

March 21, 2011

The Honorable Tim Owens, Chairperson  
Senate Committee on Judiciary  
Statehouse, Room 559-S  
Topeka, Kansas 66612

Dear Senator Owens:

**SUBJECT:** Fiscal Note for SB 239 by Senate Committee on Ways and Means

In accordance with KSA 75-3715a, the following fiscal note concerning SB 239 is respectfully submitted to your committee.

SB 239 would abolish the death penalty for crimes committed on or after July 1, 2011, and create the new crime of aggravated murder. Aggravated murder would be defined as the intentional and premeditated killing of any person in the commission of kidnapping; pursuant to a contract or agreement to kill such person; by an inmate confined to a state correctional facility, community correctional institution or jail; who is a victim in the commission or attempted commission of rape, criminal sodomy, or aggravated criminal sodomy; who is a law enforcement officer; who is a child under the age of 14 in the commission of kidnapping or aggravated kidnapping with the intent to commit a sex offense. Aggravated murder would be an off-grid person felony, which would require convicted offenders to serve life sentences without the possibility of parole, commutation of sentence, probation, community corrections, conditional release, post-release supervision, or functional incapacitation release. SB 239 would also make several technical amendments related to the criminal code.

The Kansas Sentencing Commission states that passage of SB 239 would increase prison bed requirements; however, the effect would be outside of the normal ten-year projection period and cannot be accurately quantified. The Commission indicates that the national average time from the imposition of a death sentence to the execution of an offender is approximately 12 years. For Kansas, that timeframe is slightly less. As a result, correctional facilities could experience a "stacking" effect as inmates sentenced under SB 239 enter the prison system and remain there until natural death.

According to the Office of Judicial Administration, enactment of the bill would result in separate sentencing proceedings, which are required under capital murder cases, to no longer be held. Because the number of FY 2010 capital murder cases was only five, it is assumed that the savings would not be substantial. Additionally, the Office believes that certain aggravated

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murder trials could be lengthier than capital murder proceedings and could require additional case time. However, it is not possible to predict how complex and time-consuming they would be. Therefore, a precise fiscal effect cannot be determined. In any case, the fiscal effect would most likely be accommodated within the existing schedule of court cases and would not require additional resources.

The Board of Indigents Defense estimates that reductions in defense work related to death penalty cases could result in savings totaling approximately \$400,000 starting in FY 2012 but not fully realized until FY 2013. The estimate assumes four crimes would be tried as aggravated murder rather than capital murder and that there would be savings of approximately \$100,000 per case because of reductions in the number of attorneys required to handle each case and expert witness costs. Any fiscal effect associated with SB 239 is not reflected in *The FY 2012 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Anderson", with a long horizontal flourish extending to the right.

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

cc: Helen Pedigo, Sentencing Commission  
Jeremy Barclay, Corrections  
Marie McNeal, Parole Board  
Mary Rinehart, Judiciary  
Megan Pinegar, Attorney General's Office  
Pat Scalia, Indigents Defense