MG	00CR271C	12/11/99	6	DPDU, Evans, mm, kr	03/22/01	Dismissed	Deceased while in jail	f,f,m	w,w,w	45,10,12		Y
9	2000	56	Bethel, Michael	M	W	CR	00CR53G	02/07/00	6	DPDU, Evans, lb, kr	08/22/01	Pled, capital	Life, MH Eval	f,f,m	w,w,w	50,50,49		Y
10	2000	57	Arellano, German	M	H	WH	00CR10	03/02/00	4,6	DPDU, Evans, mm, cz	05/02/01	Pled	2 Hard 25's	f,m	h,h	27,23		Y
11	2000	58	Livingston, Edgar	M	B	WY	00CR257	02/10/00	4	DPDU, Evans, Foster	09/28/00	Pled	Hard 50	f	b	?		Y
12	2000	59	ROBINSON, John	M	W	JO	00CR1444	06/03/00	6	(Evans) O'Brien	01/21/03	Trial, capital	Death	f,f	w,w	28,21		Y
13	2000	60	Felder, Davanon R	M	B	SN	00CR1837	03/27/00	6	DPDU, Barte	10/10/00	Dismissed	NA	m,m	b,b	40,35		N
FY01			12 new cases;															
1	2001	61	Oliver, Cornelius	M	B	SG	00CR2945	12/07/00	6	DPDU, Evans, kr	02/26/02	Trial, capital	Life	f,f,m,m	b,b,b,b	17,15,18,20		Y
2	2001	62	Bell, Earl (Oliver)	M	B	SG	00CR2945	12/07/00	6	Ney	02/20/02	Trial	Aquittal	co-def	co-def	17,15,18,20		N
3	2001	63	CARR, Jonathan	M	B	SG	00CR2979	12/15/00	4,6	DPDU, Evans, mm	11/15/02	Trial, capital	Death	m,m,m,f	w,w,w,w	28,29,27,25		Y
4	2001	64	CARR, Reginald (Carr)	M	B	SG	00CR2978	12/15/00	4,6	Greene	11/15/02	Trial, capital	Death	co-def	co-def	28,29,27,25		Y
5	2001	65	Trober, Brian L	M	W	WY	01CR468	03/19/01	6	DPDU, Evans, aw	09/07/01	Pled	Life;Hard 50	f,m,f	w,w,w	38,19,?		Y
6	2001	66	Sappington, Marc V	M	B	WY	01CR0604,608,615	4/7/01 & 4/10/01	6	DPDU, Evans, aw, Katb	09/02/04	Trial	Life *3	m,m,m	b,b,b	45,22,16		N
7	2001	67	Badart, Jimmy D	M	W	CR	01CR209G	04/11/01	4	DPDU, Briggs, dosh	02/20/03	Pled	138 mos	f	w	45		N
8	2001	68	Trotter, Christopher M	M	B	WY	01CR974A	05/21/01	2,6	Bath, Barr	09/04/03	Trial, capital	Life, Hard 50	f,m	b,b	29,30		Y
9	2001	69	Navarre, Michael (Trotter)	M	B	WY	01CR974B	05/21/01	2,6	Vader, D'Arcy	04/25/02	Pled	95 mos	co-def	co-def	29,30		N
10	2001	70	Eddington, Kevin (Trotter)	M	B	WY	01CR974C	05/21/01	2,6	Dani	04/19/02	Pled	111 mos	co-def	co-def	29,30		N
11	2001	71	Trotter, James Jr. (Trotter)	M	B	WY	01CR974D	05/21/01	2,6	Cahill, Duma	08/00/02	Trial	Aquittal	co-def	co-def	29,30		N
12	2001	72	Nash, Vidal (Trotter)	M	B	WY	01CR974E	05/21/01	2,6	Sachse	04/19/02	Pled	95 mos	co-def	co-def	29,30		N
FY02			3 new cases;															
1	1996	12	Klevpas, Gary			CR	96CR240G	03/30/96		Ney	12/20/01	On appeal	Death/Resentencing pdg	f	w	20		Y
2	1999	46	Hargrove, Demetrius (Trotter?)			WY	99CR308	02/19/98		DPDU, Redmond	02/06/04	Dismissed	Federal Incarceration, Fed DP			??		Y
3	2002	73	James, Tyrone D	M	B	WY	02CR615	04/16/02	6	DPDU, Evans, aw, Stockdale	04/24/03	Trial	Hard 50	m,m	b,b	32,32		N
4	2002	74	Harris, Erik A (Stallings)	M	B	WY	02CR975B	06/10/02	6	Warhurst, Barr	10/07/05	Trial, capital	Life - 3 consecutive	co-def	co-def	34,24,23,22		Y
5	2002	75	Stallings, Darrell L	M	B	WY	02CR975A	06/10/02	6	(Evans) Cerillo, Curtis	01/13/05	Trial, capital	Life - 5 consecutive	f,m,f,f,f	b,w,w,w,b	34,24,23,22		Y
FY03			4 new cases;															
1	2003	76	Lewis, Damien C	M	B	DG	02CR1268	07/10/02	6	Evans, Redmond	06/13/03	Pled, capital	2 Hard 50s	m, f	w, w	71,71		Y
2	2003	77	BELT, Douglas S	M	W	SG	03CR1255	06/24/02	4	Evans, Frieden	11/17/04	Trial, capital	Death	f	h	43		Y
3	2003	78	Hill, Nathaniel L	M	B	MG	03CR250	06/13/03	4,6	'Manna, Freeman-Johnson'		pending	Gulley, Capital Murder, 1st phase	m,f	w,w	22,21	Trial June 2007,	Y
4	2003	79	Jones, Sylvester (Hill)	M	B	MG	03CR306	06/13/03	4,6	Pokorny	09/07/04	Pled	67 mos	co-def	co-def	22,21		N
FY04			3 new cases;															
1	1996	14	Marsh, Michael L			SG	96CR1157	06/17/96		DPDU, Woodman	12/17/04	On appeal	Death/Retrial ordered	f,f	w,w	22,1	12-17-04 SC	Y
2	1997	16	Scott, Gavin D			SG	96CR1748	09/13/96		DPDU, Zinn	05/12/04	On appeal	Death/Resentencing	f,m	w,w	35,35		Y
3	2004	80	Beckman, Uriah N	M	W	BB	03CR286	05/04/03	4	Evans, Redmond (mf)	05/28/04	Pled	Hard 50, 126 mos	f	w	72		Y
4	2004	81	GLEASON, Sidney	M	B	BT	04CR52	02/21/04	6	Evans, Wicks (mf)	08/28/06	Trial, capital	Death	m, f	w,h	24,19	Sentencing A	Y
5	2004	82	Thompson, Damien (Gleason)	M	B	BT	04CR52	02/21/04	6	Wachtel, Frieden	08/12/04	Pled	Refused testimony, trial	co-def	co-def	24,19		Y
FY05			6 new cases;															
1	1999	42	Elms, Stanley M			SG	98CR1706	05/04/98		Greene, Nelson	11/17/04	Resentenced	Hard 40.	f	w	29	Death sent, vac	Y
2	2005	83	Fox, Bobby E	M	W	SW	04CR197	03/27/04	6	Evans, Wicks (df)	07/26/06	Pled, 2nd degr		m, m	w,w	4,6	Res; 07/26/06, ca	Y
3	2005	84	Allford, Achaz	M	B	SG	04CR1938	11/12/99	4	Freund, Wicks	01/20/05	Pled		f	w	22		N
4	2005	85	Stanley, Aaron (Colvin)	M	W	CY		09/13/04	6	Evans	10/04/04	Dismissed	to Military Charges	m, m	w,w		Life, 06-10-05	N
5	2005	86	Appleby, Benjamin	M	W	JO	04CR2934	06/18/02	4	(Evans) Koch, Thomas, Swain	10/27/05	Trial, capital	Hard 50; 228 mths	f	w		By 10/27/05, DPDU	N
6	2005	87	Cheever, Scott	M	W	GW	05CR18	01/19/05	5	Evans, Wicks	03/14/05	Dismissed state	to Federal Charges, Wurtz	m	w		returned to Sta	Y
7	2005	88	MOORE, Greg	M	W	HV	05CR132	04/10/05	5	(Evans) Manna, Owens	07/21/06	Trial, capital	Life w/o Parole.	m	w		Conflict 08-11	Y
FY06			4 new cases;															
1	2006	89	CHEATHAM, Phillip	M	B	SN	03CR2636	Dec 2003	6	Hawver, (FY05?)	10/28/05	Trial, capital	Death on appeal	f, f			Amended 08-24-0	Y
2	2006	90	Robinson, Elgin R J	M	B	SG	06CR1523	06/10/06	2	Wachtel (Frieden, Wicks)		pending		f	w	14	Sept. 08 JT	Y
3	2006	91	Burnett, Theodore G (Robinson)	M	B	SG	06CR1524	06/10/06	2	Manna, Owens		pending	Life w/o Parole	f	w	14	June '08 sent	Y
4	2006	92	Geniry, Everett (Robinson)	M	B	SG	06CR1683	06/10/06	2	(Sveboda) Brad Sylvester	07/19/06	Pled, capital	50 years	f	w	14	Juvenls, 17yrs, ca	N
FY07			6 new cases															
1	2007	93	Ratliff, Roger D	M	W	MI	06CR131	05/28/06	4	Evans, Freeman-Johnson	11/03/06	Pled, capital	Hard 50	f	w	21	07/25/06 arrested	Y
2	2007	94	Solis, Jose B	M	H	JO	06CR3686	12/23/06	4	Zane Todd (Freeman-Johnson)	04/19/07	dismissed cap	10/24/08 competency order	f	w		12/28/08 arrested	N

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FY #	FY	DPDU #	CLIENT NAME	G	R	CO.	CR #	CRIME DATE	21-3438	COUNSEL	END DATE	PLED/TRIAL	SENTENCE	V G	V R	V AGE	COMMENTS	NOTICE FILED/SEEK DEATH																
3	2007	95	Thurber, Justin E	M	W	CL	07CR45A	01/05/07	4	Evans, Frieden		pending		f	w		01/17/07 charged	Y																
4	2007	96	Williams, Kenton M	M	B	WY	07CR1884	10/14/06	6	Dunn, Evans		pending		m,f,f,f	b,b,b,b		charged March	Y																
5	2007	97	King, Ernest L (Williams)	M	B	WY	07CR1883	10/14/06	6	Warhurst		pending		m,f,f,f	b,b,b,b		charged March	Y																
6	2007	98	Hall, Edwin	M	W	JO	07CR1474	06/02/07	4	Paul Cramm/Corwell		pending		f	w		chpd 06-14-07; d	Y																
FY08			8 new cases																															
1	2008	99	Lowrance, Christopher M.	M	W	MG	07CR4891	03/02/07	4	DPDU		pending		f	w		chqd Oct 9, 20	N																
2	2008	100	Tatum, Atavon L. (Williams)	M	B	WY	07CR1685	10/14/06	6	Shull		pending		m,f,f,f	b,b,b,b		grand jury indic	Y																
3	2008	101	Fox, Sedale	M	B	LV	08CR41	01/22/08	6	Sarah Swain		pending		f	w	20	Filed capital	Y																
4	2008	102	Guerero, Andrew	M	B	WY	08CR219		6	John Duma		pending					Filed capital	Y																
5	2008	103	Shears, Kendrick	M	B	RN	08CR493	10/27/07	3	DPDU		pending		m	b		March '09 PH	Y																
6	2008	104	Robinson, Charvell	M	B	RN	08CR494	10/27/07	3	Manna/Owens		pending		m	b		Filed capital	Y																
7	2008	105	Strand, Jason	M	B	RN	08CR495	10/27/07	3	Wachtel		pending		m	b		Filed capital	Y																
8	2008	106	Gifford, Jr. Marvin Jay	M	W	RN	08CR525	05/18/08	4	DPDU		pending		f	w	85	06/06/08 1st a	Y																
FY09																																		
1	2003	78	Hill, Nathaniel L	M	B	MG	03CR250	06/13/03	4,6	Manna, Freeman-Johnson	10/31/08	Pled	Hard 50	m,f	w,w	22	Filed capital	Y																
2	2006	90	Robinson, Elgin R J	M	B	SG	06CR1523	06/10/08	2	Wachtel, Oler		Trial, capital	Life w/o Parole	f	w	14	chg atty 10/4/0	Y																
3	2006	91	Bumett, Theodore G (Robinson)	M	B	SG	06CR1524	06/10/08	2	Manna, Owens		Trial, capital	Life w/o Parole	f	w	14		Y																
4	2005	87	Cheever, Scott	M	W	GW	06CR198	01/19/05	5	Evans, Frieden	01/23/08	Trial, capital	Death on appeal	m	w		10/9/07 JT	Y																
5	1996	14	MARSH, Michael L.	M	W	SG	96CR1157	06/17/96	6	Wicks, Freeman-Johnson		pending		f,f	w,w	22,1	no firm trial setting	Y																
6	2007	95	Thurber, Justin E	M	W	CL	07CR45A	01/05/07	4	Evans, Frieden		Trial, capital		f	w	20	LSH Oct. '08	Y																
7	1996	12	KLEYPAS, Gary	M	W	CR	96CR240G	03/30/96	4	Evans, Frieden (Nay, O'Brien)	12/03/08	Resentenced	Death	f	w		Filed capital	Y																
8	2007	98	Williams, Kenton M	M	B	WY	07CR1684	10/14/06	6	Evans		pending		m,f,f,f	b,b,b,b		04/26/09 JT	Y,withdrew																
9	2007	97	King, Ernest L (Williams)	M	B	WY	07CR1683	10/14/06	6	Tempenny		pending		m,f,f,f	b,b,b,b		Feb. '09 JT	Y,withdrew																
10	2007	98	Hall, Edwin	M	W	JO	07CR1474	06/02/07	4	Cramm/Corwell		pled	Life w/o Parole	f	w		9/16/08 sent	Y																
11	2008	99	Lowrance, Christopher M.	M	W	MG	07CR4891	03/02/07	4	DPDU	11/06/08	Trial, capital	Life w/o Parole	f	w		Sent. '08 JT	N																
12	2008	100	Tatum, Atavon L. (Williams)	M	B	WY	07CR1685	10/14/06	6	Shull		dismissed		m,f,f,f	b,b,b,b		12/01/08 JT	Y																
13	2008	101	Fox, Sedale	M	B	LV	08CR41		6	Sarah Swain/ Evans		pending		f,?	w,?		11/06/08 MH	Y																
14	2008	102	Guerero, Andrew	M	B	WY	08CR219	02/03/08	6	John Duma	01/15/09	pled	Life w/o Parole	f,f,?		23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000																		
15	2008	103	Shears, Kendrick	M	B	RN	08CR493	10/27/07	3	DPDU		pending		m	b		Filed as capita	N																
16	2008	104	Robinson, Charvell	M	B	RN	08CR494	10/27/07	3	Manna/Owens		pending		m	b		Filed as capita	N																
17	2008	105	Strand, Jason	M	B	RN	08CR495	10/27/07	3	Wachtel		pending		m	b		Filed as capita	N																
18	2008	106	Gifford, Jr. Marvin Jay	M	W	RN	08CR525	05/18/08	4	Wicks	11/14/08	Pled	Life w/o Parole	f	w	85	114 yrs.	Y																
19	2006	89	Cheatham, Phillip	M	B	SN	03CR2635	Dec 2003	6	Hawver/ Evans	10/28/05	Trial, capital	Death on appeal	f,f			Amended 08-24-0	Y																
20	2009	107	Reed, Brandon	M	W	JO	08CR3099	Nov 2008	6	Evans, Freeman-Johnson		pending		f,?	w,?	21,UB	Filed capital	Y																
21	2009	108	Watson, Terrence	M	B	SA	09CR156	09/26/08	6	will retain McKenna		pending		m,f	b,w	22,22	Filed capital																	
STATE HABEAS																																		
1	1997	16	Scott, Gavin D	M	W	SG	96CR1748	09/13/96		J Fisher, R Falk		pending						Y																

TESTIMONY OF RONALD EVANS
SENATE JUDICIARY COMMITTEE
PROPONENT OF SENATE BILL 208

My name is Ronald Evans. Since 1999, I have been the Chief Attorney of the Death Penalty Defense Unit, a division of the Board of Indigent Defense Services. This unit defends criminal defendants at the trial level who potentially face the death penalty. There are two lawyers in the office in Topeka (including myself) with a support staff of two legal assistants, an investigator, and a mitigation specialist. We also have an office in Wichita that has two lawyers and two legal assistants.

In a case in which the death penalty is being sought, several things are different from a usual criminal prosecution:

1. It will take approximately two years for the case to go to trial;
2. There will be at least 5,000 pages of discovery exchanged between the prosecution and defense;
3. A second (or penalty) phase will need to be prepared lest the accused is convicted. This is much like a second trial that a jury hears after conviction in which issues of aggravation and mitigation are weighed before the jury decides the defendant's fate;
4. Expert testimony will be more extensively used by both the prosecution and defense;
5. Most death trials last at least three weeks (the Carr brothers' trial lasted three months);
6. The American Bar Association Standard for death penalty defense requires two death qualified defenders; thereby, each of these cases has two lawyers defending the accused;
7. The motion practice in these cases is more extensive.

Often a plea is eventually worked out between the parties, and a trial is unnecessary. However, the case must be assumed to be going to trial and must be worked and prepared. A mental health

expert is required in every case to screen the accused for possible disorders that might either provide a first stage defense and/or give the jury some reason in mitigation in the second stage.

The accused in these cases has often not been home-grown. If the school they attended is out of state, then the investigator must be dispatched there if there are potential witnesses to be interviewed. Family to be interviewed is often not from Kansas. Records (school, prison, etc.) that are out of state are more difficult to procure. Witnesses that are not in Kansas must be subpoenaed by the Interstate Compact, and this requires hiring a lawyer in the foreign jurisdiction to handle the pleadings.

A change in venue is often sought, especially if the crime was committed outside a metropolitan area. A venue study is required to present such a motion to the Court. These studies cost at least \$ 10,000. In the last case I tried, such a study revealed 90 percent of the county studied thought the accused was guilty. The motion was denied.

These are some of the ways that having a death penalty is more expensive from my perspective.
Thank you for your time.



STATE OF KANSAS
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Senate Judiciary Committee
Senate Bill 208
Assistant Solicitor General Kris Ailslieger
February 26, 2009

Mr. Chairman and members of the committee, thank you for allowing me to provide testimony on behalf of Attorney General Steve Six in opposition to Senate Bill 208. I am the Assistant Solicitor General responsible for appellate casework in the office of Attorney General Six.

Senate Bill 208 would abolish the death penalty in Kansas. Supporters of the bill point to a 2003 study that claimed it costs more to put someone to death than incarcerate them for life.

At the outset, it must be pointed out that the Attorney General's Office does not approach the death penalty through the prism of a cost-benefit analysis. Rather, the AG's Office, and prosecutors around the state, view the death penalty as a matter of justice, and make death penalty decisions based on what justice demands under the particular circumstances of a given case. One does not put a price on the lives of murder victims or the suffering of their families.

Having said that, if one insists on doing a cost analysis to determine whether the state would save significant money by abolishing the death penalty, it should first be recognized that the data for doing so does not actually exist. Any such analysis is, at best, a guess.

The 2003 Legislative Post Audit study on the costs of the death penalty candidly admits that "**Actual cost figures for death penalty and non-death penalty cases in Kansas don't exist.**" (Report, p. 10.)

More significantly, the report itself states very clearly that "[the report] is not a study of whether it is more costly for Kansas to have the death penalty than not to have it." (Report p. 32, Appendix B – Methodology). To use the report for that purpose is plainly erroneous. The report admits that its scope was not broad enough to determine whether it is more costly to have the death penalty than not, noting that a great many other factors would need to be considered. Significantly, one of these other factors the report identifies is "possible cost savings from defendants pleading guilty to avoid a trial in

Senate Judiciary

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Attachment 4

which the death sentence could be imposed.” (Report, p. 32.) The report does not take such cost savings into consideration.

Other problems with the data in this report are:

- Most agencies and individuals involved in death penalty cases do not keep time/billing reports. Therefore “the vast majority of figures are estimates.” (Report, p. 2.)
- Most information obtained was self-reported from agencies, often based on memory alone, with no way to verify the accuracy of the information.
- The Kansas Supreme Court provided no information upon which to estimate the costs of the judicial branch with respect to death penalty appeals. Therefore the report essentially guessed, basing its guess on information from North Carolina.
- The study is based on a sample of cases that is far too small (only 22 total cases). Because of the small sample size, individual cases can have a disproportionate statistical effect.
- Because the study was conducted in 2003, a great deal of data was unavailable. At that time, only one case (Kleypas) had gone completely through an initial appeal. One other (Marsh) was pending. Appeal costs for other death penalty cases were unknown, and the costs for subsequent appeals of all cases, continued incarceration, and execution were (and remain) unknown. All costs reflected for these areas in the report are merely estimates.
- The report readily admits that there is no way to tell how far the estimated costs will vary from the true costs that will ultimately be incurred.

Additionally, there are some inaccurate and/or misleading elements in the report. For example:

- The report suggests that state appellate courts have discretion to review non-death penalty cases (the suggestion being that the automatic review provision of the death penalty makes death penalty cases more expensive) – this is incorrect. Under K.S.A. 22-3602, all criminal defendants may appeal their cases “as a matter of right.”
- The report implies that death penalty defendants get various levels of appellate review not available to other criminal defendants. This is incorrect. All criminal defendants have the same access to state direct and collateral appeals and federal habeas corpus.
- The report fails to adequately clarify that the higher investigative costs associated with death penalty cases may have more to do with the nature of the crimes rather

than the fact that the defendant ultimately faced the death penalty (it does make this point, but only in small print on page 14.). In other words, the report implies that the penalty drives the investigation costs when in truth, it is the nature of the crime that drives the investigation costs.

The report is a flawed tool for assessing the cost of the death penalty in Kansas, and it certainly is not a good basis for repealing the death penalty. And even if it were not so significantly flawed, cost should not be the driving force behind such a policy decision.

Kansas has one of the most responsible and limited death penalty statutes in the nation. The death penalty does not apply to all murders. It is reserved for the worst, most heinous and cruel murders. The men on death row are some of the most notorious and dangerous criminals in our state's history. Men like the Carr brothers who robbed, raped, and tortured five young people before shooting them execution style in an open field. Miraculously, one young woman survived. Or like Doug Belt, who raped and beheaded his victim. Or like Gary Kleypas, who while on parole for beating a woman to death in Missouri, stalked a young Pittsburg State student and then raped, tortured and stabbed her to death. Or like Justin Thurber, who kidnapped, raped and sodomized Jodi Sanderholm before strangling her to death in a remote part of Cowley County.

Before being sentenced to death, these defendants were treated fairly by law enforcement and had their constitutional rights protected. Each defendant was afforded experienced defense attorneys paid for by the state, a fair trial, and an automatic appeal to the Kansas Supreme Court. Each will be given time to make peace with his god, to say goodbye to his family and prepare for death. Their victims got none of these things.

Death penalty opponents often point to problems in other states where defendants had ineffective or incompetent attorneys, where prosecutors have unlimited discretion to seek the death penalty, or where there is not an option of life-without-parole. These problems do not appear in Kansas.

We cannot put a price on justice for the victims and their families. It is by exacting the highest penalty for these individuals—whose brutal, vicious acts have taken lives and whose conduct demonstrates they have forfeited their right to live among us—that we affirm the highest value of human life. Justice requires a punishment that fits the crime, and a majority of the people of Kansas support having the death penalty to punish those guilty of committing horrific crimes in our communities.

Attorney General Steve Six opposes SB 208 because Kansas has a responsible death penalty statute and any cost savings from repealing the death penalty would be not only insignificant, but would be simply inappreciable compared to the costs suffered by our communities as a result of capital murder and the sense of justice that demands the death penalty. Kansas' death penalty should stand.

STATE OF KANSAS
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY
STEPHEN M. HOWE, DISTRICT ATTORNEY

February 26, 2009

Honorable Thomas Owens
State Capital, 536-N
Topeka, Kansas

Re: Senate Bill 208

Dear Chairman Owens,

Thank you for the opportunity to submit our written response in opposition to Senate Bill 208. I have been a prosecutor for over 18 years and have seen how the criminal justice system works with and without the use of the death penalty.

Prosecutors throughout Kansas have been very selective in their request for a death penalty sentence. The statutory factors to be considered by a jury are very narrow. The death penalty has been in effect for 14 years. Only 10 individuals have received the death penalty. A review of the inmates on death row highlights the egregious nature of their acts.

The fiscal note has indicated that additional costs are associated with the use of the death penalty. Justice should never be controlled merely by costs. The current death penalty law has not resulted in a large influx of inmates receiving death sentences. The current system provides justice for the victim's families and the community in the most shocking of murder cases in our State.

This fiscal note, however, fails to consider the leverage provided to prosecutors to obtain capital murder convictions. In the last year, our office has obtained two pleas to capital murder without an opportunity for parole. It is highly unlikely that this would have occurred without the existence of the death penalty. Thus, two trials were avoided by the leverage afforded through the death penalty. In addition to avoiding the costs of two trials and the appeal process, it has provided relief and finality to the victim's families.

We would ask this committee to reject this bill and maintain the death penalty as an option in capital murder cases. I thank you for your time and would be happy to answer any questions you may have regarding the proposed legislation.

Sincerely,

Stephen M. Howe
Johnson County District Attorney
P.O. Box 728
Olathe, KS 66051

The Senate Judiciary Committee

SB 208 --- AN ACT concerning abolition of the death penalty

Forrest Swall, Lawrence, KS

Greetings, Senator Owens, and Members of the Judiciary Committee.

I appreciate having the opportunity to visit with you regarding the proposed abolition of the death penalty in Kansas.

By now you have heard or read all, or almost all, of the arguments that could be presented both for and against this proposal.

However, I come before you as a matter of conscience, as a public witness, in support of the proposed abolition. Let me explain some of my own personal history in this matter.

First, I was a member of the House in 1994 when the current legislation was adopted. Even though I argued and voted against the then proposed legislation I was a part of the body that did adopt it. I felt then, and have continued to feel a sense of guilt through the years, a sense of responsibility for my states' enactment of legislation legalizing, in the name of the state, murder. While this sense of guilt does not plague me every day, I am frequently reminded of being a part of that experience and feeling that surely there was something I could have done, might have done, or failed to do in my inability to persuade colleagues in the House to stop what I considered a deeply flawed law.

Second, my first appearance before a Kansas Legislative Committee was in 1970 opposing a bill to establish the death penalty was being considered in the House Committee on State and Federal Affairs. My passion for stopping the legalization of capital punishment has not diminished. Third, I was actively involved with the Committee on Penal Reform and the Kansas Council on Crime and Delinquency in the 1970s into the mid 1980s. I was at the 1979 press conference when Governor John Carlin introduced his appointment of Pat McManus as Secretary of Corrections. McManus was viewed by many of us as the first ever professional corrections administrator in Kansas.

One of the first questions by reporters to Secretary McManus was on his position on capital punishment. As some will recall Governor Carlin, contrary to his consistent votes against capital punishment as a House member, campaigned on the position of being willing to sign a death penalty bill if it met all of the constitutional requirements set down in the Supreme Court decision of the mid 1970s which opened the door for states to reestablish capital punishment.

The Secretary's response was clear and firm; he was opposed. Following his statement there was a moment of silence, with all eyes on Governor Carlin. The next question to the Corrections Secretary was, essentially, "what would you do if the

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legislature adopted a capital punishment bill signed by Governor and then a person was sentenced to death and it would be your responsibility to administer the death penalty?"

McManus replied, with clarity and firmness, that he would not be responsible for such an execution; he went on to say that he would have to resign rather than carry out such an order.

Silence; all eyes on the Governor, and then the reporter's question to the governor: "did you know that your candidate held this position before you appointed him?"

As I recall the Governor seemed a little uncomfortable and Pat McManus quickly explained that for the legislature to adopt a capital punishment bill and for it to become law, with the necessary examination to make sure that it would stand up to judicial review; and then when a person would commit a homicide, be tried under a death penalty statute and be sentenced to death; . . . and then, considering the appeals process which would likely take several years and still have a chance of being overturned or delayed---McManus said this could be at least five years and very likely more, possibly ten.

Then McManus, with a wonderful disarming smile, pointed out that the tenure of corrections secretaries are not that long and that in all probability, under the best of circumstances, he would no longer be the Secretary of Corrections, nor would John Carlin be Governor----making his opposition to the death penalty moot, all of which turned out to be true.

The Governor was, as I recall, relieved as were several of the reporters, but it did make some interesting press. More than that, for me, it spoke to the humanity, the integrity of Carlin's appointment to the Secretary of Corrections position.

Now, fast forward through the 1979 legislative session; John Carlin's first year as Governor. A bill was passed that met all of his campaign criteria. The bill was on his desk early in the legislative session and it remained there for days, until the last possible day for his signature or his veto. That day was coincidentally, Good Friday; the Friday before Easter.

It was no secret that Carlin's most influential advisors, his staff members, were opposed to the death penalty. They objected to his campaign position. In visiting with several of them in later years I was reminded, by more than one of his staff, of the tense conversations in the Governor's office. He had made a campaign pledge that was viewed by many as one of the critical positions in securing his election. What would be the political fall out if he were to veto a bill provided by the legislature in just the form he said would be required for his signature?

Then, late that Friday afternoon John Carlin violated his promise; he vetoed the bill.

For a long time I had a copy of the governor's veto statement. It is in the record; perhaps some of you have read it. John Carlin, as a human being, could not bring himself to being a major party to an act, or potential acts, of violence perpetrated by

the state. He decided that to do what in his mind was right was more important than the political fall-out. He decided that he could not be a party to legalizing executions by signing a death penalty bill, or by just washing his hands and allowing it to become law.

I am here today representing, in addition to my own deep sense of opposition to the death penalty, the position of members of the Social Action Committee of the Lawrence Unitarian Fellowship. I stand in solidarity with my religious faith group, as well as a broad spectrum of religions faith groups in opposition to killing. It is a position long held by the nation-wide Unitarian Universalist Association going back long before the position adopted by the UUA General Assembly in 1962.

I am here to affirm those of you who are responsible for sponsoring SB 208. I am here to plead with others who have for various reasons, and in all sincerity believe, that in Kansas we should put people to death when they engage in horrendous crimes. I know those arguments well, I understand, I grieve for the loved ones and friends of persons who are killed. I know how persuasive the plea for justice through death can be.

And, I know too that it is wrong to kill; it would be wrong for me, it would be wrong for you and I believe with all my heart that it is wrong for the state to engage in a form of "legal" executions. I with all of you long for that day when we, as human beings, will stop our killing. While we can not know when it will end, we know it can begin with SB 208 abolishing the Kansas Death Penalty in 2009.

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Written Testimony in Support of SB 208

Senate Judiciary Committee

February 25, 2009

Chairman Owens and Members of the Committee, I submit this written testimony on behalf of Amnesty International, a worldwide human rights organization. Our mandate is based on the Universal Declaration of Human Rights and other international human rights treaties. Amnesty International supports the abolition of the death penalty.

Homicide is an unspeakable tragedy that changes families forever. An individual's right to life has been violated by another person. Dreams and hopes are dashed; life has to now be lived without a loved family member. Meanwhile, the community goes through its own intense emotions, including including a real sense of vulnerability.

The public policy question before us today is whether the death penalty is the best we can offer our grieving families and the best choice we can make from a human rights perspective. We believe the death penalty fails in both arenas.

The death penalty process intensely focuses the state's resources on the person charged with the murder. This process ignores the very real needs of the family to a large part, and it also disregards communal needs for healing. We believe it would be far better to end the use of the death penalty and instead to put society's time and resources into crime prevention and to victim services for families and communities who are dealing with homicide.

Donna Schneweis, State Death Penalty Abolition Coordinator
2044 SW Stone Avenue, Topeka, KS 66604 785-271-1688 dms2@mindspring.com

Internationally, the growing trend is toward abolition of the death penalty because governments are recognizing that capital punishment is not a helpful tool in protecting their societies. Ninety-two countries are abolitionist for all crimes, and another ten are for ordinary crimes. Additionally, thirty-six countries are abolitionist in practice (these countries have the death penalty for murder but have not executed anyone during the past 10 years, have either a policy or established practice of not executing, or have a stated international commitment to not execute).

In contrast, only fifty-nine countries retain the death penalty and use it. These include China, North Korea, Iran, Iraq, Pakistan, and Saudi Arabia to name a few. The top 5 countries for executions in 2007 were: China with at least 470, Iran with at least 317, Saudi Arabia with at least 143, Pakistan with at least 135, and the USA came in fifth with 42 executions. We believe these are not countries Kansas wants to choose to emulate in terms of its public policies.

Amnesty International's members include persons who have lost loved ones to homicide. We want public safety and we want the needs of victim family members addressed. Abolition of the Kansas death penalty would allow us to work toward those goals in a more effective manner than is possible with our current system which is focused on 'an eye for an eye". It's time to join the ranks of the governments who reject the death penalty and focus on more effective solutions.

Murder Victims' Families for Reconciliation
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Senate Judiciary Committee
Written Testimony in Support of S 208
26 February 2009

Mr. Chairman and Members of the Committee:

2009 is the 32nd consecutive year that I have actively lobbied for abolition of capital punishment at the Legislature. You all are familiar with me and my concern that continued application of the death penalty in Kansas will only prolong the suffering of murder victims' families by re-traumatizing them each time they publically have to re-visit their grief when the case is brought up in the media.

Today I wish to provide you with statistical data demonstrating the inefficacy of executions across the nation. Since 1966, I have annually tracked homicide data utilizing figures garnered from the FBI's *Uniform Crime Report* in addition to execution status as reported annually by the NAACP Legal Defense Fund. The information rarely varies from year to year. I have attached the 2007 data, the most recent information provided by the Department of Justice. However, I have on file the data from previous years for any of you that would be interested in comparing that information.

Note that the table is separated by a solid line in the center delineating the states with the highest murder rates from the lowest at the 50% level. A quick glance at the table provides immediate evidence of the ineffectiveness of deterring murder by using the death penalty. As you will note, 12 of the 14 states without capital punishment are contained in the lower 50%. Likewise, only 5 of 25 of those states executed a defendant during the 21st century (delineated in light blue) compared to 21 of 25 states comprising the top 50%. Even more compelling is the finding that only 37 of the 1096 executions (from 1977 through 2007) occurred in the lower 50% states.

Also worth noting are the murder rates of Kansas, Nebraska and Colorado compared to Oklahoma and Missouri. The former 3 states had approximately 1/2 the murder rate of the latter 2 but executed a total of 4 defendants, whereas Oklahoma and Missouri ranked 3rd and 4th respectively in the nation in total executions (152 between them).

In 2004, I testified in favor of Life Without Parole for persons convicted of capital murder. With that bill's passage, Kansas is adequately protected by that alternative sentence. More importantly, murder victims' families now have the reassurance that those defendants convicted of killing their loved ones will never be back on the street again. I once again ask that you pass S 208 as a means of best providing for the safety and welfare of all Kansans.

Bill Lucero
Kansas Coordinator
Murder Victims' Families for Reconciliation

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Rank order and murder rates per 100,000 inhabitants of the 50 states according to the Uniform Crime Report-- 2007

Rank Order	State	Murder rate per 100,000 inhabitants	Executions in 2007	Executions since 1977	Last Execution since 1977	Death row 12-31-07	Method of execution
1	Louisiana	14.2	0	27	2002	88	Injection
2	Maryland	9.8	0	5	2005	6	Injection/Gas
3	Alabama	8.9	3	38	2007	203	Injct/Electro
4	New Mexico	8.2	0	1	2001	2	Injection
5	South Carolina	8.0	1	37	2007	63	Injct/Electro
6	Georgia	7.5	1	40	2007	107	Injection
7	Nevada	7.5	0	12	2006	77	Injection
8	Arizona	7.4	1	23	2007	126	Injection/Gas
9	Mississippi	7.1	0	8	2006	64	Injection
10	Arkansas	6.7	0	27	2005	40	Injct/Electro
11	Michigan	6.7			No death penalty		
12	Florida	6.6	0	64	2006	397	Injct/Electro
13	Missouri	6.5	0	66	2005	48	Injection/Gas
14	North Carolina	6.5	0	43	2006	173	Injection
15	Tennessee	6.4	2	4	2007	102	Injct/Electro
16	Alaska	6.4			No death penalty		
17	California	6.2	0	13	2006	667	Injection/Gas
18	Oklahoma	6.1	3	86	2007	84	Injection
19	Texas	5.9	26	405	2007	373	Injection
20	Illinois	5.9	0	12	1999	11	Injection
21	Pennsylvania	5.8	0	3	2005	228	Injection
22	Indiana	5.6	2	19	2007	19	Injection
23	Virginia	5.3	0	98	2006	21	Injct/Electro
24	Kentucky	4.8	0	2	1999	39	Injct/Electro
25	Ohio	4.5	2	26	2007	188	Injection
26	New Jersey	4.4			No death penalty		
27	Delaware	4.3	0	14	2005	19	Injection/Hang
28	New York *	4.2			No death penalty		
29	Kansas	3.9	0	0		9	Injection
30	Nebraska	3.8	0	3	1997	10	Electrocution
31	West Virginia	3.5			No death penalty		
32	Idaho	3.3	0	1	1994	19	Inj/Firing Sqd
33	Wisconsin	3.3			No death penalty		
34	Colorado	3.1	0	1	1998	2	Injection
35	Wyoming	3.1	0	1	1992	2	Injection
36	Connecticut	3.0	0	1	2005	9	Injection
37	Massachusetts	2.9			No death penalty		
38	Washington	2.7	0	4	2001	9	Injection/Hang
39	Minnesota	2.2			No death penalty		
40	Utah	2.2	0	6	1999	9	Inj/Firing Sqd
41	South Dakota	2.1	1	1	2007	3	Injection
42	Oregon	1.9	0	2	1997	35	Injection
43	Vermont	1.9			No death penalty		
44	North Dakota	1.9			No death penalty		
45	Rhode Island	1.8			No death penalty		
46	Hawaii	1.7			No death penalty		
47	Maine	1.6			No death penalty		
48	Montana	1.5	0	3	2006	2	Injection
49	Iowa	1.2			No death penalty		
50	New Hampshire	1.1	0	0		0	Injection/Hang

* Although New York technically has a death penalty statute, the law has been declared unconstitutional.

Data supplied by the U.S. Department of Justice and the NAACP Legal Defense Fund.

Senate Judiciary Committee
February 26, 2009

Testimony of the Kansas Association of Criminal Defense Lawyers
in Support of SB 208

The Kansas Association of Criminal Defense Lawyers is a 300-person organization dedicated to justice and due process for those accused of crimes. Roughly 84 of our current members are public defenders (some of whom work exclusively as capital defenders), and many other members accept appointments to criminal cases under contract with BIDS. For the reasons set forth below, KACDL **supports** Senate Bill 208, which would prospectively abolish the death penalty in Kansas.

- 1. The Kansas public defender system is in crisis.** If money is to be spent on criminal justice, Kansas must shore up the core requirements of effective assistance of counsel to every person accused of crime before it invests in a costly capital system. Abolishing the death penalty is necessary so that Kansas may avoid the experience of Georgia, where a single capital case (the Brian Nichols courthouse shooting)—whose costs were driven up in large part by the prosecution—essentially bankrupted that state's public defender system. See Brenda Goodman, *Georgia Murder Case's Cost Saps Public Defense System*, THE NY TIMES (Mar. 22, 2007), <http://www.nytimes.com/2007/03/22/us/22atlanta.html>; Molly McDonough, *Prosecutors Drove Cost of Ga. Death Penalty Case*, ABA JOURNAL (Aug. 9, 2008), http://abajournal.com/news/annual_meeting_coverage_elsewhere/.
- 2. The costs of maintaining the death penalty will increase exponentially over the next few decades.** In the fifteen years since Kansas brought back the death penalty, Kansans have had to bear the cost of various original capital trials and sentencing proceedings, a handful of completed direct capital appeals (Kleypas, Marsh, and Scott), one United States Supreme Court case argued on the merits (Marsh), and one completed re-sentencing proceeding (Kleypas). Over time, as more death sentences are either reversed or affirmed on direct appeal, Kansans will see costs increase exponentially as the state continues to charge and try new capital cases while *retrying* those cases in which convictions and/or death sentences have been reversed. Meanwhile, cases in which convictions and death sentences are affirmed on direct appeal will begin winding their way through the cumbersome but necessary state and federal postconviction process, with multiple visits to the United States Supreme Court a given in any capital case.

Testimony of the Kansas Association of Criminal Defense Lawyers
in Support of SB 208

While defendants in noncapital cases have the same rights to the state and federal postconviction process, noncapital cases rarely receive the same level of scrutiny beyond direct appeal that capital cases receive.

The American Bar Association has reported that in one study of the Florida capital postconviction process, it was concluded that “on average, over 3,300 lawyer hours are required to take a post-conviction death penalty case from the denial of certiorari by the United States Supreme Court following direct appeal to the denial of certiorari through that state’s post-conviction proceedings.” ABA GUIDELINES FOR THE APPOINTMENT AND PERFORMANCE OF DEFENSE COUNSEL IN DEATH PENALTY CASES (2003), available at <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/deathpenaltyguidelines2003.pdf>. And while *defense* costs may be federally funded in federal postconviction proceedings, the *state* (whether the AG office or the local prosecutor) must still expend a considerable amount of resources to appear in those proceedings.

- 3. The high error rate in capital cases guarantees that the cycle of expensive capital litigation will continue in Kansas.** In 1991, the Chair of the U.S. Senate Committee on the Judiciary asked Columbia University School of Law Professor James Liebman to research the error rates in capital cases around the country. In 2000, Professor Liebman published nine years of “painstaking” research. He described the “capital error rate” as “the proportion of fully reviewed capital judgments that were overturned at one of the three stages [direct appeal, state postconviction, and federal postconviction] due to serious error.” He concluded that “[n]ationally, over the entire 1973-1995 period, the overall error-rate in our capital punishment system was 68%.” James S. Liebman et al., *A Broken System: Error Rates in Capital Cases, 1973-1995* (2000), available at <http://www2.law.columbia.edu/instructionalservices/liebman/>.

In Kansas, the error rate has so far been 100% on direct appeal. With such an inauspicious beginning, Kansas has a long way to go before it even approaches Liebman’s 68%, which is itself disheartening. Each time a capital case has to be retried, the costs of that case double, public faith in the justice system diminishes, and system resources are stretched that much thinner.

- 4. Every Kansas death sentence reviewed to date has been deemed infected by constitutional error.** Some may be under the mis-impression that both Gary Kleypas’s and Michael Marsh’s death sentences were erroneously reversed because the weighing equation that a majority of the Kansas Supreme Court invalidated in those cases was later upheld by the United States Supreme Court. But the Kansas Supreme Court found

other constitutional errors in those cases, as well as in the more recent case of Gavin Scott. Specifically, the death sentences reviewed to date were infected by at least the following constitutional errors:

- In *State v. Kleypas*, 272 Kan. 894 (2001), the Kansas Supreme Court unanimously held that the prosecutor committed extensive misconduct during Gary Kleypas's sentencing phase by, among other things, making comments that "were clearly improper and reflect a complete lack of understanding of the concept of mitigating circumstances." 272 Kan. at 1103. The Court concluded that at least some of the prosecutor's misconduct was intentional, and probably resulted from the corruptive influence of the death penalty:

Many of the instances of prosecutorial misconduct appear to stem from a misunderstanding of the law regarding the imposition of the death penalty and cannot be characterized as intentional. Others, however, would be improper in any proceeding and can only be explained by the pressure put on the prosecutor to secure the death penalty in a high profile case.

Id. at 1123. While the Court reversed Kleypas's death sentence because of the weighing equation, it also held that "the net cumulative effect of the prosecutorial misconduct might very well have provided an additional basis for reversal." *Id.*

- In *State v. Marsh*, 278 Kan. 520 (2004), the Kansas Supreme Court reversed Michael Marsh's death sentence not just on grounds that the weighing equation was unconstitutional, but also because the Court unanimously concluded that Marsh's trial on capital murder was infected by judicial error, and thus his capital-murder conviction could not stand. Specifically, the Court held that when the trial judge excluded Marsh's evidence that somebody else committed the capital murder with which Marsh was charged, the judge thereby "violated Marsh's fundamental right to a fair trial." 278 Kan. at 533.
- In *State v. Scott*, 286 Kan. 54 (2008), the Kansas Supreme Court reversed Gavin Scott's death sentence after unanimously holding that the trial judge failed "to provide the jury with a proper standard for determining mitigating circumstances." 286 Kan. at 107. (The Court also found "numerous instances of improper comment" by the prosecutor during Scott's guilt phase, and observed that "reasonable minds may disagree as to whether the sheer number of such remarks demonstrate ill will

on the part of the prosecutor.” *Id.* at 84. The Court nonetheless upheld Scott’s conviction as supported by overwhelming evidence.).

5. **Abolition will reduce costs to the Attorney General’s office.** The state budget division has submitted a fiscal note for HB 2351, reporting that the AG’s office “indicates no fiscal effect” as a result of abolishing the death penalty. This makes no sense. Just this week, the Saline County District Attorney explained that she asked the Kansas Attorney General’s office to assist with a capital prosecution in her jurisdiction because “[i]t will be very time consuming. We do not have enough staff to cover a death penalty case.” See Erin Matthews, *California Man Could Face Death Penalty*, SALINA JOURNAL (Feb. 21, 2009), <http://www.saljournal.com/rdnews/story/Capital022109>. Is the AG truly suggesting that there is no cost associated with staffing and resources when the AG’s office handles capital cases? Surely there was some cost to that office when it briefed and argued the constitutionality of the weighing equation before the United States Supreme Court. Surely there was some cost to that office when it handled the resentencing hearing of Gary Kleypas. Does the AG expect his office’s lawyers to volunteer their time to defend death sentences that are eventually challenged in state and federal postconviction proceedings? Would the AG approve if this body designated that no funds allotted to the AG’s criminal division be used toward capital litigation, or to pay the salaries of lawyers for their time spent prosecuting capital cases?

Capital cases require more person hours than noncapital cases for myriad reasons. For example, they require weeks of in-court hours conducting jury selection to probe potential jurors about issues that are not present in noncapital cases (specifically, whether potential jurors are capable of returning a death sentence); they require extensive preparation for sentencing trials that do not occur in noncapital cases; and they often involve detailed consultation with experts about sentencing issues not present in noncapital cases (for instance, the state relied on an expert neuro-radiologist to rebut certain brain-scan evidence offered as mitigation during sentencing in the Carr case). It may be that the county, and not the AG’s office, bears certain costs of litigation, such as expert fees. But presumably when the AG is handling a case, its lawyers spend significant hours working with their experts before putting them on the witness stand. And, of course, both expert fees and lawyer salaries are ultimately borne by Kansans no matter who signs the checks.

6. **The unavailability of the death penalty for BTK, Kansas's most notorious and feared serial killer, allowed for his speedy conviction, his certain incarceration, and the near-guarantee that he will be unable to challenge his conviction.** The contrasting cases of Dennis Rader and Justin Thurber provide just one illustration of the cost savings that abolishing the death penalty will accomplish. Justin Thurber, accused of murdering Jodi Sanderholm in January 2007, offered to plead guilty in exchange for a life sentence. His offer was rejected by a state eager to impose the ultimate punishment. Thurber's case dragged on for two years before he was convicted and sentenced to death, and Kansans now have decades of appellate and postconviction litigation to endure (and fund) while Thurber exercises his rights to challenge the fairness of the process that resulted in his death sentence. In contrast, Dennis Rader pled guilty and was given ten life sentences within six short months after his arrest for the murders he was charged with committed during his confessed reign of terror as Wichita's most notorious and feared serial killer. By pleading guilty, Rader waived any legal avenues for challenging his convictions and sentences. Kansans can thus rest assured that the man known as BTK now has no further legal options, and will simply die in prison. Had the state been able to pursue the death penalty in Rader's case, it would surely have done so, thereby ensuring Rader's longevity in the annals of Kansas capital litigation, and costing millions of Kansas dollars in the process.

7. **Arguments that prosecutors need the threat of death to force defendants into pleas resulting in life sentences do not reflect reality.** Prosecutors have argued that they need the death penalty on the books so that they can threaten defendants with death in order to force them to plead guilty. They claim that this "hammer" allows the state to save money by avoiding trial when defendants otherwise would not voluntarily plead guilty and accept a life sentence. But this argument does not reflect reality. Such a hammer was not necessary to induce Dennis Rader to plead guilty to multiple murders, even while knowing that his plea would result in multiple life sentences. And if the state were truly interested in avoiding the costs associated with capital litigation, it would have accepted the plea offers of Gary Kleypas, Justin Thurber, and others who were willing to waive their trial rights and accept life sentences (some of whom ultimately received life sentences anyway from juries unwilling to return death verdicts). Finally, the fact that the state does in some cases accept defendants' plea offers merely serves to illustrate the arbitrariness inherent in the system. For instance, it is difficult to square one prosecutor's refusal to accept Justin Thurber's plea with another prosecutor's acceptance of Edwin Hall's plea. Hall was, like Thurber, also accused of kidnapping, raping, and murdering a teenage girl (Kelsey Smith). Finally, the hammer of death can result in the high cost of inducing innocent people to plead guilty. The state of Nebraska recently learned this

lesson the hard way, with the exonerations of five defendants who confessed to a murder they did not commit and pleaded guilty “to escape the threat of the death penalty.” Paul Hammel, *Pardons Granted To Five In Murder They Didn’t Commit*, OMAHA WORLD-HERALD (Jan. 27, 2009). The Nebraska legislature is now considering a bill that would award to the wrongfully convicted \$50,000 for each year spent in prison. *Id.*

Respectfully submitted,

Paige A. Nichols
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785.832.8024
on behalf of KACDL

Testimony of the Kansas Association of Criminal Defense Lawyers
in Support of SB 208

Bill Kurtis
Kurtis Productions LTD
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February 26, 2009

Bill Lucero
Kansas Coalition Against the Death Penalty
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Dear Members of the Kansas Legislature,

Several years ago I wrote a book, Death Penalty on Trial, which argued that our system of justice makes too many mistakes to trust it with imposing a penalty of death. There was one other important point that stood out in my research. A death penalty trial is much too expensive. If you combine the cost of the trial with the cost of incarceration, a death penalty sentence is much costlier than life in prison.

In light of current economic hardships, other states have begun to consider abolishing the death penalty. I know you're facing a budget deficit as well. I strongly urge you to finish the work that the Kansas Coalition Against the Death Penalty and other Kansas legislators have begun and support Senate Bill 208.

I would like to lend my voice to those who are urging you to abolish the death penalty in Kansas and replace it with life in prison without parole.

Thank you for considering this action.

Sincerely,

Bill Kurtis

Senate Judiciary
2-27-08
Attachment 10

Johnson County Police Chiefs' and Sheriffs' Association

10 Crescent Boulevard, Lake Quivira, Kansas 66217-8401
Phone: 913/631-5300 Fax: 913/631-5761 Email: burdel@sbcglobal.net



DATE: February 26, 2009
TO: Senator Owens and Members of the Judiciary Committee
FROM: Chief Wes Jordan
JCCSA President
SUBJECT: SENATE BILL 208

On behalf of the Johnson County Kansas Police Chiefs' and Sheriffs' Association (JCCSA), we learned today that Senate Bill 208 would abolish the Death Penalty.

Our Association was formally organized in 1962 to share information and ideas, coordinate matters of mutual concern, and provide professional law enforcement services. We suspect your committee must be inundated with legal opinions and a plethora of scholarly research conclusions. Our perspective is much more to the point and condensed -- we respectfully oppose this recommendation and ask that the Death Penalty provision remain as written.

Thank you for your time and consideration of our perspective.

WLJ:jlw

Derek Schmidt - Senate Bill 208

From: Megan DiGiovanni <mDiGiovanni@cbtks.com>
To: <Derek.Schmidt@senate.ks.gov>
Date: 2/26/2009 9:40 PM
Subject: Senate Bill 208

Mr. Schmidt-

I am writing to you regarding Senate Bill 208 that is being reviewed currently. I have a deep interest in this bill because my brother, Brad Heyka, and his friends were victims of a crime that resulted in their death. The two brothers, Reginald and Johnathan Carr, who committed this crime are now sitting on death row in Kansas. My brother and his friends were not only killed while kneeling naked in a soccer field in the middle of a snow storm, they were also raped and tortured as well. I am against Bill 208 and find it appalling that the abolishment of the death penalty is being considered as a way to save money. I have read through the information and as it shows, there is no concrete evidence that being taking away the death penalty that funds will be saved. The death penalty has been used as a tool to get offenders to plea bargain therefore saving the tax payers money. If the committee would truly like to look at ways to cut back on funds regarding the death penalty then I would suggest looking at the process. In the eight years since Brad and his friends died it is absurd that the criminals are still going through the appeals process. While I understand their right to appeal I think that eight years is time wasted which equates to money wasted. I hope that I can have your support by voting against Bill 208, not only for me but most importantly for Brad and his friends. While the bill would not directly effect Reginald and Johnathan I believe it would only be a matter of time that the eleven sitting on death row would be looked at if this bill passed. Please feel free to contact me shall you have any further questions or would want to sit and discuss this more. Thank you for your time.

Sincerely,
Megan Heyka DiGiovanni
785-249-2556

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Senate Judiciary

2-27-09

Attachment 12

Derek Schmidt - Death Penalty Hearing

From: Larry Heyka <larmar1@cox.net>
To: <Derek.Schmidt@senate.ks.gov>, <Jean.Schodorf@senate.ks.gov>, <jschodorf@aol.com>, <Julia.Lynn@senate.ks.gov>, <julia@senatrojulialynn.com>, <Dwayne.Umbarger@senate.ks.gov>, <Mary.PilcherCook@senate.ks.gov>, <Les.Donovan@senate.ks.gov>, <ldondist27@aol.com>
Date: 2/26/2009 9:52 PM
Subject: Death Penalty Hearing
CC: 'Megan DiGiovanni' <mDiGiovanni@cbtks.com>, "'Scott, Amy X [EQ]'" <Amy.Scott@Embarq.com>, <elizabeth.daily@yahoo.com>, 'Larry Heyka' <LHeyka@banklandmark.com>, 'Larry Heyka' <larmar1@cox.net>

Senators----

My name is Larry Heyka and I live in Manhattan, Kansas. I must say that I am very disturbed and disappointed that you are now looking to repeal the Death Penalty in Kansas. My son, Brad Heyka, was murdered on December 15, 2000 by the Carr Brother in a very brutal and violent crime. Along with Brad, three of his close and dear friends were also murdered with him. They were forced to do acts against their will at gunpoint and later taken out to a frigid and snowy field naked and were told to kneel down and then were murdered by the Carr Brothers execution style. I, and my family, will never forget that event for the rest of our lives. The Carr Brothers received a very fair trial and the evidence was found to very conclusive, including an eye witness who was also shot but survived.

Kansas has one of the most responsible and limited death penalty statues in the nation. The death penalty does not apply to all murders. It is reserved for the worst, most heinous and cruel murders. The individuals on death row in Kansas are some of the most notorious and dangerous criminals in our state's history. These defendants received two experienced attorneys and an automatic appeal to the Kansas Supreme Court. Each is being given time to make peace with God and to say goodbye to their families and prepare for death. The victims got none of these things.

The state of Kansas needs to retain the death penalty and show that it is very serious about justice. Kansans want and deserve that and it is not right for you to determine that laws should be weakened at a time when serious crimes have escalated throughout the nation. In reality, the State of Kansas should get tougher on crime than it is today. Talking to law enforcement agents, it is obvious that the justice system has opened a revolving door and criminals continue to re-commit more serious crimes and are released early or put on probation with very little true punishment time. These acts escalate and are now often ending in numerous more severe crimes such as murder. Let's make those who commit criminal acts understand that there are real consequences for their actions. Please get a grip on the severity of the situation and take rationale and real efforts to reduce crime in Kansas. SB 208 does not address the problems or issue but merely shows weakness by those that support this potential legislation.

If you had endured the pain and loss that we have, you might understand better your responsibilities. I plead with you to let the Death Penalty stand.

Thanks for your consideration in this matter.

Larry R. Heyka
 4116 Berkshire Circle

Senate Judiciary
 2-27-09
 Attachment 13

Manhattan, Ks 66503
785-770-8695 Home
785-341-4613 Cell

13-2

Derek Schmidt - FW: Senate Bill 208 - please read before voting

From: "Scott, Amy [EQ]" <Amy.Scott@Embarq.com>
To: "Derek.Schmidt@senate.ks.gov" <Derek.Schmidt@senate.ks.gov>
Date: 2/26/2009 5:29 PM
Subject: FW: Senate Bill 208 - please read before voting

Below is the letter I sent to Mr. Owens. If this can be read in tomorrow's session, I would appreciate it. Thank you again for your help!

From: Scott, Amy [EQ]
Sent: Thursday, February 26, 2009 5:15 PM
To: 'towens10@att.net'
Subject: Senate Bill 208 - please read before voting
Importance: High

Mr. Owens,

I am in your district. I live at 95th and Switzer in Overland Park.

I represent the victims who have been tortured, raped, and murdered by two men who sit on death row. I am opposed to Senate Bill 208 for my personal reasons, but I was supporter of Kansas' Death Penalty prior to these murders.

I feel the need to voice my concerns about the introduction of Senate Bill 208. Your peers in 1994 voted to add the death penalty as a sentence for only the cruelest of criminals. Lots of time went into making that happen. It's only been used 11 times over the last 14 years. Only when it's necessary are prosecutors using it. Lots of consideration goes into charging someone with this charge. The state felt compelled that they needed it in 1994, enough to add it into the state's system. Why would we turn that around for a quick, short term "savings"?

The death penalty is used as leverage in ways to get confessions over criminals. In those cases, it saves Kansas money. Those savings need to be considered. Were those included in the audit from 2003?

The states that surround us have the death penalty and use it - Missouri and Oklahoma. We could model their learnings and potentially bring down the cost of the trial.

It is a deterrent if Kansas would use it. 11 men are on death row now, we should instead spend our time moving those through.

As someone who still walks around with her heart broken 8 years later, I have forever been changed by the torture, cruelty, evilness and fear that the Carr brothers brought upon my boyfriend and our innocent friends. The Carr brothers laughed at the court system through the entire trial, and I think they are still laughing at the State of Kansas because nothing has moved them closer to the death chamber since they were sentenced in 2002. Please do not let them have the last laugh and vote yes to Senate Bill 208.

As a life long citizen of Kansas, I want to feel that we have strict laws in place to punish those who inflict the harshest of pain. I may not be the most eloquent writer in this correspondence, but that does not mean my points don't deserve your consideration.

The two individuals that are speaking against Senate Bill 208 are educated on the topic and speak from experience. Do not take that there are two people there as a representation of how Kansas feels on it. There are MANY people who feel we need the death penalty.

Senate Judiciary

2-27-09

Attachment 14

Please read this in tomorrow's session as I cannot be there in person. Thank you for your time.

Amy Scott
Overland Park, KS
913-461-6858
Amy.scott@embarq.com

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