

REVISED
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SUPPLEMENTAL NOTE ON SENATE BILL NO. 6

As Reported without Recommendation
by Senate Committee on Judiciary

Brief*

SB 6 would abolish the death penalty in the State of Kansas and replace this with the sentence of life imprisonment without the possibility of parole for those crimes now defined as capital murder. The bill deletes references to the death penalty in ten statutes as part of this change. The bill is effective July 1, 2005.

Defendants sentenced to death before the effective date of the bill would not be affected by this legislation.

Background

The bill was supported by Senators Haley and Schodorf; representatives of the Kansas Catholic Conference; Amnesty International; and Murder Victims Families for Reconciliation. Written testimony was also submitted against the death penalty by a former assistant Wyandotte County District Attorney.

The bill was opposed by a Sedgwick County Deputy District Attorney and six family members of murder victims who submitted written testimony in opposition to the abolition of the death penalty in Kansas.

Kansas Death Penalty Law and Procedure

Kansas enacted the current capital murder/death penalty statutes in 1994. Capital murder is an off-grid person felony. The crime of capital

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

murder is limited to seven specific types of first degree murder as follows:

- (1) Intentional and premeditated killing of any person in the commission of kidnaping or aggravated kidnaping;
- (2) Intentional and premeditated killing of any person pursuant to a contract;
- (3) Intentional and premeditated killing of any person by an inmate or prisoner confined in a state correctional facility;
- (4) Intentional and premeditated killing of the victim of, the commission of, or attempt to commit rape, criminal sodomy, or aggravated criminal sodomy;
- (5) Intentional and premeditated killing of a law enforcement officer;
- (6) Intentional and premeditated killing of more than one person as a part of the same act or transaction or acts connected together; or
- (7) Intentional and premeditated killing of a child under the age of 14 in the commission of kidnaping or aggravated kidnaping with intent to commit a sex offense.

A separate sentencing proceeding to determine whether the defendant shall be sentenced to death is required. In the sentencing proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the aggravating circumstances enumerated in KSA 21-4625 and any mitigating circumstances.

The aggravating circumstances are limited by statute to the following:

- (1) The defendant was previously convicted of a felony in which the defendant inflicted great bodily harm, disfigurement, dismemberment, or death on another.
- (2) The defendant knowingly or purposely killed or created a great risk of death to more than one person.

- (3) The defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.
- (4) The defendant authorized or employed another person to commit the crime.
- (5) The defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.
- (6) The defendant committed the crime in an especially heinous, atrocious, or cruel manner.
- (7) The defendant committed the crime while serving a sentence of imprisonment on conviction of a felony.
- (8) The victim was killed while engaging in, or because of the victim's performance or prospective performance of, the victim's duties as a witness in a criminal proceeding.

Mitigating circumstances shall include, but are not limited to, the following:

- (1) The defendant has no significant history of prior criminal activity.
- (2) The crime was committed while the defendant was under the influence of extreme mental or emotional disturbances.
- (3) The victim was a participant in or consented to the defendant's conduct.
- (4) The defendant was an accomplice in the crime committed by another person, and the defendant's participation was relatively minor.
- (5) The defendant acted under extreme distress or under the substantial domination of another person.
- (6) The capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law was substantially impaired.

- (7) The age of the defendant at the time of the crime.
- (8) At the time of the crime, the defendant was suffering from post-traumatic stress syndrome caused by violence or abuse by the victim.
- (9) A term of imprisonment is sufficient to defend and protect the people's safety from the defendant.

If, by unanimous vote, the jury finds beyond a reasonable doubt that one or more of the aggravating circumstances in KSA 21-4625 exist and, further, that the existence of such aggravating circumstances is not outweighed by any mitigating circumstances which are found to exist, the defendant shall be sentenced to death; otherwise, the defendant shall be sentenced to life without the possibility of parole.

The death penalty is carried out by intravenous injection at the Lansing Correctional Facility.

A person under 18 or a mentally retarded person cannot be sentenced to death or to life without the possibility of parole under KSA 21-4622 and KSA 2004 Supp. 21-4623.

Kansas Supreme Court Decisions: the Kansas Death Penalty Law Is Unconstitutional

The Kansas Supreme Court has rendered two decisions, one in late 2001 and the most recent one in December of 2004, involving the Kansas capital punishment law. See *State v. Kleypas*, 272 Kan. 894, 40 P.3d 139 (2001) and *State v. Marsh* ___ Kan. ___, 102 P.3d 445 (2004). Both cases found the law unconstitutional. The 2001 case found the law was unconstitutional only as applied in the specific case. The 2004 case found the law unconstitutional on its face and incapable of being construed by the court in a constitutional manner. The impact of the most recent decision is that Kansas no longer has the ability to impose the death penalty on any person convicted of capital murder until such time as the U.S. Supreme Court would override this Kansas Supreme Court decision.

Kansas Attorney General Files Appeal to U.S. Supreme Court

The Kansas Attorney General has filed a *writ of certiorari* with the United States Supreme Court seeking to have that court reverse the *Marsh* ruling and uphold the constitutionality of the Kansas capital punishment law. Whether the U.S. Supreme Court grants the writ likely will not be known until June.

If the U.S. Supreme Court fails to grant *certiorari*, or having granted the review but renders a decision against the State of Kansas, then all death penalty sentences rendered since the enactment of the law in 1994 are invalid and all defendants receiving the death sentence would have to be resentenced.

Impact of the *Marsh* Case on Death Row Inmates, Other Cases

The following are the names of the seven persons who have been convicted of capital murder in Kansas and the date of their offenses.

Gary Kleypas – March 30, 1996
Michael Marsh – June 17, 1996
Gavin Scott – September 13, 1996
John Robinson Sr. – June 3, 2000
Jonathan Carr – December 11 and 15, 2000
Reginald Carr – December 11 and 15, 2000
Douglas Belt – June 25, 2002

Five death penalty cases are currently proceeding to trial.

None of the defendants listed above will receive the death penalty if the *Marsh* case is not overturned. The maximum sentence that can be imposed is either the Hard 40 or the Hard 50.

2003 Post Audit Report

A December 2003 Legislative Post Audit Report entitled "Costs Incurred for Death Penalty Cases: A K-Goal Audit of the Department of Corrections concluded, among other things, that cases where the death penalty is sought could cost up to 70 percent more to prosecute.

**Kansas Judicial Council Death Penalty
Advisory Committee Report**

The Kansas Judicial Council's Death Penalty Advisory Committee issued a report dated January 29, 2004, which explores the costs of death penalty cases. The report concludes there is little a state can do to lessen the costs of death penalty cases.

Fiscal Note

The fiscal note for SB 6 states that according to the Board of Indigents' Defense Services, passage of the bill would affect expenditures for both trial costs and appeal costs. On the trial side, a death penalty case under current law that would proceed as a non-death case under this bill would cost approximately \$200,000 per case. Death penalty trials currently cost approximately \$500,000 per case. As a result, savings at the trial level for these cases under this bill would be approximately \$300,000 per case. For appeal costs, the agency states that it cannot estimate an amount for savings per case, as death penalty appeals can continue for an average of 12 years from the commission of a crime. The Kansas Sentencing Commission states that the proposed legislation would have no effect on prison admissions or offender population levels through FY 2014.