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**Testimony in Support of House Bill 2389**  
**Presented to the House Committee on Corrections and Juvenile Justice**  
**By Kris Ailsieger, Deputy Solicitor General**

**March 14, 2013**

Chairman Rubin and Members of the Committee,

I appear today on behalf of Attorney General Derek Schmidt in support of HB 2389. This bill is intended to address a gap of prosecutorial authority in K.S.A. 21-6617 that can arise when a local prosecutor is conflicted out of a capital case and seeks the assistance of the Attorney General.

K.S.A. 21-6617 requires prosecutors to file written notice of their intent to request a separate sentencing proceeding seeking the death penalty following a capital murder conviction. Currently, this statute references only county and district attorneys and does not specifically address the authority of the Attorney General to file such written notice.

HB2389 would clarify existing law by providing specific authority for the Attorney General to file written notice of intent to seek the death penalty in cases where the local elected official has a conflict. Conflict situations occur most often in smaller jurisdictions. Examples include county attorneys who have formerly represented the defendant, victim, or a witness in an unrelated matter; county attorneys who are related to the family of the defendant or victim; county attorneys who have a personal relationship with one of the families or a witness. In these conflict situations, the county or district attorney typically asks the Attorney General to prosecute the case.

HB 2389 is narrow in scope and would apply only in situations of conflict. The determination of conflict would be made by the local elected official or a court. This is consistent with existing law and does not change the overall effect of the statute. Written notice to seek the death penalty would still be required. This bill does not expand the authority of the Attorney General, but rather clarifies such authority.

Therefore, the Attorney General strongly urges passage of this bill to protect the validity of those verdicts.