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House Corrections and Juvenile Justice Committee
Testimony of Amy Hanley, Assistant Attorney General
Office of Attorney General Derek Schmidt
In Opposition to HB 2323
March 15, 2012

Chair Colloton and Members of the Committee,

I am a prosecutor with the Kansas Attorney General's Office handling high-level crimes throughout the state of Kansas, including capital murder. I recently prosecuted *State of Kansas v. James Kraig Kahler*, a capital case resulting in a death sentence. I appear today on behalf of Attorney General Derek Schmidt in opposition to the passage of HB 2323 which would abolish the death penalty for crimes committed on or after July 1, 2011, and create the new crime of aggravated murder. We strongly believe capital punishment is appropriate for the narrow class of murderers subject to it.

Precedent Upholding Constitutionality

In *Kansas v. Marsh*, 548 U.S. 163, 126 S. 2516 (2006), the United States Supreme Court reversed the Kansas Supreme Court's decision in *State v. Marsh*, 278 Kan. 520, 102 P.3d 445 (2004). The U.S. Supreme Court specifically found that Kansas' capital sentencing system was constitutionally permissible within the general principles set forth in death penalty jurisprudence. In *State v. Scott*, 286 Kan. 54, 97, 183 P.3d 801 (2008), the most recent Kansas Supreme Court decision dealing with the death penalty, the Court concluded, "the decision in *Kansas v. Marsh* is nothing more than the application of well-settled law to the particular statute at issue." The United States Supreme Court's decision in *Marsh* is the final word on the question of whether Kansas' death penalty violates the United States Constitution.

Narrow Application

The death penalty is the appropriate penalty for the narrow class of heinous murderers subject to it. Specifically, it is only available for pre-meditated murders and requires an element beyond premeditation to be found. The Marsh Court found that the Kansas death penalty "rationally narrows the class of death-eligible defendants and permits a jury to consider any mitigating evidence relevant to its sentencing determination." Id. at 164. The law further requires the State to demonstrate the existence of an aggravating circumstance beyond a reasonable doubt and prove this aggravator is not outweighed by mitigating circumstances. In the small percentage of cases where the death penalty applies, the jury has specific criteria to determine whether life or death is appropriate. This statutory process ensures that the death penalty is only given in the most horrific cases.

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Deterrence

Logic and common sense tell us the threat of punishment deters crime. To examine deterrence of the threat of capital punishment, we must consider not only those who have committed capital murder, but also those who will commit capital murder in the future. An increasing number of studies show a clear deterrent effect correlated to the death penalty.

- Paul R. Zimmerman, *State Executions, Deterrence, and the Incidence of Murder*, JOURNAL OF APPLIED ECONOMICS, Vol. III, No. 1, 163, 190 (May 2004) (“... it is estimated that each state execution deters somewhere between 4 and 25 murders per year (14 being the average)).
- Hashem Dezhbakhsh, Paul H. Rubin, Joanna M. Shepard, *Does Capital Punishment have a Deterrent Effect? New Evidence from Postmoratorium Panel Data*, AMERICAN LAW AND ECONOMIC REVIEW, 344, 373 (Fall, 2003) (“Our results suggest that the legal change allowing executions beginning in 1977 has been associated with significant reductions in homicide. . . . our most conservative estimate is that the execution of each offender seems to save, on average, the lives of eighteen potential victims. (This estimate has a margin of error of plus and minus ten).”
- Charles N. W. Keckler, *Live v. Death: Who Should Capital Punishment Marginally Deter?*, 2 J. LAW, ECONOMICS & POLICY, 101, 109 (2006) (“using data up to 1997, indicates that ‘an additional execution generates a reduction in homicide by five . . .’”)
- Isaac Ehrlich, *The Deterrent Effect of Capital Punishment: A Matter of Life and Death*, 65 AM. ECON. REV. 397 (1975) (estimating each execution deters eight murders)
- H. Naci Mocan and R. Kaj Gittings, *Getting Off Death Row: Commuted Sentences and the Deterrent Effect of Capital Punishment*, 46 J.L. & ECON. 453 (2003) (finding each execution deters, on average, five murders).
- Cass R. Sunstein and Adrian Vermeule, *Is Capital Punishment Morally Required? Acts, Omissions, and Life-Life Tradeoffs*, 58 STAN. L. REV. 703 (2006).
 - **“If the current evidence is even roughly correct . . . then a refusal to impose capital punishment will effectively condemn numerous innocent people to death. States that choose life imprisonment, when they might choose capital punishment, are ensuring the deaths of a large number of innocent people.”** (p. 706).

Conclusion

Prosecutors approach these cases with consideration for what is right for the case, the victims, and the community. Ultimately, this issue is a matter of justice, of seeking the appropriate penalty for the crime. Kansas must ensure that justice is imposed for the heinous murders that qualify for the death penalty. Some crimes are so heinous, they deserve the ultimate punishment. Currently, Kansas has nine murderers who are under sentence of death. If this legislation passes, the appropriate and just penalty to punish future murderers like these will no longer be available.

I would be happy to answer any questions.