

SESSION OF 2009

SUPPLEMENTAL NOTE ON SENATE BILL NO. 208

As Amended by Senate Committee on
Judiciary

Brief*

SB 208, as amended, would repeal the crime of capital murder in Kansas. The bill also would remove the death penalty as a sentencing option after July 1, 2009. Individuals who received a death penalty sentence prior to July 1, 2009, are still subject to the death penalty.

The bill would provide that a defendant convicted of any of the following crimes be sentenced to life in prison without the possibility of parole:

- Intentional and premeditated killing of any person in the commission of kidnapping, or aggravated kidnapping, when the kidnapping or aggravated kidnapping was committed with the intent to hold such person for ransom;
- Intentional and premeditated killing of any person pursuant to a contract or agreement to kill such person or being a party to the contract or agreement pursuant to which such person is killed;
- Intentional and premeditated killing of any person by an inmate or prisoner confined in a state correctional institution, community correctional institution or jail or while in the custody of an officer or employee of a state correctional institution, community correctional institution or jail;
- Intentional and premeditated killing of the victim of one of the following crimes in the commission of, or subsequent

*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>

to, such crime: rape, criminal sodomy, or aggravated criminal sodomy, or any attempt thereof;

- Intentional and premeditated killing of a law enforcement officer;
- Intentional and premeditated killing of more than one person as a part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct; or
- Intentional and premeditated killing of a child under the age of 14 in the commission of kidnapping, or aggravated kidnapping, when the kidnapping or aggravated kidnapping was committed with intent to commit a sex offense upon or with the child or with intent that the child commit or submit to a sex offense.

The bill would provide the Governor may commute a death sentence for a person sentenced prior to the repeal of the death sentence on July 1, 2009, to imprisonment for life or for any term not less than ten years.

The bill would repeal the provision that required the Board of Indigents' Defense Services to assign attorneys to represent defendants convicted of capital murder and sentenced to death on direct appeal and on habeas corpus proceedings.

Background

The proponents of the bill, as introduced, who presented testimony at the Senate Committee hearing were Senator Carolyn McGinn; Senator David Haley; Richard Dieter, Executive Director, Penalty Information Center; Sean O'Brien, Attorney; Sue Norton, Murder Victims' Families for Reconciliation; Dr. Michael Birzer, Kansas Coalition Against the Death Penalty; Michael Schuttloffel, Executive Director, Kansas

Catholic Conference; Duane Friesen, Mennonite Churches of Central Kansas; Pat Scalia, Executive Director, Board of Indigents' Defense Services; Forest Swall, Former member of the House of Representatives; Ron Evans, Chief, Death Penalty Defense Unit; Donna Schneweis, State Death Penalty Abolition Coordinator; Bill Lucero, Kansas Coordinator, Murder Victims' Families for Reconciliation; Paige A. Nichols, Kansas Association of Criminal Defense Lawyers; and Bill Kurtis, journalist and author.

The opponents of the bill, as introduced, who presented testimony at the Senate Committee hearing included Kris Ailslieger, Assistant Solicitor General, on behalf of Kansas Attorney General Steve Six; Steve Howe, Johnson County District Attorney, on behalf of the Kansas County and District Attorneys Association; Wes Jordan, Chief, Johnson County Police Chiefs and Sheriff's Association; Megan DiGiovanni, private citizen; Larry Heyka, private citizen; and Amy Scott, private citizen.

The Senate Committee on Judiciary amended the bill to make minor technical changes.

According to the fiscal note on the bill, as introduced, the Board of Indigents Defense Services estimates that SB 208 would reduce expenditures from the State General Fund in FY 2010 by \$723,132. The Board estimates savings of \$600,000 for professional services, \$107,380 for rent and utilities, and \$15,752 in salary reductions. The agency anticipates additional savings in future years because of the increasing number of capital murder cases filed each year. The Office of Judicial Administration, the Office of the Attorney General, and the Judicial Council all indicate no fiscal effect as a result of SB 208. The Kansas Sentencing Commission anticipates a long-term impact on prison beds as a result of the bill, but an amount cannot be estimated because the impact would occur beyond the ten-year forecast period. Any fiscal effect associated with SB 208 is not included in *The FY 2010 Governor's Budget Report*.

