

2009 Kansas Death Penalty Guide

January 2009

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.

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

Kansas Capital Case Distribution by County

Cheyenne	Rawlins	Decatur	Norton	Phillips	Smith	Jewell	Republic	Washington	Marshall	Nemaha	Brown	Doniphan	Leavenworth		
Sherman	Thomas	Sheridan	Graham	Rooks	Osborne	Mitchell	Cloud	1 Clay	1 Pottawatomie	1 Jackson	Atchison	Jefferson	Wyandotte		
Wallace	Logan	Gove	Trego	Ellis	Russell	Lincoln	Ottawa	~	~ Riley	~ Geary	~ Wabau-see	~ Shaw-nee	1 Douglas	1 Johnson	
Greeley	1 Wichita	Scott	Lane	Ness	Rush	Barton	Ells-worth	~ Saline	1 Dickinson	Morris	Osage	Franklin	1 Miami		
Hamilton	Kearny	Finney	Hodge-man	Pawnee	Edwards	Stafford	Rice	1 McPher-son	1 Marion	Chase	Lyon	Coffey	Anderson	Linn	
Stanton	Grant	1 Hask-ell	Gray	Ford	Kiowa	Pratt	Kingman	~ Reno	1 Harvey	1 Sedgwick	1 Butler	1 Greenwood	Wood-son	Allen	1 Bourbon
Morton	Stevens	1 Seward	Meade	Clark	Co-manche	Barber	Harper	Sumner	1 Cowley	Elk	Wilson	Neosho	Crawford	~ Cherokee	

1 is one case ~ is 2 - 4 cases # is 5 - 10 cases x is 11 or more cases

As of December 18, 2008, cases with the potential for a death sentence were pending in Cowley, Johnson, Leavenworth, Reno, and Wyandotte counties.

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:

- kidnaping or aggravated kidnaping 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 kidnaping when the kidnaping 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 are 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.

Death Row

Men who have been sentenced to death are held at the El Dorado Correctional Facility in the Administrative Segregation Unit. Any women sentenced to death would be held at the Topeka Women's Correctional Facility.

Executions

Executions will be by lethal injection at the Lansing Correctional Facility's execution chamber in the old Administration Building.

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 death sentence of Gary Kleypas due to unconstitutional provision in law. Decision was expected to impact at least four cases. 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.

24 Capital Trials since 1994

11 men have received death sentences for capital murder.

1. Gary Kleypas. Death of Carrie Williams. Crawford Co. Death sentence thrown out by KS 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 KS Supreme Court. Retrial pending.
3. Gavin Scott. Deaths of Doug and Beth Brittain. Sedgwick Co. Death sentence thrown out by KS 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.

13 men were not sentenced to death after trial for capital murder.

1. Robert Verge. Deaths of Kyle and Chrystine Moore. Dickinson Co. Hard 40 + 19 years.
2. Virgil Bradford. Deaths of Kyle and Chrystine Moore. Dickinson Co. Hard 40.
3. Frank Deiterman. Death of Patrick Livingston. Cherokee Co. Hard 40. (Prosecution didn't seek death in the penalty phase.)
4. Richard Powell. Deaths of Mark and Melvin Mims. Wyandotte Co. In penalty phase, Court ruled him mentally retarded so case then proceeded with non-capital sentencing.
5. Gordon Martis. Convicted of first degree murder of Alphonse Moore, second degree murder of Jerry Seals. Wyandotte Co.
6. Jeffrey Hebert. Death of James Kenney. Clay Co. Hard 50 + 46 months, 12 months, and 7 months.
7. Cornelius Oliver. Convicted of two premeditated first degree and two felony first degree murders in the deaths of Jermaine Levy, Quincy Williams, Dessa Ford, and Raeshawnda Wheaton. Sedgwick Co. Life, two Hard 50s + two 20-year sentences. Codefendant Bell was acquitted on four counts of murder.
8. Christopher Trotter. Deaths of Traylenea Huff and James Darnell Wallace. Wyandotte Co. At least 50 years in prison.
9. Darrell Stallings. Convicted in the deaths of Tameika Jackson, Melvin Montague, Samantha Sigler, Destiny Wiles, Trina Jennings. Wyandotte Co. Five hard 50 sentences.
10. Greg Moore. Convicted in death of Kurt Ford. Harvey Co. Life in prison without parole.
11. Ted Burnett. Convicted in death of Chelsea Brooks. Sedgwick Co. Life in prison without parole.
12. Elgin Robinson. Convicted in the death of Chelsea Brooks. Sedgwick Co. Life in prison without parole.

13. Nathaniel Hill. Convicted in the deaths of April Milholland and Samuel Yanofsky. Montcomery Co. Hard 50 plus additional time for drug crimes. (Death was not sought in the penalty phase.)

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.

Another question offered the option of either 50 years in prison before parole consideration or the death penalty. Here, too, the respondents preferred the non-death option, with 51 percent choosing imprisonment and 42 percent choosing death.

The poll was conducted by Jayhawk Consulting Services.

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 bipartisan study commission members included victim rights advocates, law enforcement, and others. 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. Hudson County Prosecutor Edward DeFazio recently said: "As a practical matter, we have really seen no difference in the way we conduct our business in prosecuting murder cases."

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 innocence, racial disparity, and cost as reasons for abolition.

States Struggle to Pay for the Death Penalty

In New Mexico, the State Supreme Court ruled unanimously that without additional money for death penalty defense, capital murder prosecutions would have to be halted.

Utah is also experiencing funding challenges. Their 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)

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These three organizations work to educate Kansans about the death penalty.

KCADP is on the web at www.kscadp.org.

