

# **Kansas Coalition Against The Death Penalty**

**February 2009**

## **From the Coordinator**

*This is a special newsletter; we have some important news to convey and need your help in getting the word out to everyone you know that has an interest in seeing the Kansas Death Penalty abolished. This newsletter provides a significant amount of information about the problems with the Kansas Death Penalty, how to get more information if needed and more importantly how to make your voice heard in Topeka.*

As our Legislature meets in Topeka, Legislators and the Governor are making hard choices about the state budget. It is estimated that they will have to cut at least 200 million from the current fiscal year's budget (which ends June 30), and one billion dollars from the budget for the fiscal year starting July 1, 2009.

Education, healthcare, public safety, and many other vital state programs are being cut and some critical programs may be eliminated.

Several legislators have responded by introducing legislation to abolish the Kansas Death Penalty. SB 208 was introduced on February 4, 2009 by the Senate Ways and Means Committee. It will be heard by the Senate Judiciary Committee later this month. SB 208 would replace the current death penalty sentence with life without parole for crimes that are currently death penalty eligible that occur after July 1, 2009.

The bill would not impact those currently sentenced to death or currently charged with capital murder; those cases would still be subject to the existing statute.

We commend these legislators for putting the death penalty "on the table". Nearly fifteen years ago, capital punishment became law again in our state. It is abundantly clear from the experience of these fifteen years that the death penalty is fraught with substantive errors. Legislative Post Audit's own study revealed that a death penalty case, taken to execution, can cost up to 70% more than a case taken through decades of incarceration. Many KCADP members (individual and organizational) have fundamental moral or rational positions against capital punishment.

Stories in the media during the last few days have detailed the horrible stories of how Jodi Sanderholm died. Murder is tragedy that harms not just the victim's family, but also the community as a whole. Feelings run high, often culminating in an eye for an eye. Can we, as Kansans, just step back and take a thoughtful look at what our relentless pursuit of an "eye for an eye" philosophy has brought since 1994? It has diverted millions of dollars to a system bent on killing a handful of people. This misguided focus on what

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should happen to the perpetrator means that our energies and our dollars are not available to help families and communities heal. It also means those dollars are not available to programs that could prevent crime.

I keep thinking of the words spoken by President Dwight Eisenhower in his address "The Chance for Peace" on April 16, 1953. "...Every gun that is made, every warship launched, every rocket fired signifies, in the final sense, a theft from those who hunger and are not fed, those who are cold and are not clothed..." I believe an apt paraphrase is this "Every death penalty case filed, every death penalty trial, every death sentence is a theft from those who hunger and are not fed, those who are cold and are not clothed in our state." It is also a theft from victim services and from crime prevention programs.

Kansas can make wiser choices than we are now. Let's get rid of the death penalty, and instead put our energies and our dollars into programs that really serve the needs of Kansans.

**For more information, contact:**

**Amnesty International:** Donna Schneweis • 785-271-1688 • email: [dms2@mindspring.com](mailto:dms2@mindspring.com)

**Kansas Coalition Against the Death Penalty:** 785-232-5958 • email: [kcadp@cox.net](mailto:kcadp@cox.net)  
KCADP also has a website: [www.kscadp.org](http://www.kscadp.org)

**Murder Victims Families for Reconciliation:** Bill Lucero • 785-232-5958 • email: [mvfrks@cox.net](mailto:mvfrks@cox.net)

**MAKING YOUR VOICE HEARD IN TOPEKA...**

**First find the names of your legislators:**

Get on the web:

<http://www.kslegislature.org/> and then follow links to the Senate and House rosters and legislator email or

By phone:

You also can find out your legislators' info via the Toll free Legislative Hotline at 1-800-432-3924. They can tell you who your legislators are, what their direct phone numbers are, and their email address.

**Then contact your Representative and Senator and urge them to end the Kansas Death Penalty. This newsletter has ample evidence of how flawed our current death penalty process is.**

By postal mail: Kansas Statehouse, Topeka, KS 66612

By message via the Hotline: 1-800-432-3924

**Board News**

- The KCADP board recently welcomed two new members: Cheryl Pilate from Olathe and Larry Hesel from Pawnee Rock.
- The Board will gather in Emporia on February 21<sup>st</sup> for a planning retreat. The goal of the retreat is to lay the groundwork for enhancing the effectiveness of the coalition in the years ahead.

## **Kansas Death Penalty History**

**1859:** Kansas Territorial Legislature passed a death penalty law. Hanging was the method of execution.

**1907:** Governor Hoch signed abolition legislation.

**1931:** Governor Woodring vetoed reinstatement legislation.

**1935:** Governor Landon signed reinstatement legislation.

**1965:** Last execution in Kansas (Kansas had 24 executions under state law to this time).

**1972:** Furman decision ended Kansas death penalty.

**1979:** Governor Carlin vetoed reinstatement legislation. He also vetoed it in '80, '81, and '85.

**1994:** Governor Finney allowed a reinstatement bill to become law without her signature.

**2001:** Kansas Supreme Court threw out the death sentence of Gary Kleypas due to unconstitutional provision in law. This decision was expected to impact at least four cases. A Court "interpreted" Legislative intent in order to salvage the law.

**2004:** Kansas Supreme Court ruled unconstitutional the same section of the Kansas death penalty law.

**2006:** U.S. Supreme Court ruled the disputed section of the Kansas law is constitutional.

Men who have been sentenced to death are held at the El Dorado Correctional Facility in the Administrative Segregation Unit.

Women sentenced to death would be held at the Topeka Women's Correctional Facility

## **Provisions of the 1994 Death Penalty Law**

### **Eligibility for the Death Penalty**

Kansas' 1994 death penalty law provided the option of a death sentence for intentional, premeditated murders that contain one or more of these seven factors:

- \*Kidnapping or aggravated kidnapping for ransom;
- \* Contract murder;
- \* Murder of any person by an inmate in a correctional facility;
- \*Murder of a victim of rape, criminal sodomy, or aggravated criminal sodomy in the attempt to commit or the commission of, subsequent to the crime;
- \* Murder of a law enforcement officer;
- \*Murder of more than one person during the same act, or in two or more acts connected as part of a common scheme;
- \*Murder of a child under the age of 14 in the commission of kidnapping when the kidnapping is done with the intent to commit an unlawful sex offense upon or with the child, or with the intent that the child commit or submit to a sex offense.

### **Death Penalty Applicability**

\*To be eligible for the death penalty, the defendant must be at least age 18 at the time of the crime.

\*Persons who were found to be mentally retarded are not subject to the death penalty.

### **Alternative Sentences**

Persons convicted of capital murder prior to July 1, 2004, who were not given a death sentence were sentenced to either 25 or 50 years in prison. These are "hard" sentences, meaning that number of years must be served before even being considered for parole. There is no good time credit.

The law was changed in 2004, and for murders occurring after July 1 of that year, the alternative to a death sentence is life in prison without parole. Like the death penalty, that sentence (life without parole) does not apply to individuals determined to be mentally retarded.

### **Status of Kansas Death Penalty Cases July 1994-January 1, 2009 Kansas State**

- 77 capital cases filed in 27 counties
- 24 trials completed (sentence pronounced)
- 11 death sentences originally...
- \*1 death sentence removed per request of DA
- \*3 death sentences vacated by Kansas Supreme Court
- Other cases remain in early appeals
- **0 Executions**

#### **11 men have received death sentences for capital murder.**

- 1. Gary Kleypas.**- Death of Carrie Williams. Crawford Co. Death sentence thrown out by Kansas Supreme Court. New penalty phase held, resentenced to death in 2008.
- 2. Michael Marsh.**- Deaths of Marry Ane and Marry Elizabeth Pusch. Sedgwick Co. Capital conviction thrown out by Kansas Supreme Court. Retrial pending.
- 3. Gavin Scott.**- Deaths of Doug and Beth Brittain. Sedgwick Co. Death sentence thrown out by Kansas Supreme Court. New penalty phase pending.
- 4. Stanley Elms .**- Death of Regina Gray. Sedgwick Co. District Attorney's office later agreed to drop the death penalty if Elms dropped his appeal alleging prosecutorial misconduct and other errors.

**5. Jonathan Carr.**- Deaths of Jason Befort, Brad Heyka, Heather Muller, Aaron Sander. Sedgwick Co.

**6. Reginald Carr.**- Deaths of Jason Befort, Brad Heyka, Heather Muller, Aaron Sander. Sedgwick Co.

**7. John Robinson.**- Deaths of Izabela Lewicka and Suzette Trouten. Johnson Co.

**8. Douglas Belt .**- Death of Lucille Gallegos. Sedgwick Co.

**9. Phillip Cheatham.**- Death of Annette Roberson and Gloria Jones. Shawnee Co.

**10. Sidney Gleason.**- Death of Darren Wornkey and Mikiala Martinez. Barton Co.

**11. Scott Cheever.**- Death of Matt Samuels. Greenwood Co.

**In addition to these findings another 13 men were convicted of Capital Murder but they were not sentenced to death.**

### **Problems With The Death Penalty in Kansas**

Kansas courts and state agencies have documented **significant problems** with the Kansas death penalty process.

**\*Jury Misconduct** – In 1999, Judge Kennedy threw out a jury recommendation of death in Sedgwick County due to juror misconduct in the penalty phase of Gavin Scott's trial.

**\*Prosecutorial Misconduct** – In 2001, the Kansas Supreme Court found that there were "numerous" instances of prosecutorial misconduct in the case of Gary Kleypas in Crawford County.

**\*Cost** – Legislative Post Audit reported to the 2004 Legislature that the death penalty can cost up to 70% more than a non-death-penalty case, even with incarceration costs included.

**\*Judicial Error** – In 2004, the Kansas Supreme Court ruled that the capital murder conviction of Michael Marsh had to be vacated due to error by the Judge in this Sedgwick County case. The judge had refused to allow critical evidence to be heard in court.

**\*Disparity of Application** – The Judicial Council released a study on January 12, 2005, which noted that geographic disparity exists. The Council found that persons who go to trial on capital murder charges in Sedgwick County are more likely to get a death sentence than those in Wyandotte County.

**\*Withheld Evidence** – In 2006, the first trial of Bob Fox ended in a mistrial in Seward County. The ruling came when it was learned that a key piece of evidence favorable to the defendant had been withheld from the defense.

**These are the findings of state courts and agencies, and not merely claims of those concerned about the death penalty. It is a serious matter when a state with so few death sentences has this many confirmed problems. In addition, a special three-day hearing is slated for April 2009 in Shawnee County to consider evidence related to ineffective assistance of counsel in a death penalty case where it is alleged the defense attorney made little effort to prepare for the penalty phase of the trial.**

**Kansas Voters Voice Support for Alternatives** In a poll of Kansas voters conducted in January 2007, respondents expressed clear support for alternatives to the death penalty for the crime of first degree murder. When offered an option of life in prison without parole and a requirement for

restitution to go to victim families, 65 percent chose that option. Only 24 percent chose the death penalty.

## **The Death Penalty Elsewhere in the United States**

### **New Jersey: Abolition Is Not Hampering Murder Prosecutions**

On December 17, 2007, New Jersey Governor Corzine signed legislation which abolished that state's death penalty. The Legislature passed a death penalty repeal after a Study Commission recommended abolition.. The Commission's findings were endorsed by the New Jersey Prosecutors' Association. In the year since, New Jersey prosecutors have found that abolition is not posing problems for them.

### **Maryland Study Commission**

**Recommends Abolition** Maryland's Death Penalty Study Commission voted 13 to 7 in support of a recommendation to abolish that state's death penalty. The commission cited reasons of innocence, racial disparity, and cost .

**States Struggle to Pay for the Death Penalty** The New Mexico Supreme Court ruled unanimously that without additional money for death penalty defense, capital murder prosecutions would have to be halted.

The Utah Supreme Court in a November 2008 ruling said, "It is the duty of the legislative branch to provide for adequate defense of capital defendants...it falls to us, as the court of last resort in this state, to assure that no person is deprived of life, liberty, or property, without the due-and competent-process of law. Without a sufficient defense, a sentence of death cannot be constitutionally imposed." (Archuleta v. Galetka)

If you enjoy the Newsletter and want to help support the anti-death penalty effort financially, please use the form below to send a donation. If you want a receipt for tax purposes, please check the appropriate box. Make checks out to KCADP. We thank you for your support.

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