

February 12, 2019

The Honorable Rick Wilborn, Chairperson
Senate Committee on Judiciary
Statehouse, Room 541-E
Topeka, Kansas 66612

Dear Senator Wilborn:

SUBJECT: Fiscal Note for SB 21 by Senate Committee on Ways and Means

In accordance with KSA 75-3715a, the following fiscal note concerning SB 21 is respectfully submitted to your committee.

SB 21 would abolish the death penalty for crimes committed on or after July 1, 2019. The bill would repeal the capital murder statute and create the new crime of aggravated murder, which would be an off-grid person felony. Offenders convicted of aggravated murder would be sentenced to imprisonment for life without the possibility of parole and would not be eligible for commutation of sentence, parole, probation, assignment to a community correctional services program, conditional release, post release supervision, functional incapacitation release, or suspension, modification, or reduction of sentence. The bill would also make several technical amendments.

The Office of Judicial Administration states enactment of SB 21 would still require the courts to work through any existing death penalty cases committed before July 1, 2019. Judges and exempt non-judicial staff at both the district and appellate court levels work additional hours to address death penalty cases and, to some extent, have to delay hearing other cases. The Office states that there are currently two appellate research attorneys who devote a significant amount of time to death penalty cases. The Office indicates aggravated murder proceedings would be less lengthy than death penalty proceedings. However, a fiscal effect upon the Judicial Branch cannot be estimated.

If the death penalty were to be abolished under SB 21, the State Board of Indigents' Defense Services estimates savings for the agency of approximately \$765,000 from the State General Fund in FY 2020.

The Office of the Attorney General estimates that the bill would cause the agency to incur additional costs of approximately \$375,000 from the State General Fund over the next two fiscal years. The Office states that new legal arguments may be available to those offenders who were sentenced to death for crimes committed before July 1, 2019. According to the Office, there are ten offenders who are under the sentence of death. This could result in those offenders creating additional legal actions, which would result in litigation costs of approximately \$250,000 (10 offenders X \$25,000 per case) for those cases. Also, the Office of the Attorney General anticipates that the bill would generate at least one U.S. Supreme Court appeal, which would require additional expenditures of approximately \$125,000.

The Kansas Sentencing Commission states that enactment of SB 21 would have no effect on prison admissions or beds. Unlike some other states, Kansas does not have specialized separate holding facilities or a “death row” for offenders. Offenders who have been sentenced to death are placed in administrative segregation, which is a custody setting that includes other inmates. The Kansas Department of Corrections estimates enactment of SB 21 would result in a cost avoidance related to the acquisition of drugs necessary to carry out an execution; however, the Department cannot estimate what the cost avoidance would be.

The Kansas Department of Corrections states the current execution chamber is located at the Lansing Correctional Facility and will be closed once the new Lansing facility opens in January 2020. Because the bill would not be retroactive, the Department states it would either keep the execution chamber at Lansing, build a new structure at the El Dorado Correctional Facility estimated to cost \$493,000, or renovate existing space at El Dorado with an estimated cost of \$125,000. Any fiscal effect associated with SB 21 is not reflected in *The FY 2020 Governor’s Budget Report*.

Sincerely,

A handwritten signature in black ink that reads "L. L. Campbell". The signature is written in a cursive, flowing style.

Larry L. Campbell
Director of the Budget

cc: Janie Harris, Judiciary
Scott Schultz, Sentencing Commission
Linda Kelly, Corrections
Willie Prescott, Office of the Attorney General
Pat Scalia, Indigents Defense Services