



Judiciary

O-2

Death Penalty in Kansas

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O-1

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O-3

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O-5

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O-2 - Death Penalty in Kansas

Background

On June 29, 1972, the United States Supreme Court, in *Furman v. Georgia*, 408 U.S. 238 (1972), held the imposition and execution of the death penalty, or capital punishment, in the cases before the court constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. Justice Potter Stewart remarked that the death penalty was “cruel and unusual in the same way that being struck by lightning is cruel and unusual.” That case nullified all capital sentences imposed without statutory guidelines.

In the following four years, states enacted new death penalty laws aimed at overcoming the court’s *de facto* moratorium on the death penalty. Several statutes mandated bifurcated trials, with separate guilt and sentencing phases, and imposed standards to guide the discretion of juries and judges in imposing capital sentences. In *Gregg v. Georgia*, 428 U.S. 153 (1976), the Court upheld the capital sentencing schemes of Georgia, Florida, and Texas. The Court found that these states’ capital sentencing schemes provided objective criteria to direct and limit the sentencing authority’s discretion, provided mandatory appellate review of all death sentences, and allowed the judge or jury to take into account the character and record of an individual defendant.

The death penalty was reenacted in Kansas on July 1, 1994. Then-Governor Joan Finney allowed the bill to become law without her signature.

The Kansas Supreme Court, in *State v. Marsh*, 278 Kan. 520, 534–535, 102 P. 3d 445, 458 (2004), held that the Kansas death penalty statute was facially unconstitutional. The court concluded that the statute’s weighing equation violated the Eighth and Fourteenth Amendments of the *United States Constitution* because, “[i]n the event of equipoise, i.e., the jury’s determination that the balance of any aggravating circumstances and any mitigating circumstances weighed equal, the death penalty would be required.” *Id.*, at 534, 102 P. 3d, at 457. The United States Supreme Court reversed the Kansas Supreme Court’s judgment and held the Kansas capital sentencing statute is constitutional. In June 2006, the Court found that the Kansas death penalty statute satisfies the constitutional mandates of *Furman* and its progeny because it “rationally

narrows the class of death-eligible defendants and permits a jury to consider any mitigating evidence relevant to its sentencing determination. It does not interfere, in a constitutionally significant way, with the jury's ability to give independent weight to evidence offered in mitigation."

The Kansas Supreme Court heard oral arguments in *State v. Scott*, Docket No. 83,801, on September 4, 2007. The issue before the court is the same as it was in *Marsh*. However, the Court will decide whether the state's death penalty law violates the *Kansas Constitution* rather than the *United States Constitution*. A decision is pending.

Kansas Capital Murder Crime

In Kansas, the capital murder crimes for which the death penalty can be invoked include the following:

- Intentional and premeditated killing of any person in the commission of kidnaping, or aggravated kidnaping, when the kidnaping or aggravated kidnaping was committed with the intent to hold the person for ransom;
- Intentional and premeditated killing of any person under a contract or agreement to kill that person or being a party to the contract killing;
- Intentional and premeditated killing of any person by an inmate or prisoner confined to 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, the crime of 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 kidnaping, or aggravated kidnaping, when the kidnaping or aggravated kidnaping was committed with intent to commit a sex offense upon or with the child or with the intent that the child commit or submit to a sex offense.

According to Kansas law, upon conviction of a defendant of capital murder, there will be a separate proceeding to determine whether the defendant shall be sentenced to death. This proceeding will be conducted before the trial jury as soon as practicable. If the jury finds, beyond a reasonable doubt, that one or more aggravating circumstances exist and that such aggravating circumstances are not outweighed by any mitigating circumstances which are found to exist, then by unanimous vote, the defendant will be sentenced to death. The Kansas Supreme Court will automatically review the conviction and sentence of a defendant sentenced to death.

If mitigating circumstances outweigh the aggravating circumstances, a defendant convicted of capital murder will not be given a death sentence but will be sentenced to life without the possibility of parole. A defendant sentenced to life without the possibility of parole is not eligible for parole, probation, assignment to community correctional services program, conditional release, post-release supervision, or suspension, modification or reduction of sentence.

Costs

Generally, costs for death penalty cases tend to be higher at the trial and appeal stages. In fact, cases in which the death penalty was sought and imposed could cost about 70 percent more than cases in which the death penalty was not sought.

Costs By Case Type

	Death Sentence (7 cases)	Death Penalty Sought- Sentenced to Prison (7 cases)	Death Penalty Not Sought (8 cases)
Total Cost for Group	\$10.6 million	\$6.3 million	\$6.3 million
Most-Expensive Case	\$2.4 million	\$1.1 million	\$1.0 million
Least-Expensive Case	\$1.1 million	\$0.7 million	\$0.6 million
Median Cost for a Case	\$1.2 million	\$0.9 million	\$0.7 million

Source: 2003 Performance Audit Report for Death Penalty Cases: A K-Goal Audit of the Department of Corrections

The Kansas Board of Indigents' Defense established a Kansas Death Penalty Defense unit, with four public defenders who specialize in capital punishment issues. The approved budget for *FY 2008* is approximately \$24 million.

Death Penalty and Mental Retardation

At the national level, the U.S. Supreme Court in *Atkins v. Virginia*, 536 U.S. 304, (2002), stated that capital punishment of those with mental retardation is cruel and unusual punishment under the Eighth Amendment of the *U.S. Constitution*. After the U.S. Supreme Court ruling, holding that it is unconstitutional to execute people with mental retardation, various states attempted to draft legislation that would comply with the *Atkins* ruling.

Currently, Kansas law defines “mentally retarded” to mean a person having significantly subaverage general intellectual functioning to an extent which substantially impairs one’s capacity to appreciate the criminality of one’s conduct or to conform one’s conduct to the requirements of law.

In the *Atkins* decision, there is no definition of “mentally retarded” but the Court referred to a national consensus regarding mental retardation.

In this context, there are recent bill drafts that address the topic of mental retardation, in addition to other issues. In 2003 HB 2439, which did not pass, mental retardation was defined as a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills which originates before the age of 18.

In 2004 SB 355, which also did not pass, the term cognitive disability was used instead of mental retardation. Cognitive disability was defined to mean a disability characterized by significant limitations both in intellectual functioning and deficits in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. “Significant limitations” in intellectual functioning meant two or more standard deviations below the norm.

The 2004 interim Special Committee on Judiciary examined the death penalty in view of the *Atkins v. Virginia* case and, specifically, the substance of 2004 SB 355. Several bills were introduced during the 2005, 2006, and 2007 Sessions on this issue, but no action was taken.

Death Penalty and Minors

In *Roper v. Simmons*, 543 U.S. 551 (2005), the U.S. Supreme Court invalidated the death penalty for all juvenile offenders. The majority opinion pointed to teenagers’ lack of maturity and responsibility, greater vulnerability to negative influences, and incomplete character development, concluding that juvenile offenders assume diminished culpability for their crimes.

There is a provision in current Kansas law that declares that if a defendant in a capital murder case was less than 18 years of age at the time of the commission of the crime, the court shall sentence the defendant as otherwise provided by law, and no sentence of death shall be imposed. As a result of KSA 21-4622, cited here, the death penalty or capital punishment cannot be imposed on a minor in Kansas.

Method of Carrying Out Death Penalty

The method of carrying out a sentence of death in Kansas will be by intravenous injection of a substance in sufficient quantity to cause death in a swift and humane manner.

Number of Inmates in Kansas Under Sentence of Death

<u>Defendant’s Name</u>	<u>County</u>	<u>Date Capital Penalty Imposed</u>
Belt, Douglas	Sedgwick	November 17, 2004—Appeal Pending
Carr, Jonathan	Sedgwick	November 15, 2002—Appeal Pending
Carr, Reginald	Sedgwick	November 15, 2002—Appeal Pending
Cheatham, Phillip D., Jr.	Shawnee	October 28, 2005—Appeal Pending
Gleason, Sidney	Barton	August 28, 2006—Appeal Pending
Kleypas, Gary	Crawford	March 11, 1998—Death Sentence vacated and remanded for a new sentencing hearing.

Defendant's Name	County	Date Capital Penalty Imposed
Marsh, Michael	Sedgwick	April 16, 1998—Death Sentence conviction for capital murder vacated and remanded for a new trial.
Robinson, John	Johnson	January 21, 2003—Appeal Pending
Scott, Gavin	Sedgwick	August 12, 1999—Appeal Pending

On November 17, 2004, the death sentence of Stanley Elms of Sedgwick County was vacated and he was removed from administrative segregation and sentenced to the Hard 40 term, which is life in prison with no possibility of parole for 40 years.

As of August 2007, there are nine inmates that are held in administrative segregation since technically Kansas does not have a death row. Inmates, therefore, under sentence of death are held in administrative segregation at the El Dorado facility.

State-to-State Comparison

Kansas is one of 38 states that has a death penalty. The two following charts show the states with a death penalty and the 12 states without such penalty.

38 States With The Death Penalty

(Source: Death Penalty Information Center)

Alabama	Florida	Louisiana	New Hampshire*	Oregon	Virginia
Arizona	Georgia	Maryland	New Jersey*	Pennsylvania	Washington
Arkansas	Idaho	Mississippi	New Mexico	South Carolina	Wyoming
California	Illinois	Missouri	New York*#	South Dakota*	
Colorado	Indiana	Montana	North Carolina	Tennessee	
Connecticut*	Kansas*	Nebraska	Ohio	Texas	U.S. Government
Delaware	Kentucky	Nevada	Oklahoma	Utah	U.S. Military*

* Indicates jurisdiction with no executions since 1976.

New York's death penalty statute was ruled unconstitutional on June 24, 2004.

12 States Without The Death Penalty

(Source: Death Penalty Information Center)

Alaska	Michigan	West Virginia
Hawaii	Minnesota	Wisconsin
Iowa	North Dakota	
Maine	Rhode Island	District of Columbia
Massachusetts	Vermont	Puerto Rico

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