

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Tim Owens at 9:30 a.m. on January 29, 2010, in Room 548-S of the Capitol.

All members were present.

Committee staff present:

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

Others attending:

See attached list.

Bill Introductions

Senator Terri Huntington requested the introduction of a bill that would require that, in a step-parent adoption, the father must give consent to the adoption unless the father is deemed to be unfit and the adoption is found to be in the best interests of the child. The bill was introduced without objection.

Senator Julia Lynn introduced a bill regarding the filling of a vacancy of the sheriff's office. The bill was introduced without objection.

The Chairman called for final action on **SB 208 - Abolishing the death penalty** and **SB 375 - Abolishing the death penalty; creating the crime of aggravated murder.**

Senator Vratil moved, Senator Schmidt seconded, to table SB 208. Motion carried.

Senator Pilcher-Cook distributed a proposed balloon amendment to **SB 375** regarding commutation of a sentence as it applies to those already convicted under the death penalty. Senator Pilcher-Cook moved, Senator Lynn seconded, to adopt the proposed balloon amendment. Motion carried. (Attachment 1)

Senator Vratil moved, Senator Schmidt seconded, to amend SB 375 on page 3, line 5 to add the word "commute" at the appropriate place as discerned by the revisor and at any other appropriate place as discerned by the revisor. Motion carried.

Senator Pilcher-Cook requested an appropriate motion regarding the functionality clause currently in statute.

Senator Schmidt moved, Senator Vratil seconded, to amend SB 375 to exclude the functional disability/incapacitation clause for all death penalty and life without parole convictions in the appropriate place as discerned by the revisor. Motion carried..

Senator Schmidt moved, Senator Lynn seconded, to table SB 375. Motion failed.

Senator Vratil moved, Senator Haley seconded, to recommend SB 375 as amended favorably for passage. Motion carried..

Senator Schmidt and Senator Lynn requested their no votes recorded.

The next meeting is scheduled for February 1, 2010.

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

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Jan 29, 2010

NAME	REPRESENTING
Ed Kwapp	KACP/KPOA/KSA
Donna Scheweis	Amnesty International
Bell Lucas	MVFRK5
Tyler Feeser	Home Condition A DP -
Sean Miller	CAPITOL STRATEGIES
Joseph Molino	KS BAR ASSN.
Richard Smarney	KENNELY & ASSOC.
Ann D. Thomas	BAD-EMS
Jerry Cunningham	Bad of EMS

**SENATE BILL No. 375**

By Committee on Judiciary

1-14

Sen. Pilcher-Cook  
SB375-Balloon1.pdf  
RS - JThompson - 01/29/10

Senate Judiciary  
1-29-10  
Attachment 1

9 AN ACT concerning abolition of the death penalty; amending K.S.A. 21-  
10 3452, 21-4622, 21-4634, 21-4635, 21-4641, 21-4706, 22-3405, 22-3705  
11 and 22-4210 and K.S.A. 2009 Supp. 21-4619, 22-3717, 22-4902, 38-  
12 2255, 38-2271, 38-2312, 38-2365, 39-970, 65-5117, 72-1397 and 75-  
13 52,148 and repealing the existing sections; also repealing K.S.A. 21-  
14 3439, 21-4623, 21-4624, 21-4625, 21-4626, 21-4627, 21-4629, 21-4630  
15 and 21-4631.

16  
17 WHEREAS, Kansas reenacted the death penalty in 1994; and  
18 WHEREAS, Inmates in Kansas are currently under sentence of death;  
19 and

20 WHEREAS, Kansas has not carried out an execution since 1965; Now,  
21 therefore,

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

23 New Section 1. (a) No person shall be sentenced to death for a crime  
24 committed on or after July 1, 2010.

25 (b) Any person who is sentenced to death for a crime committed prior  
26 to July 1, 2010, may be put to death pursuant to the provisions of article  
27 40 of chapter 22 of the Kansas Statutes Annotated, and amendments  
28 thereto.

29 (c) This section shall be part of and supplemental to the Kansas crim-  
30 inal code.

31 New Sec. 2. (a) Aggravated murder is the:

32 (1) Intentional and premeditated killing of any person in the com-  
33 mission of kidnapping, as defined in K.S.A. 21-3420, and amendments  
34 thereto, or aggravated kidnapping, as defined in K.S.A. 21-3421, and  
35 amendments thereto, when the kidnapping or aggravated kidnapping was  
36 committed with the intent to hold such person for ransom;

37 (2) intentional and premeditated killing of any person pursuant to a  
38 contract or agreement to kill such person or being a party to the contract  
39 or agreement pursuant to which such person is killed;

40 (3) intentional and premeditated killing of any person by an inmate  
41 or prisoner confined in a state correctional institution, community cor-  
42 rectional institution or jail or while in the custody of an officer or em-  
43 ployee of a state correctional institution, community correctional insti-

1 3513 and 21-3516, and amendments thereto, if the offender is 15 years  
2 of age or older and the victim is under 14 years of age, such violations  
3 are off-grid crimes for the purposes of sentencing. Except as provided in  
4 K.S.A. 21-4642, and amendments thereto, the sentence shall be impris-  
5 onment for life pursuant to K.S.A. 21-4643, and amendments thereto.

6 (e) Violation of section 2, and amendments thereto, is an off-grid  
7 crime for the purposes of sentencing. Except as provided in K.S.A. 21-  
8 4622 and 21-4634, and amendments thereto, the sentence shall be im-  
9 prisonment for life without the possibility of parole pursuant to section 3,  
10 and amendments thereto.

11 Sec. 11. K.S.A. 22-3405 is hereby amended to read as follows: 22-  
12 3405. (1) The defendant in a felony case shall be present at the arraign-  
13 ment, at every stage of the trial including the impaneling of the jury and  
14 the return of the verdict, and at the imposition of sentence, except as  
15 otherwise provided by law. In prosecutions for crimes not punishable by  
16 death or life without the possibility of parole, the defendant's voluntary  
17 absence after the trial has been commenced in such person's presence  
18 shall not prevent continuing the trial to and including the return of the  
19 verdict. A corporation may appear by counsel for all purposes.

20 (2) The defendant must be present, either personally or by counsel,  
21 at every stage of the trial of traffic infraction, cigarette or tobacco infrac-  
22 tion and misdemeanor cases.

23 Sec. 12. K.S.A. 22-3705 is hereby amended to read as follows: 22-  
24 3705. The governor may, when ~~he~~ the governor deems it proper or ad-  
25 visable, commute a sentence in any criminal case by reducing the penalty  
26 as follows:

(1) ~~(a)~~ If the sentence is death, to imprisonment for life ~~or for any term~~  
28 ~~not less than ten years without the possibility of parole or any lesser~~  
29 ~~sentence, but not to any term less than ten years;~~

30 ~~(b) if the sentence is life without the possibility of parole, to impris-~~  
31 ~~onment for life or any term not less than ten years;~~

(2) ~~(b) (e)~~ except as provided in subsection (b), if the sentence is to im-  
32 prisonment, by reducing the duration of such imprisonment;

(3) ~~(c) (d)~~ if the sentence is a fine, by reducing the amount thereof;

(4) ~~(d) (e)~~ if the sentence is both imprisonment and fine, by reducing  
36 either or both.

37 Sec. 13. K.S.A. 2009 Supp. 22-3717 is hereby amended to read as  
38 follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A.  
39 1993 Supp. 21-4628 prior to its repeal; K.S.A. 21-4635 through 21-4638,  
40 and amendments thereto; section 3, and amendments thereto; K.S.A. 8-  
41 1567, and amendments thereto; K.S.A. 21-4642, and amendments  
42 thereto; and K.S.A 21-4624, and amendments thereto, an inmate, includ-  
43 ing an inmate sentenced pursuant to K.S.A. 21-4618, and amendments

(a)

and not to

STRIKE

(b) The governor shall not commute a sentence of life without the possibility of parole.