

March 18, 2015

The Honorable John Barker, Chairperson  
House Committee on Judiciary  
Statehouse, Room 149-S  
Topeka, Kansas 66612

Dear Representative Barker:

**SUBJECT:** Fiscal Note for HB 2129 by House Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2129 is respectfully submitted to your committee.

HB 2129 would abolish the death penalty for crimes committed on or after July 1, 2015. 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. Offenders would not be eligible for commutation of sentence and the Governor would not be permitted to commute a sentence of life without the possibility of parole. The bill includes one technical amendment to reconcile the docket fee for expungement applications across certain statutes.

If the death penalty were abolished under HB 2129, the State Board of Indigents Defense estimates an annual savings for the agency totaling \$355,000 from the State General Fund beginning in FY 2016 for defense of new cases that would no longer be needed. The estimate includes \$255,000 from eliminating trial level capital defenders and \$100,000 from eliminating appellate defense and other post-conviction work. The Board indicates future savings of \$345,000 for a private appellate team could be expected from existing cases that will begin proceeding through the appeals process. Additional future savings of \$411,000 could be expected from the state habeas proceeding which is a procedurally required stage of capital cases. The estimate includes \$255,000 for a private defense team and \$156,000 for two qualified habeas public defenders.

The Office of Judicial Administration indicates that the bill would allow the separate sentencing proceedings required for capital cases to be discontinued at the appeal level. While this would save court staff time, the Office anticipates it would be partially offset by the criminal procedures required for the new crime of aggravated murder. Therefore, it is likely that judges and non-judicial personal would continue to spend significant amounts of time on these cases. Also, courts would still be required to work through any existing death penalty cases. Judges and

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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. While it is possible that at some point in the future those positions will no longer be needed, it is unknown when that might occur.

The Office of the Attorney General estimates that the agency could incur additional costs of approximately \$350,000 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, 2015. According to the Office, there are nine 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 \$225,000 (9 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 HB 2129 would have no effect on prison admissions or beds. The Department of Corrections indicates that any savings gained from passage of the bill would be negligible. 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. It is likely that offenders convicted of the new crime of aggravated murder would also be placed in administrative segregation. Any fiscal effect associated with HB 2129 is not reflected in *The FY 2016 Governor’s Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn Sullivan", with a horizontal line extending to the right.

Shawn Sullivan,  
Director of the Budget

cc: Mary Rinehart, Judiciary  
Scott Schultz, Sentencing Commission  
Pat Scalia, BIDS  
Willie Prescott, Attorney General’s Office