

SESSION OF 2010

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 375**

As Amended by Senate Committee on  
Judiciary

**Brief\***

SB 375, as amended, would repeal the crime of capital murder. It also would remove the death penalty as a sentencing option for a crime committed on or after July 1, 2010. The bill would not affect the death sentence for any person who is sentenced to death for a crime committed prior to July 1, 2010.

The bill would create the new crime of aggravated murder. Aggravated murder would be the:

- 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 to, such crime: rape, criminal sodomy, or aggravated criminal sodomy, or any attempt thereof;
- Intentional and premeditated killing of a law enforcement officer;

---

\*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>

- 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 defendant may be prosecuted for crimes combined to charge aggravated murder, not just aggravated murder. Aggravated murder is an off-grid person felony. The penalty for a conviction of aggravated murder is life without the possibility of parole. A person sentenced to life without the possibility of parole would not be eligible for commutation of sentence, parole, probation, assignment to community corrections, conditional release, postrelease supervision, functional incapacitation release, or suspension, modification, or reduction of sentence.

Additionally, the bill would:

- Amend Alexa's law to include capital murder, prior to its repeal, and aggravated murder to a list of crimes which define "person" and "human being" also to mean an unborn child;
- Amend the expungement statute to maintain that no expungement of convictions for capital murder, prior to its repeal, and aggravated murder, or attempts of these crimes, are authorized;
- Provide that a mentally retarded defendant or a defendant less than 18 years of age at the time of the commission of the crime of aggravated murder would not be sentenced to life without the possibility of parole, but would be sentenced as otherwise provided by law;
- Cross-reference life without parole for aggravated murder and make other technical and clarifying amendments as to which statute applies to the defendant's crime, depending on the date of the crime;
- Amend Jessica's law to provide that an offender who is sentenced to imprisonment for life without the possibility of parole shall not be

eligible for commutation of sentence, parole, probation, assignment to community corrections, conditional release, postrelease supervision, functional incapacitation release, or suspension, modification, or reduction of sentence;

- Amend the special sentencing statute to clarify that aggravated murder is an off-grid person felony with a mandatory sentence of life without the possibility of parole;
- Limit the Governor's power to commute a death sentence to life without the possibility of parole, and would limit the Governor's power to commute a sentence of life without the possibility of parole altogether;
- Make a clear statement that life without the possibility of parole means no eligibility for parole;
- Amend the statute on functional incapacitation release to make clear that a person sentenced to death or life without the possibility of parole is not eligible for such a release; and
- Make technical cleanup amendments, making references to capital murder prior to its repeal and adding references to aggravated murder.

## **Background**

In 2009, SB 208 would have repealed the crime of capital murder in Kansas. The bill also would have removed the death penalty as a sentencing option after July 1, 2009. Individuals who received a death penalty sentence prior to July 1, 2009, would still have been subject to the death penalty under SB 208. Additionally, the bill would have provided that a defendant convicted of any crimes which would have been capital murder would have been sentenced to life in prison without the possibility of parole under the bill. An amended version of the bill passed out of the Senate Judiciary Committee. After a lengthy debate on the floor of the Senate, it was decided that the bill should be sent to the Judicial Council for study during the interim.

The Judicial Council Committee members were:  
Honorable Donald R. Noland, Chairperson;  
Ron Evans, Chief Defender, Kansas Death Penalty Defense Unit;  
Jeffrey D. Jackson, Professor of Law, University of Kansas School of Law;

Michael Kaye, Professor of Law, Washburn University;  
Senator Stephen Morris, Senate President;  
Steven Obermeier, Assistant Johnson County District Attorney;  
Senator Thomas C. "Tim" Owens;  
Kim T. Parker, Deputy Sedgwick County District Attorney;  
Patricia Scalia, Executive Director of the Kansas Board of Indigents'  
Defense Services;  
Jason Thompson, Assistant Revisor of Statutes; and  
Ron Wurtz, Deputy Federal Public Defender.

The Judicial Council Committee's primary assignment was to review and make recommendations on 2009 SB 208. The Committee agreed that SB 208 presented a number of technical problems which could not be resolved simply by amending the bill. Instead, the Committee drafted a new bill, 2010 SB 375. The Committee's findings are available in the Report of the Judicial Council Death Penalty Advisory Committee.

The proponents of the bill, as introduced, who presented testimony in the Senate Committee hearing were representatives of the Capital Punishment Center at the University of Texas School of Law; the Catholic Church; the University of Colorado, Boulder; Amnesty International; Kansas Coalition Against the Death Penalty; Murder Victims' Families for Reconciliation; the Mennonite Church; Murder Victims Families' for Human Rights; the United Methodist Church, Kansas Area; St. Mary's Law School; League of Women Voters of Kansas; the Kansas Association of Criminal Defense Lawyers; and the National Association for the Advancement of Colored People, Topeka Branch.

The opponents of the bill, as introduced, who presented testimony in the Senate Committee hearing were representatives of the Kansas Attorney General's Office; nine victim advocates; the Kansas Peace Officers' Association; and the Kansas County and District Attorney's Association.

Providing neutral testimony on the bill, as introduced, was Patricia Scalia, Executive Director of the Board of Indigent's Defense Services.

The Senate Committee amended the bill to:

- Clarify that a person sentenced to life without the possibility of parole would not be eligible for commutation of sentence or a functional incapacitation release;

- Make corresponding changes to the sentence of life without the possibility of parole in Jessica's law; and
- Clarify the limits to the Governor's commutation power with regard to a sentence of death and to life without the possibility of parole.

According to the fiscal note on the bill, as introduced, there are ten offenders on "death row" as of June 30, 2009. Nationally, the average time from sentence to carrying out the death penalty has increased to approximately 12 years. In Kansas, that amount of time has been 11 years, but no death sentences have been carried out. The Kansas Sentencing Commission indicates that SB 375 would have no effect initially. The effect of this bill would be the difference in bed needs after the first inmate would have been put to death, with a stacking effect until the average age at death from natural causes in prison. This will increase the need for prison beds, but the effect is outside the ten-year projection period and cannot be estimated. The Board of Indigent Defense Services projects that the bill would reduce defense costs for death penalty cases, but the savings would not be realized until at least FY 2012 when the trials take place under the new law. The Board estimates a cost-savings of approximately \$400,000 annually beginning in FY 2012 for four trials, or \$100,000 savings per case by eliminating one stage of the trial. The Office of Judicial Administration indicates that SB 375 would save the court time because the trial and appeals process for capital murder cases are lengthier than they are for aggravated murder cases, but the savings cannot be estimated.