



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

Testimony in Opposition to House Bill 2282
Presented to the House Committee on Corrections and Juvenile Justice
By Attorney General Derek Schmidt

February 19, 2019

Chairman Jennings, members of the Committee, thank you for this opportunity to testify in opposition to House Bill 2282, which proposes to repeal the Kansas death penalty law.

I oppose this repeal measure and urge you not to approve it. The Kansas death penalty law is narrowly tailored and has been applied only in the most horrific cases.

When I served in the Kansas Senate, I believed strongly that the death penalty should remain on the books. Having now served as Attorney General for eight years and in that capacity having worked on death penalty cases, including arguing two death penalty cases before the United States Supreme Court, my convictions in this regard have only been strengthened.

The death penalty evokes strong emotions on both sides of the debate. Whatever your views, I urge you to resolve this matter based on those fundamental concepts that underlie the death penalty – notions of justice, of life, of morality, of religious belief. I would discourage you from cheapening this debate by allowing it to devolve into a dollars-and-cents calculation, a cold mathematical approach that in my view obscures the very real human dynamics at work in this discussion.

In the past eight years, the Kansas death penalty law has been tested before the nation's highest court in two separate days of arguments presenting three constitutional issues involving a total of four cases, and in each case has been upheld. Our state Supreme Court has now upheld capital murder convictions and death sentences in five cases. The U.S. Supreme Court has affirmed four of those convictions and death sentences. Our law is sound, and in my view, the death penalty is appropriate for justice in some cases. It should remain an option available to a jury of the defendant's peers in proper cases. I urge you not to repeal it.

I also would like to address the notion, reflected in New Section 1 of House Bill 2282, that it is possible to legislatively abolish the death penalty only prospectively while leaving any death sentence for prior crimes (as proposed in this bill, crimes committed before July 1, 2019) to be carried out. As a practical matter, I am skeptical that is so and, instead, think the practical effect of adopting House Bill 2282 likely will be to prevent *all* future executions by the State of Kansas, including the execution of persons already under sentence of death prior to July 1, 2019.

Attempts to prospectively abolish the death penalty will inevitably invite a new round of litigation challenging the prior sentences. *See State v. Santiago*, 318 Conn. 1, 89, 122 A.3d 1 (2015) (determining Connecticut death penalty unconstitutional after legislature attempted to abolish death penalty prospectively). It also will increase pressure on future governors to commute existing death sentences rather than take the steps necessary for the State to carry out an execution, and reduce the incentive for State agencies to undertake the actions that are required to carry out an execution. If preventing all future executions is, in fact, this legislation's intention, it would seem preferable simply to say so directly rather than leaving those victims and families whose lives have been affected by capital murder-death penalty crimes committed prior to July 1, 2019, in a state of renewed uncertainty about the fate of those sentences.

Rather than abolishing the death penalty in Kansas, I respectfully recommend the Legislature take steps to improve the existing system so that executions of those persons properly convicted of capital murder and sentenced to death, and whose sentences are affirmed by the judiciary, will in fact be carried out.

Thank you for your consideration.

###