



Kansas County & District Attorneys Association

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www.kcdaa.org

To: Chairman Jennings and Members of the House Corrections and Juvenile Justice Committee

From: Kim T Parker, Prosecutor Coordinator: Kansas County & District Attorney's Association

Date: February 13, 2017

Re: House Bill 2167 Neutral Testimony

Good Afternoon Chairman Jennings and Members of the Committee;

Thank you for considering the testimony of our association and our unique perspective on the viability of the Death Penalty in Kansas. We represent the elected County and District Attorneys and their appointed prosecutors who seek to enforce the law enacted by this body in courtrooms across this state.

We have consistently voiced our impressions and concerns when similar bills have been proposed in the years since Kansas reenacted the Death Penalty, as a possible punishment after an individual is convicted of Capital Murder. I have incorporated in my testimony, the testimony of Sedgwick County District Attorney Marc Bennet and Johnson County Attorney Stephen Howe submitted last year during the hearing on SB 126 to demonstrate that consistency, and our unique perspective on HB 2167 as it bears on the safety and protection of the citizens of Kansas.

As a prosecutor for 32 years, I had the occasion to review hundreds of cases in which one individual murdered another and to personally try over 40 homicide jury trials of those 40 only three individuals convicted of capital murders were eligible for a death punishment; Reginald Carr, Jonathan Carr and Stanley Elms. The Capital Murder statute in this state is very narrow. Very specific elements and factors are required to proceed with a death sentence. The death penalty is reserved for the most heinous circumstances of the murder of others. It is important for this body to know, that in my multiple contacts with the families of murdered victims, the family is often surprised and dismayed that the death penalty is not a possible penalty for the wrongful murder of their loved one.

Prosecutors in Kansas rarely seek a death sentence in even some of the most violent and atrocious murders. Most 1<sup>st</sup> degree murders are prosecuted under the Hard 50 sentencing statute due to the very limited circumstances of the Capitol Murder statute.

The United States Supreme Court and has repeatedly determined after challenge; the Kansas Death Penalty Statute to be constitutionally sound. The Kansas Supreme Court has likewise upheld the Death Penalty Statute in Robinson, Cheever and Gleason since this body last considered this same question in SB 126.

I urge you to review the attached testimony of Sedgwick County District Attorney Marc Bennett as he informs your committee regarding four of the most recurrent attacks on the death penalty, and the

testimony of Johnson County District Attorney Stephen Howe as he informs your committee as to the practical impact of the current death penalty law as prosecutors seek to protect and respond to murder in our communities.

Respectfully submitted

Kim T Parker, Prosecutor Coordinator  
Kansas County and District Attorney's Association



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To: Hon. Chairman King and Members of the Senate Judiciary Committee  
From: Marc Bennett, on behalf of the KCDA  
Date: January 16th, 2014  
Re: Neutral testimony on SB 126

Honorable Chairman King and Members of the Senate Judiciary Committee:

Thank you for the opportunity to address you regarding Senate Bill 126. As the Kansas legislature considers the continued viability of the death penalty in this state, the board of directors of the Kansas County and District Attorney's Association felt it appropriate to offer the unique perspective of the Kansas prosecutors tasked with the responsibility of standing on behalf of their fellow Kansans in courtrooms around our state and seeking to enforce our capital murder statute.

Whether the ongoing public policy of this state will be to sustain or eliminate capital murder and the death penalty is solely a decision for our representative legislators. The KCDA neither advocates for or against the death penalty. But like any important issue that has the ability to affect criminal justice and the public's confidence in the same, the KCDA would be remiss if we did not give voice to concerns of our membership.

Our comments here are intended to address the four most common arguments against the death penalty: cost, delay, the risk of wrongful conviction, and morality.

As to cost, because the death penalty is literally the most serious cause of action that can be brought in any courtroom in the world, there is no reason to expect it is going to be cheap. Arguably, it should not be. That said, prosecutors and public defenders are public servants paid a set salary. The use of experts and forensic analysis will add costs to be sure, but the same can be said of Hard 50 cases, vehicular homicides and all other levels of homicide prosecutions. Even if one were to argue that more expert testimony and forensic testing does get poured into death penalty cases, if capital murder were repealed Hard 50 cases would become the most serious penalty. In turn, the vigor – and costs--attendant to the defense and prosecution of capital murder would simply shift to Hard 50 cases. In short, whether capital murder is repealed or not, the notion that repeal will somehow save the state money is without support.

The argument that the death penalty in Kansas is broken as evidenced by the fact that we have had the death penalty since 1994 and no one has been executed, is simply indefensible. If we created an express-lane to the death chamber, the arguments would be just as robust that such a system betrayed a cavalier attitude and a lack of attention to the most serious punishment. The Marsh and, subsequently, the Cheever decisions from the Kansas Supreme Court were appealed successfully to the United States Supreme Court. Other cases that were awaiting appeal while Marsh ran its course were delayed for several years because Marsh had the potential to be dispositive. That was a unique situation, not likely to be repeated because we now know our death penalty is constitutional. Moving forward, the Attorney General's current proposal in HB \_\_\_ 126 to add meaningful time boundaries to capital appellate practice should ensure the right to effective appellate review is also timely.

The risk of wrongful convictions as evident by the number of "innocent" people exonerated is simply exaggerated. There is insufficient space to address this argument here but suffice to say that when a case is overturned decades after the fact for ineffective assistance of counsel, for instance, the State's ability to re-prosecute that case with deceased witnesses, aged evidence and failing memories is significantly compromised. Those are the types of situations that make up the lion's share of "innocent exonerations." While there are some who will no doubt strenuously take issue with this statement and hold fast to the argument that death penalties have for some reason attracted an inordinate number of wrongful prosecutions out of keeping with all other types of criminal prosecutions in this country, the facts simply do not support that assertion. It has surely happened that innocent people have been exonerated. But not at the inflated numbers argued by the ardent anti-death penalty lobby.

That said, the din rising from that argument will do little to further the dialogue as the relative position of those on either side of the "wrongful conviction" discussion are not likely to find common ground. What DOES inform this legislature's assessment, however is the fact that our uniquely conservative (small "c") capital murder and death penalty statutes minimizes as much as may be humanly possible this risk. So few capital cases are filed, and fewer still make it on to death penalty consideration. During the Hard 50 legislation we discussed the fact that 90-100 murder cases are filed in an average year in Kansas. Typically, no more than 2-3 capital cases get filed from that number. Very often, the number is 1 or fewer. In Sedgwick County, the jurisdiction with the highest number of capital cases charged, there have been a total of three capital cases filed against 7 defendants since 2008. Further, the Supreme Court of Kansas will apply the highest level of appellate review to these cases, further minimizing any risk that an innocent person will someday find themselves awaiting imposition of the death penalty in Kansas.

Finally, we turn to the moral argument. On this point the KCDAAs offers no argument one way or the other, except to say that this is the ground upon which the legislature's decision should rest. Whether the public policy of Kansas is to support or reject the death penalty is indeed a moral decision. All the other arguments – when exposed to factual analysis – do nothing to inform the debate. Whether the death penalty is right

for Kansas is for the legislative body to decide. We simply want to make sure this body is in possession of the facts when the decision is made.

The KCDA stands ready to honor this decision and give it voice in the courtrooms of the State of Kansas.

Sincerely,

The Board of Directors  
The Kansas County and District Attorneys Association

Barry Wilkerson, Riley County Attorney  
Marc Goodman, Lyon County Attorney  
Marc Bennett, District Attorney, Sedgwick County  
Steve Howe, District Attorney, Johnson County  
Ellen Mitchell, Saline County Attorney  
Doug McNett, Assistant County Attorney, Pawnee County  
Chris Smith, Cowley County Attorney



STATE OF KANSAS  
Tenth Judicial District

**OFFICE OF DISTRICT ATTORNEY**  
STEPHEN M. HOWE, DISTRICT ATTORNEY

January 14, 2014

Senate Judiciary Committee  
Attention: Senator Jeff King, Chairman  
State Capitol, Room 346-S  
Topeka, Kansas 66612-1504

Re: Senate Bill 126

Dear Chairman King,

Thank you for the opportunity to submit our written response in opposition to SB 126. I have been a prosecutor for more than 24 years, and have seen how the criminal justice system works with and without the use of the death penalty.

Prosecutors throughout Kansas have been very selective in their request for a death penalty sentence. The statutory factors to be considered by a jury are very narrow. During the 20 years in which death penalty has been in effect, only 13 individuals have received the death penalty. A review of the facts surrounding those convictions highlights the shocking nature of these crimes and the justification for this penalty. The death penalty law has not resulted in a large influx of inmates receiving death sentences.

There have been efforts to use fiscal notes to justify eliminating the death penalty. These notes have indicated that additional costs are associated with the use of the death penalty. Justice should never be controlled merely by costs, and the deterrent effect of having the death penalty in Kansas cannot be measured.

The misnomer that eliminating the death penalty will reduce the cost of litigation on the most heinous of murder cases is misguided and not supported by the history of litigation in Kansas. When the Hard 40/50 law was the top punishment, we experienced the same elongated litigation we now see in current death penalty cases. Two of the most notorious murder cases in Johnson County bear this out. Both the Richard Grissom and John Robinson cases had protracted litigation, even though only one of the cases carried a death penalty sentence.


The facts surrounding the crimes are the primary drivers on costs in this type of litigation. The filing of a death notice has no bearing on the efforts exerted by law enforcement and prosecutors to hold murderers accountable.

The Judicial Council Death Penalty Advisory Committee report fails to consider the leverage provided by having the death penalty in obtaining capital murder convictions. Our office has obtained four pleas to capital murder without an opportunity for parole. It is highly unlikely that this would have occurred without the existence of the death penalty. Thus, four trials were avoided by the leverage afforded through the death penalty. In addition to avoiding the costs of four trials and the appeal process, it has provided relief and finality to the victims' families.

The current death penalty law is an effective tool in obtaining justice for the people of Kansas. I ask that you vote in opposition of this bill.

I thank you for your time and would be happy to answer any questions you may have regarding the proposed legislation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steve M. Howe".

Stephen M. Howe  
Johnson County District Attorney