

March 19, 2013

The Honorable Arlen Siegfried, Chairperson
House Committee on Federal and State Affairs
Statehouse, Room 185-N
Topeka, Kansas 66612

Dear Representative Siegfried:

SUBJECT: Fiscal Note for HB 2397 by House Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2397 is respectfully submitted to your committee.

HB 2397 would abolish the death penalty for crimes committed on or after July 1, 2013. The bill would also repeal the capital murder statute and create the new crime of aggravated murder, which would be an off-grid person felony. Offenders convicted of aggravated murder would be sentenced to imprisonment for life without the possibility of parole. Offenders would not be eligible for commutation of sentence and the Governor would not be permitted to commute a sentence of life without the possibility of parole.

HB 2397 would establish the Kansas Death Penalty Abolition Fund within the Office of the Attorney General. All expenditures from the fund would be for mental health and other support services for families of victims of homicide. All actual or budgeted cost savings resulting from abolishing the death penalty including cost avoidance of prosecution, defense, corrections, and other associated costs would be determined by the Director of the Budget. Annually, on or before June 30, the Director of the Budget must certify the amount of cost savings in each state agency State General Fund account to the Director of Accounts and Reports. The certified amounts would then be transferred to the Kansas Death Penalty Abolition Fund annually on July 1, or as soon as monies are available.

The Board of Indigents Defense reports that abolishing the death penalty would create agency savings totaling \$157,000 in FY 2014 from eliminating 3.00 FTE positions, including a trial level capital defender (\$63,000), a mitigation specialist (\$58,000), and a legal assistant (\$36,000). Fewer staff in the Board's death penalty defense unit would be required as cases are completed at the trial level. Additionally, it is expected that reductions in future expenditures could be attained. The Board states that the use of private attorneys for conflict cases would no longer be necessary and would produce savings of \$200,000 per trial. Also, there would be no need to present mitigation which would save \$143,000 per trial from eliminating costs related to expert witnesses and travel. It is estimated that savings from appeals could approach \$100,000 per year. All expenditure reductions would be from the State General Fund.

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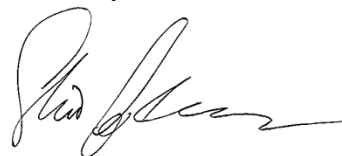
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The Office of Judicial Administration indicates that the bill would allow the separate sentencing proceedings required for capital cases to be discontinued. While this would save considerable court staff time, the Office anticipates it would be partially offset by the criminal procedures required for the new crime of aggravated murder. Therefore, it is likely that judges and non-judicial personal would continue to spend significant amounts of time on these cases. Also, courts would still be required to work through any existing death penalty cases. Currently, judges and exempt non-judicial staff at both the district and appellate court levels work additional hours to address death penalty cases and, to some extent, have to delay hearing other cases. The Office states that there are currently two appellate research attorney positions who devote a significant amount of time to death penalty cases. While it is possible that at some point in the future those positions will no longer be needed, it is unknown when that might occur. The Office of Judicial Administration is not able to determine an accurate estimate of any savings to be transferred from the Judicial Branch to the Kansas Death Penalty Abolition Fund.

The Office of the Attorney General estimates that the agency could incur additional costs of approximately \$300,000 from the State General Fund over the next two fiscal years. The Office states that new legal arguments may be available to those offenders who were sentenced to death for crimes committed before July 1, 2013. According to the Office, there are eight offenders who are under the sentence of death. This could result in those offenders creating additional legal actions which would result in litigation costs of approximately \$200,000 (8 offenders X \$25,000 per case) for those cases. Also, the Office of the Attorney General anticipates that the bill would generate at least one U.S. Supreme Court appeal which would require additional expenditures of approximately \$100,000.

The Kansas Sentencing Commission states that HB 2397 would have no effect on prison admissions or beds. The Department of Corrections indicates that any savings gained from passage of the bill would be negligible. Unlike some other states, Kansas does not have specialized separate holding facilities or a “death row” for offenders. Offenders who have been sentenced to death are placed in administrative segregation which is a custody setting that includes other inmates. It is likely that offenders convicted of the new crime of aggravated murder would also be placed in administrative segregation. The bill would have no fiscal effect on the Division of the Budget. Any fiscal effect associated with HB 2397 is not reflected in *The FY 2014 Governor’s Budget Report*.

Sincerely,



Steven J. Anderson, CPA, MBA
Director of the Budget

cc: Willie Prescott, Attorney General’s Office
Mary Rinehart, Judiciary
Jeremy Barclay, Corrections