

Approved: 3/15/94
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:00 a.m. on February 24, 1994 in Room 514-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Mary Galligan, Legislative Research Department
Gordon Self, Revisor of Statutes
Darlene Thomas, Committee Secretary

Others attending: See attached list

A motion was made by Senator Bond, seconded by Senator Oleen to approve the minutes for February 8, February 9, February 10, February 11, and February 14 Senate Judiciary meeting. The motion carried.

SB 742--jurisdiction of certain law enforcement officers to execute a valid search warrant

Senator Emert gave the Criminal Law Subcommittee report on SB 742. The issue prompting SB 742 was the inability to serve search warrants from one municipality to another. The report of the subcommittee was to amend SB 742 to include Sedgwick County and report the bill favorably.

A motion was made by Senator Emert, seconded by Senator Feleciano to adopt the subcommittee report and to report SB 742 favorably as amended. The motion carried.

SB 473--death penalty for certain crimes

HB 2578--death penalty for first degree murder; 40-year parole eligibility if death penalty not imposed

A motion was made by Senator Parkinson, seconded by Senator Vancrum to amend SB 473 into HB 2578 with technical amendments of adding a severability clause and providing the prosecutor must give notice of seeking the death penalty within 5 days after arraignment. The motion carried.

A motion was made by Senator Rock to amend conceptually HB 2578 as amended to be patterned after the Virginia Statute, seconded by Senator Parkinson (Attachment No. 1)

A substitute motion was made by Senator Bond, seconded by Senator Martin to amend HB 2578 to replace "capitol punishment" with "life without parole". A division was requested, 6 Yes; 6 No. Motion failed.

Original motion by Senator Rock to amend conceptually HB 2578 as amended to be patterned after the Virginia Statute, seconded by Senator Parkinson was considered. The motion carried.

A motion was made by Senator Bond, seconded by Senator Martin to include appropriation for the fiscal years 1995, 3.614 million and 1996, 3.640 million as per fiscal note (Attachment No. 2). Division was requested, 6 Yes; 6 No. The motion failed. Senator Feleciano asked to be recorded as voting to support the motion.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m.
on February 24, 1994.

A motion was made by Senator Parkinson, seconded by Senator Ranson to report HB 2578 favorably as amended. A division was requested, 7 Yes; 6 No. The motion carried.

The meeting adjourned at 11:00 a.m.

The next meeting is scheduled for February 24 upon adjournment of the Senate in Room 254-E, 1994.

GUEST LIST

COMMITTEE: Senate Judiciary Committee

DATE: 2/24/94

NAME (Please Print)	ADDRESS	COMPANY/ORGANIZATION
Bangert, S Therese	TOPEKA	KCADP
Alma Stephens	"	MVFR
Helen Stephens	"	KPOA
TONI WHEELER	TOPEKA	SEN KARR
Jill McBride	Topeka	OBSCURE
Donna Schneeweis	Topeka	AI
Ben Cooks	Topeka	KPA
CHERYL LYNN	WINFIELD	KSO/KWKS
Trudy Arnold	Topeka	AIA KAUSNE
Lillian DeAngelo	Pete Topeka	
Jim Chan	Topeka	KCDAA
Paul Shelby	Topeka	QIA
Ron Miles	Topeka	BIDS
Neil Gately	Topeka	BIDS
Deanne McKenna	"	KCADP
Bill Lucero	"	MVFR
Ann Bzorek	"	IRS
Dana Weising	Olathe	KU
Deb SURGERTY	Topeka	KU
Sherida Collier	Olathe	KU student
Dana Tucker	Lawrence	KU
Lillian Aylen	Lawrence	KU
J. Solbach	"	"

GUEST LIST

COMMITTEE: Senate Judiciary Committee

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[illegible]

Proposed Amendments to H.B. 2578

1. This amendment would limit application of the death penalty to a limited and statutorily defined class of intentional and premeditated killings.

Crimes subject to death penalty:

Creation of capital murder.

Capital murder would be:

1. Intentional and premeditated killing of any person in the commission of kidnapping, as defined in K.S.A. 21-3420 and amendments thereto, when the kidnapping was committed with the intent to hold such person for ransom;

2. intentional and premeditated killing of any person by another for the purpose of receiving money or any other thing of monetary value;

3. intentional and premeditated killing of any person by an inmate confined in a state or local correctional institution or while in the custody of an officer or employee of the state or local correctional institution;

4. intentional and premeditated killing of any person in the commission of, or subsequent to, rape, as defined in K.S.A. 21-3502 and amendments thereto, criminal sodomy, as defined in subsections (a)(2) or (a)(3) of K.S.A. 21-3505 and amendments thereto and aggravated criminal sodomy, as defined in K.S.A. 21-3506 and amendments thereto or any attempt thereof, as defined

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in K.S.A. 21-3301 and amendments thereto;

5. intentional and premeditated killing of a law enforcement officer, as defined in K.S.A. 21-3110 and amendments thereto;

6. intentional and premeditated killing of more than one person as a part of the same act or transaction; and

7. intentional and premeditated killing of a child under the age of 12 in the commission of kidnapping as defined in K.S.A. 21-3420 and amendments thereto, when the kidnapping was committed with intent to commit a sex offense against the child.

2. This amendment would require technical amendments to numerous sections of the bill, including sections 1, 2, 3, 8 and 9.



DIVISION OF THE BUDGET

Room 152-E
State Capitol Building
Topeka, Kansas 66612-1504
(913) 296-2436
FAX (913) 296-0231

Joan Finney
Governor

Gloria M. Timmer
Director

February 23, 1994

REVISED

The Honorable Jerry Moran, Chairperson
Senate Committee on Judiciary
Statehouse, Room 255-E
Topeka, Kansas 66612

Dear Senator Moran:

SUBJECT: Revised Fiscal Note for SB 473 by Senators
Parkinson, et al.

In accordance with KSA 75-3715a, the following revised fiscal note concerning SB 473 is respectfully submitted to your committee.

SB 473 would provide for death by injection for conviction of first-degree murder and a finding that the defendant committed the crime intentionally and with premeditation for any individual 18 years of age at the time of the act. No sentence of death would be allowed for an individual determined by the court to be mentally retarded.

The district attorney would be required to provide in writing at the time of arraignment a request that the death penalty would be sought by the state at the trial. Upon conviction of murder in the first-degree and a finding that the defendant committed the crime intentionally and with premeditation, the court would be required to conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death.

The proceeding would be conducted by the trial judge before the trial jury as soon as possible. Evidence may be presented at the sentencing proceeding concerning any matter relevant to the question of sentencing, including aggravating circumstances and any mitigating circumstances. If the jury is unable to reach a verdict, the judge must dismiss the jury and impose a sentence as provided by law. In addition, the trial court would review any

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jury verdict for a sentence of death to ascertain whether the sentence is supported by the evidence. If the sentence is not supported by the evidence, the court would modify the sentence and provide a written explanation of the new sentence for the record.

The bill would make provision for an automatic review by, and appeal to, the Supreme Court of Kansas any sentence of death imposed by a trial court. In addition, if SB 473 is held unconstitutional by the Supreme Court of Kansas or the United States Supreme Court, the court having jurisdiction over the person must resentence the defendant as otherwise provided by law.

Under the bill's provisions, the "Hard 40" authorized under current law--which requires the offender to serve 40 years before becoming parole eligible--remains a sentencing option for offenders convicted of premeditated first degree murder. Offenders convicted of premeditated first degree murder who do not receive either the death penalty or the "Hard 40" would receive a life sentence under which parole eligibility is achieved after 15 years. The bill does not affect sentencing for persons convicted of first degree felony murder, i.e. murder committed during the commission of another felony crime, which currently carries a life sentence penalty with parole eligibility after 15 years.

The bill makes provision for the person sentenced to death to make an anatomical gift. In addition, a member of the clergy, three persons designated by the prisoner and not more than six persons designated by the Secretary of Corrections may be present at the execution.

Finally, SB 473 provides that if an inmate in custody is declared insane, the execution is suspended until such time as the inmate is declared sane. If an inmate alleges to be pregnant, a procedure would be in place to suspend the execution until the child is born or the pregnancy is terminated.

Based on fiscal impact statements provided by the Department of Corrections, the Office of Judicial Administration and the State Board of Indigents' Defense Services the provisions of the act would increase expenditures in FY 1995 by approximately \$3.6 million above amounts included in the *FY 1995 Governor's Budget Report*. The State General Fund would be required to provide all funding except \$40,000 from the Correctional Institutions Building Fund. These statements also indicate that costs would continue at that increased level and possibly increase further in future years.

The State Board of Indigents' Defense Services estimates \$2,328,526 from the State General Fund would be required for the defense of indigent clients. The above cost estimate assumes the caseload experienced in FY 1993, the retention of the present system of assigned counsel and public defenders who are qualified

to defend a capital case, and a cost of \$125 per hour per capital case. The estimate also assumes the appellate defender would require 4.0 or 5.0 new FTE positions in order to handle the eight to ten years of appeals that have been established as the norm in capital cases. The four or five additional positions estimated at the appellate level are 2.0 or 3.0 FTE Attorney B, 1.0 FTE paralegal, and 1.0 FTE Secretary I positions. The Board is estimating 37 premeditated murder cases per year through one or more stages of capital litigation. The Board has prepared a very detailed fiscal impact statement for the bill, which is available in the Division of the Budget office.

The Office of Judicial Administration indicates that the fiscal impact on the Judicial Branch would be minimal. The additional expense associated with SB 473 would be borne primarily by the counties as trial costs and operating expenses. The state pays for all personnel costs at the trial level and the counties pay for the operating expenditures. The fiscal impact to the counties has been requested.

The Kansas Department of Corrections indicates that the primary cost to the Department would be for space renovation and equipment at El Dorado Correctional Facility. Approximately \$40,000 from the Corrections Institution Building Fund is estimated in renovation costs to create an execution room and adjacent rooms for detention of the inmate and for staff preparations. If a lethal injection machine is used, the cost of the machine is approximately \$40,000. If medical personnel are used instead, the cost would be less, including payment of fees to administer personnel and the cost of the drugs. Other costs to be incurred would be autopsy expenses and, in some cases, burial expenses.

SB 473 could result in a small decline in inmate population, and expenditures would be affected only in marginal operating costs, i.e. food, clothing, supplies and other inmate-related expenses which currently run at approximately \$1,600 per year. The Department does not anticipate that enactment of SB 473 alone would require additional staff. However, to the extent that its provisions contribute to the need for segregation capacity for management of high risk inmates, the bill could reinforce needs identified by the Department for additional segregation capacity which has more intensive staffing requirements than general inmate population housing units.

Information was received from four counties and the Office of the Attorney General regarding HB 2578. The four counties, Finney, Riley, Sedgwick, and Johnson, identify similar costs associated with death penalty legislation. The counties would incur costs for additional staff in the prosecutors offices, staff training, juries, expert witness expenses, district court operations, jails, and additional operations in the county prosecutor's office. The

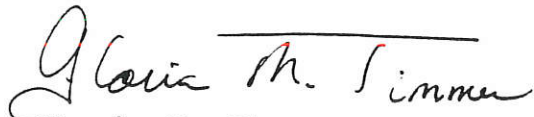
The Honorable Jerry Moran, Chairperson
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Division of the Budget has estimated a statewide annual county expense of \$1,205,702. (See attached chart).

The Office of the Attorney General indicates there may be some impact on the office, but that it would not be great. The Attorney General believes assistance at the local level, which is discretionary on his part, would shift more heavily to death penalty cases. While the criminal staff at the Office of the Attorney General and the Kansas Bureau of Investigation now includes experienced prosecutors, the agency indicates that it may be necessary in the future to concentrate more heavily on employing prosecutors with significant experience. This would result in a relatively "insignificant" increase in salary and wage expenditures. An increase in staff may be necessary in the future to accommodate the increase in post-conviction habeas corpus and civil rights cases filed by prisoners. The Attorney General maintains that death penalty cases alone would not require "significant" increases in staff.

The Division of the Budget estimates the costs for the bill in FY 1996 would be approximately \$3.6 million. The estimate is based on a 3.0 percent inflation factor, holds the caseload estimate and the staffing requirements to the FY 1995 levels, and deletes the one-time expenditures for capital outlay for the Department of Corrections.

Sincerely,


Gloria M. Timmer
Director of the Budget

cc: Jan Johnson - Corrections
Jerry Sloan - Judicial Branch
Mel Cathey - Indigents' Defense

473.fn

Estimate of Additional Costs to Implement SB 473

	FY 1995	FY 1996++
STATE COSTS:		
Board of Indigents' Defense Services		
Trial costs:		
14.8 cases @ \$103,750*	\$1,535,500	
Appeal costs:		
attorney time & transcripts**	1,104,782	
Less current resources	<u>(311,756)</u>	
Total for Indigents' Defense	\$2,328,526	\$2,398,382
Department of Corrections:		
Space renovation & machine	80,000	--
COUNTY COSTS:		
Trial and appeal costs+	<u>1,205,702</u>	<u>1,241,873</u>
TOTAL	\$3,614,228	\$3,640,255

* Included are trial, expert witness, and investigative costs

** Assumes 1 writ of certiorari and 2 writs of habeas corpus per year, plus transcript fees

+ Assumes 14.8 trials and 4.4 appeals per year. Assumes the counties will handle all of the appeal process. The Office of the Attorney General has not provided any estimates to the number of cases the agency would assume from the counties, nor any cost estimates for the agency's expenses related to SB 473.

++ Assumes an inflationary factor of 3.0 percent between FY 1995 and FY 1996.

Note 1: The cost estimates do not take into account the effect "stacking" would have on the cost of appeals. Stacking would be the accumulation of cases on appeal over time because of the length of the appeal process.