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GREG SMITH

**Informational Hearing on Kansas Death Penalty**

**March 15, 2012**

Chair Colloton, Vice Chair Kinzer, and Committee, thank you for allowing me the opportunity to provide testimony in opposition to repealing the Kansas Death Penalty. This is an issue which I have had strong feelings on all of my adult life. I support having a death penalty.

**HISTORICAL/LEGAL**

It is not a foreign concept and the United States Constitution gives ample evidence that the Founders considered it a reasonable penalty for certain crimes. One only need look to the fifth amendment of the Constitution passed by Congress March 4, 1789 and ratified December 15, 1791:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Clearly, the Founders anticipated and found it normal to have capital punishment for certain crimes. It is not a Constitutional issue and despite some stumbling over the years by the courts it is a legal punishment in the United States of America.

Should there still be any question as to the constitutionality of the death penalty, the 14<sup>th</sup> amendment, passed by Congress June 13, 1866 and ratified July 9, 1868, states:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

From a historical and legal standpoint the constitutionality of the death penalty is obvious.

### **LOGICAL**

The death penalty is a tool that a prosecutor may use for three reasons and is illustrated in the news article from *The Columbus Dispatch*, by Allison Manning, dated May 15, 2011 that is attached to my testimony. Those reasons are:

- 1) It's a tool for prosecutors to obtain information they may not be able to get any other way;
  - a) A plea bargain may obtain information that no other method will.
- 2) It can lessen court costs for crimes of a heinous nature;
  - a) Cost is always listed by opponents as a reason to discontinue the death penalty. I refer you to the portion of the Kansas Legislative Post Audit included in the packet I provided. No one knows the cost of this method of punishment. The Post Audit states, "Actual cost figures for death penalty and non-death penalty cases in Kansas don't exist."
- 3) It can provide families a quicker resolution to the criminal justice process.

Some crimes are so heinous that no other penalty is warranted. I refer you to the packet I handed out that lists the nine individuals currently sentenced to death in Kansas. There is little doubt the crimes described are heinous and rate a sentence of death.

In Kansas, the frequent and consistent decisions by the Kansas Supreme Court to remand capital cases back to the lower courts demonstrates the need to revise the method of judicial selection. The law in Kansas is one of the most narrowly defined capital punishment laws in the nation and was successfully upheld by the United States Supreme Court in 2006. There is no need to continually re-litigate what is credible,

defensible, and logical law. The logical person would conclude that the Kansas Supreme Court is incapable of carrying out their duty in regards to this issue. The practice of appointing justices who do not believe in the rule of law needs to be stopped. I have attached the current capital murder statute to my testimony.

**PERSONAL EXPERIENCE**

I have been through the experience of a capital punishment case. My daughter, Kelsey, was kidnapped, sodomized, raped and strangled to death. Her killer was charged with capital murder. He eventually pled guilty to avoid being put to death. His plea saved countless dollars of taxpayer money. Even more could have been saved. At the sentencing hearing, the defense lawyer told the court about when my daughter's killer admitted he killed my daughter. Even though the lawyer knew that his client was guilty he continued making motions, falsely impugned an FBI agent, and attempted to cast suspicion on a fictitious third party that caused the pre-trial hearings to go on for several months longer than they needed to. The cost to the taxpayers should have been charged to the defense.

**OBJECTIONS**

**Innocent put to death** – There is no record of any of the 57 people executed in Kansas prior to 1976 as having been innocent. No persons convicted of capital murder in Kansas have been released because they were found to be innocent. Persons that commit the types of crimes that qualify them for capital punishment are not innocent. They made a conscious decision to torture and terrorize another human being before killing them.

**Pro – Life** – The taking of the life of an unborn child is not the same as the taking of a life of convicted murderer. The unborn child has no choice in the matter. The unborn child is innocent and has harmed no one. The convicted murderer chose to commit his or her crime and must bear the consequences of his or her unlawful actions.

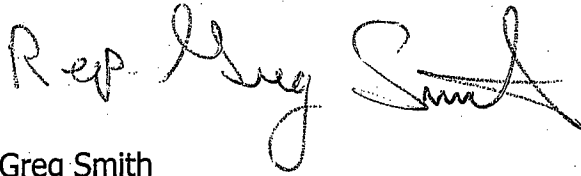
**Not a Deterrent** – Some would argue that the death penalty is not a deterrent to others. I am not going to debate whether it is or not. The purpose of the death penalty is not to deter others or provide rehabilitation opportunities. It is a punishment. I do know that a person serving multiple life sentences has no incentive to change his or her behavior in prison if the worst penalty that can be added on is another life sentence.

The death penalty is a deterrent to the person who receives the sentence. They will not commit another crime.

**CONCLUSION**

The death penalty is a needed tool for the state. There is no credible evidence in Kansas that a death penalty case is too costly, or that innocent people have been either imprisoned or executed. The death penalty provides the state with a valuable tool to obtain information that can help the family of the victim and/or solve other crimes. Some crimes are so terrible that the only just punishment is death.

Thank you for allowing me to speak about this topic today. I would be happy to stand for questions at the appropriate time.

A handwritten signature in black ink that reads "Rep. Greg Smith". The signature is written in a cursive style with a large, stylized "S" at the end.

Greg Smith

Father of murder victim, Kelsey Smith

**21-5401. Capital murder.** (a) Capital murder is the:

- (1) Intentional and premeditated killing of any person in the commission of kidnapping, as defined in subsection (a) of K.S.A. 2011 Supp. 21-5408, and amendments thereto, or aggravated kidnapping, as defined in subsection (b) of K.S.A. 2011 Supp. 21-5408, and amendments thereto, when the kidnapping or aggravated kidnapping was committed with the intent to hold such person for ransom;
  - (2) 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;
  - (3) 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;
  - (4) Intentional and premeditated killing of the victim of one of the following crimes in the commission of, or subsequent to, such crime: Rape, as defined in K.S.A. 2011 Supp. 21-5503, and amendments thereto, criminal sodomy, as defined in subsections (a)(3) or (a)(4) of K.S.A. 2011 Supp. 21-5504, and amendments thereto, or aggravated criminal sodomy, as defined in subsection (b) of K.S.A. 2011 Supp. 21-5504, and amendments thereto, or any attempt thereof, as defined in K.S.A. 2011 Supp. 21-5301, and amendments thereto;
  - (5) Intentional and premeditated killing of a law enforcement officer;
  - (6) 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
  - (7) Intentional and premeditated killing of a child under the age of 14 in the commission of kidnapping, as defined in subsection (a) of K.S.A. 2011 Supp. 21-5408, and amendments thereto, or aggravated kidnapping, as defined in subsection (b) of K.S.A. 2011 Supp. 21-5408, and amendments thereto, 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.
- (b) For purposes of this section, "sex offense" means rape, as defined in K.S.A. 2011 Supp. 21-5503, and amendments thereto, aggravated indecent liberties with a child, as defined in subsection (b) of K.S.A. 2011 Supp. 21-5506, and amendments thereto, aggravated criminal sodomy, as defined in subsection (b) of K.S.A. 2011 Supp. 21-5504, and amendments thereto, prostitution, as defined in K.S.A. 2011 Supp. 21-6419, and amendments thereto, promoting prostitution, as defined in K.S.A. 2011 Supp. 21-6420, and amendments thereto, or sexual exploitation of a child, as defined in K.S.A. 2011 Supp. 21-5510, and amendments thereto.
- (c) Capital murder is an off-grid person felony.

**History:** L. 2010, ch. 136, § 36; July 1, 2011.

# Death penalty a tool for leverage

Prosecutors can use it to get something from defendant

By Allison Manning

The Columbus Dispatch Sunday May 15, 2011 5:33 AM

Comments: 0

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Killers Sammy Littleton II and Matthew Hoffman will die for their crimes in jail, but not by lethal injection.

That's not because the heinousness of their crimes didn't warrant the death penalty, but rather because prosecutors wanted something from each of them.

In Hoffman's case, Knox County prosecutors needed the triple-murderer to lead them to the bodies of his victims. In Littleton's case, prosecutors wanted to ease the families' pain and honor their wish to spare themselves the time and anguish of a trial and appeals.

Both murderers agreed to plead guilty and serve life in prison without the possibility of parole. In exchange, they are allowed to live.

The death penalty in Ohio is more than just a form of punishment - it's a tool prosecutors rely on to get information, avoid lengthy and costly trials and to provide quick justice to families in pain. In contrast, pursuing a death-penalty case can mean decades before an execution date even is set.

Knox County Prosecutor John Thatcher said that if the death penalty hadn't been an option, he doesn't think the Hoffman case would have been settled without a trial. Defense attorneys likely would have wanted a shot at parole, and Thatcher said he never would have agreed.

Hoffman, he said, was the worst of the worst. "Obviously, he can never be let out of prison."

But even when they get something in return, it's an agonizing decision for the families. Larry Maynard recalled his first reaction when prosecutors told him they were considering a plea deal for Hoffman to locate his son's remains: "Hell no."

But after some painful reflection, he decided that not being able to bury 11-year-old Kody wasn't worth the eye-for-an-eye punishment he wanted in his gut. The other families agreed, and Kody; his mother, Tina Herrmann; and family friend Stephanie Sprang were found dismembered in a hollow tree.

"In order for us to have some sort of closure ... it's something that I had to do," he said.

In Littleton's crime, the families' desire to end the case facilitated the swift justice once he agreed to plead guilty.

Her family didn't want victim Tiffany Brown's young boys to have to deal with this case as they grew up, Logan County Prosecutor Eric Stewart said. And older members of the families of Littleton's other victims, Dick and Gladis Russell, wanted to live to see the case's conclusion.

Their wishes were Stewart's motivation: "He certainly deserved the death penalty."

22-6

# EXECUTIVE SUMMARY

LEGISLATIVE DIVISION OF POST AUDIT

## Overview of Costs Incurred for Death Penalty Cases: A K-GOAL Audit of the Department of Corrections

**Kansas has had a death penalty law 3 times, but hasn't executed anyone since 1965.** *Kansas is one of 38 states that currently have the death penalty. The U.S. Supreme Court struck down the death penalty laws in 40 states, including Kansas in 1972. After several previous attempts, the 1994 Legislature enacted a new death penalty law, which then-Governor Joan Finney allowed to become law without her signature.* ..... page 3

*Kansas doesn't have a separate "death row." The 7 inmates currently sentenced to death are housed in the maximum security prison in El Dorado, with other prisoners who are in administrative segregation.*

**Not every murder qualifies for the death penalty.** *To seek the death penalty for a crime, several things have to occur:* ..... page 3

- *the circumstances of the crime have to fit the criteria set out in State law*
- *the prosecutor's office must file formal capital murder charges*
- *the prosecutor's office must file formal declaration to seek the death penalty within 5 days of the preliminary hearing.*

*Not all capital-eligible crimes are charged capital. Not all capital charges result in the prosecutor seeking the death penalty.*

**The U.S. Supreme Court has stated that "death is different," which leads to more review and a lengthier process for those cases in which the death penalty is sought.** *Death penalty cases are subjected to higher or "super" due process standards. These include:* ..... page 5

- *Jurors for death penalty cases have to be "death penalty qualified." This means jurors go through extensive questioning by both the prosecution and defense to make sure their beliefs about capital punishment wouldn't substantially impair or prevent their performance as jurors.*
- *There's a two-phase trial process. A jury determines the defendant's innocence or guilt in the first trial. In a second, separate trial, usually the same jury decides whether to recommend the death penalty.*

- *The jury must consider aggravating and mitigating circumstances in the sentencing phase. This can be extensive and make the sentencing phase quite lengthy.*
- *State and federal law require an automatic review of death penalty cases by the State Supreme Court. For most other sentences, the Kansas Supreme Court would have the option of deciding whether to consider any appeal.*

**Costs for death penalty cases are incurred at both the State and local levels.** ..... page 8  
*The State Board of Indigents' Defense Services usually bears the cost of defending capital murder cases. Prosecution costs will be borne by either the counties or the State, depending on who assumes the responsibility for the case. In jurisdictions where local prosecutors don't have staff with the expertise to prosecute a death penalty case, the Kansas Attorney General's office is called in.*

**Question 1: How Does the Cost of Death Penalty Cases in Kansas Compare With The Costs of Cases Involving Non-Death Sentences?**

*Actual cost figures for death penalty and non-death penalty cases in Kansas don't exist. Some information presented here is based on estimates because judges, attorneys, court staff and local law enforcement officers don't keep case-by-case time records and projections. Other costs had to be projected because most death penalty cases in Kansas are in the early stages of the process, and it can't be known how many appeals these cases will have.* ..... page 10

**During this audit, we obtained and compared estimated cost information for 22 cases.** ..... page 10

- *7 cases where the death penalty was sought and given*
- *7 cases where the death penalty was sought and not given*
- *8 first degree murder cases where the death penalty was not sought*

*These included only cases that had gone to trial and resulted in a conviction.*

**Cases in which the death penalty was sought and imposed could cost about 70% more than cases in which the death penalty wasn't sought.** ..... page 11  
*The following table includes estimates of all State and local costs incurred to-date, as well as projected costs for things that haven't yet occurred— such as appeals, incarceration, and executions.*



Category	State Information
State Abbreviation	KS
State Name	Kansas
Death Penalty?	Yes
Number of Executions Since 1976	0
Number of Executions before 1976	57
Current Death Row Population	9
Women on Death Row	0
Date Death Penalty Re-enacted	04/22/1994
1st Execution After Re-enactment	0
Murder Rate (per 100,000)	3.5
Is Life Without Parole an Option?	Yes
Can a defendant get death for a felony in which s/he was not responsible for the murder?	Yes
Number of Innocent Persons Freed From Death Row	0
Number of Clemencies Granted	0
Region	Midwest
Method	Injection
How is the Sentence Determined?	Jury
Location of Death Row(s)	El Dorado (Women: Topeka)
Clemency Process	Governor may receive a non-binding recommendation of clemency from a board or advisory group

DEATH PENALTY INFORMATION CENTER

[www.deathpenaltyinfo.org/state-by-state](http://www.deathpenaltyinfo.org/state-by-state)

## Listing of Kansas Death Row Inmates

### **Douglas Belt**

Convicted in November 2004 of capital murder, attempted rape and aggravated arson in the killing of Lucille Gallegos in west Wichita.

### **Jonathan Carr**

Convicted of the same five murders as his older brother Reginald. See below.

### **Reginald Carr**

Convicted of capital murder for the December 15, 2000 home invasion where the Carr's subjected five young men and women to robbery, sexual abuse, and murder. The victims, all in their twenties, were forced to strip naked, bound, and subjected to various forms of sexual humiliation, including rape and oral sex. The Carr's also forced the men to engage in sexual acts with the women, and the women with each other. They then drove the victims to ATMs to empty their bank accounts, before finally bringing them to a snowy deserted soccer complex on the outskirts of town and shooting them execution-style in the backs of their heads, leaving them for dead. The Carr brothers then drove one of the victim's truck over the bodies. The Carr's were also convicted of first degree murder (non-capital) for killing Ann Walenta four days before the quadruple murder.

### **Phillip D. Cheatham**

Convicted in September 2005 of one count of capital murder, two counts of first degree murder and one count of attempted first degree murder in the deaths of Gloria Jones, and Annette Roberson. A third victim, Annetta Thomas, played dead and survived with 19 gunshot wounds.

### **Scott Cheever**

Convicted in November 2007, of killing Greenwood County Sheriff Matt Samuels in January 2005.

### **Sidney John Gleason**

Convicted in July 2006 in the shooting deaths of Miki Martinez and Darren Wormkey in February 2004.

### **Gary Wayne Kleypas**

Convicted for the 1996 rape-murder of Carrie Williams in Pittsburg, Kansas. Police found Williams body beaten and stabbed in her apartment.

### **John Edward Robinson Sr.**

Convicted of capital murder in the deaths of Izabel Lewicka and Suzette Trouten and of first degree murder in the case of Lisa Stasi, who disappeared in 1985 and was never found.

### **Justin Thurber**

Was sentenced to death for the January 2007 killing of 19-year-old college student Jodi Sanderholm