

House Corrections and Juvenile Justice Committee
February 13, 2017

House Bill 2167

Testimony of Meryl Carver-Allmond
Proponent

Dear Chairman Jennings and Members of the Committee:

I am employed as a public defender at the Capital Appellate Defender Office. I handle direct appeals of death penalty cases in the Kansas appellate courts, as well as non-capital cases as time permits. I would like to share with you my personal experience with the ongoing waste of resources inherent in our Kansas death penalty system.

From 2008 to 2012, I was an attorney with the (non-capital) Appellate Defender Office. While there, I handled murders and serious sex crimes, in addition to more mundane felonies. In 2012, I moved to the capital office, and I have continued to work there since.

At the time I switched offices, I was successfully representing about 70 clients. Now, I have 15. The reason that I can only handle about 20% of the clients that I used to? Because five of my current clients are sentenced to death.

The phrase “death is different” gets used a lot, but—even setting aside the moral and finality concerns that saying is often aimed at—death cases *are* quite different in size, complexity, and the time required to pursue them properly. The enhanced jury selection, separate sentencing trial, and general “leave no stone unturned” scrutiny that capital cases must receive makes them exponentially bigger and more complicated.¹

For example, when I was working on non-capital cases, for a first-degree murder or serious sex crime, the average size of a record on appeal² that I received in my office was a little under 1400 pages. While those cases varied in complexity, I cannot remember a case that took me longer than 3 weeks of active work to review and brief.

¹ And that size and complexity is largely mandated by the federal constitution and the United States Supreme Court. As I have previously testified before this body, efforts to speed this process up or truncate the cases would be expensive and almost certainly lead to mistakes.

² The “record on appeal” is the collection of trial transcripts, motions, exhibits, and other documents that an appellate attorney must review before filing a brief with the appellate courts. Its size is one method appellate attorneys commonly use to evaluate the time it will take to brief a case.

The records on appeal for my current capital cases range from 3,362 pages to 36,334 pages. Excepting the newest case, which does not yet have a tabulated record, the median size is 7,378 pages. The only capital case that I have worked on completely from start to present has a record on appeal that is 4,757 pages, and took me 6 months of active work to review and brief.

That case—which is the least complex of the capital cases that I am appointed to—had 10 appellate issues. When working on non-death murder cases, the most complex cases that I ever worked on had a maximum of 4 appellate issues.

The size and complexity of these cases means they take more time. It also means that they take more attorneys, sometimes *many* more attorneys than one might think. American Bar Association guidelines require two defense attorneys at all times on each capital case.³ But because—by the time defense attorneys review the case and prosecutors review the case and judges review the case—years can elapse, attorneys often move on to other positions during the pendency of a capital case. This means that much of the work of familiarizing oneself with a case must be done several times over.

In our oldest capital case in Kansas, for example, I am the 9th appellate attorney and the 19th attorney overall to represent my client. I cannot speak with expertise on all of the work that goes into preparing for a capital trial, but it took me 4 months to familiarize myself with the case for appeal, and that was after previous attorneys had already done almost all of the required briefing. That does not include time I spent preparing to argue the case or in preparing post-argument filings.

Further, that client—who is not a young man—is only now, after 20 years, at the end of the first of three levels of mandated appellate review. That's 19 attorneys on the defense side alone—all funded by our Kansas tax dollars—for a man to, most likely at this point, die of natural causes in prison.

If HB 2167 is passed, a case like his could be briefed by a single attorney in 3 weeks, appealed in a few years, and finished. And the case would have the same result—a man would die of natural causes in prison.

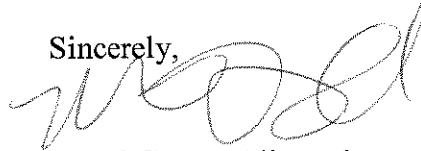
In addition to being an attorney, I am also the mother of two future Kansas public school students. As I watch this waste in our resources day-in and day-out, it's hard for me not to think: How many teachers could we pay with 20 years of attorney fees? How many after-school programs could we fund? How many science classrooms could we equip? Particularly given

³ American Bar Association, *Guidelines for the Appointment and Performances of Defense Counsel in Death Penalty Cases*, Rev. Edition, 2003, <http://www.americanbar.org/content/dam/aba/migrated/>.

our current budget situation, it is irresponsible to keep throwing money into our futile death penalty system.

For these reasons, I urge this committee to vote in favor of HB 2167.

Sincerely,

A handwritten signature in black ink, appearing to read 'Meryl Carver-Allmond', written in a cursive style.

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