

Death penalty in the state of kansas

[Law](#), [Death Penalty](#)



The Death Penalty issue has been a grave controversy especially in our contemporary society, not only in U. S. but also in Europe. Unfortunately, resolving the issue is very difficult due to the complexity of the judicial system in the U. S. State judicial systems must deal with the constitutionality of the state laws as well as their proper applic. In addition, popular opinion is also a powerful force that may bring about changes on either whether death penalty exists at all or what weight death penalty should have versus life imprisonment without parole.

These opinions may be based on religious beliefs, on human rights, on the magnitude of violence of the crimes committed, and the popular need to feel safe from violent assaults, non-homicidal and homicidal rapists, as well as violent homicidal offenders. Other questions remain: what is the value of deterrence of the death penalty type of sentence? What is the cost of inmates on death row? Inmates stay on death row for a while, mainly because most of the times, they are appealing their sentence or waiting for a pardon from the state governor or even the President. Since Kansas has reestablished the death penalty, these concerns have been of primary interest to the Kansas judicial system and the state residents.

Twenty-nine years after the last execution, the state of Kansas reestablished the death penalty sentence in 1994, under SB (Senate Bill) 473 and HB (House Bill) 2578. SB 473 states that the death penalty is restored in Kansas for first degree murders whereas HB 2578 simply authorizes the death penalty to be reenacted. Interestingly, in an annual survey of college students across the U. S., students were asked whether they were in favor of death penalty. In 1969, this survey reported 54% of the students in favor of

the abolition of the death sentence, in 1985, it was down to 27%, in 1989 21%, and in 1995 20%. (Bedau, 85)

The percentage in 1995 was the lowest and seemed to reflect a trend in young people's general acceptance of death penalty; remember that Kansas reenacted the sentence in 1994! Is it a coincidence? Evidently, popular demands and trends are taken into account in state legislatures; that is the principle of democracy. The Gallup News service reported on June 1st 2006 that back in 1994, 65% of the entire population of the U. S. favored life without parole whereas in 2006, 80% favored life without parole.

Further, they also reported that in 2006, 47% were for the death penalty while 48% were for life without parole. (Newport, Gallup) Consequently, based on these data, the attitude the American people has gradually changed to favoring life without parole with a 50/50 division over the choice between life without parole and death penalty. The examination here is that the legality of death penalty is always measured against contemporary standards of morality. Therefore, the trend that has been observed in the past few years shows that more and more people do not support the death penalty, illustrating a change of views. (Bedau, 90)

Kansas law allows for death penalty but also for life without parole.

According to the 2005 Kansas Death Penalty Guide, the exact description of the crimes punishable by death in Kansas is given in the KSA 21-3439 reenactment as capital murder with 8 aggravating circumstances. Death is given by lethal injection. For a life sentence in Kansas, persons who are guilty of capital murder will be jailed for 25-50 years. The sentence must be

served entirely before the individual can be eligible for parole. There is no good behavior credit. (Kansas, 1)

Carlson and Garrett (Carlson, Garrett, 5) give the 3 major sanctions available in the U. S. judicial system, economic penalties, probation, and incarceration, as well as the 4 primary goalsof incarceration, deterrence, incapacitation, retribution, and rehabilitation. The following remarks summarize briefly the position of supporters or opponents of death penalty, respectively. The death penalty sentence is viewed as a way to deter other criminals from committing crimes, incapacitating the criminal on death row who will pay a retribution for his crimes by his or her death.

If someone is on death row, there is a feeling that he or she will not be able to be rehabilitated. As for life without parole, the long-term incarceration will serve as deterrent for the criminal and others outside; it will incapacitate the criminal while the long sentence without any credit is considered a retribution for the crime. In this case, there is a feeling that the criminal will be able to be rehabilitated if he or she lives longer than the sentence.

(Bedau, 127) This is the basic controversy of death versus life imprisonment.

For any death penalty case, that includes Kansas, there is a diversity of factors to be considered to decide whether or not capital cases are pursued. There are factors that differ for every case, for every state, for every crime committed, and for every inmate whose past may not have been exemplary. (Cassell, Bedau, 118) In addition, jurors and prosecutors must be sure that death penalty can be applied in the case they are working on.

However, the decision process for any juror is still subjective because his or her decision is still dependent upon the strength of the prosecution's arguments as well as evidence, the degree of certainty that the person is not innocent, the legal defense's arguments and evidence if any, and the crime committed against the victim and the family. The judge must follow the case tightly and apply the law in a correct fashion. However, the interpretation of the law can also be subjective. Each capital case trial is very hard to go through because it entails numerous problems that can take time to sort out with respect to state laws versus the U. S. Constitution. (Bedau, 183)

Interpretation of the law in Kansas has been a source of contentions among supporters for sentencing to death, opponents, and the judicial system. The main debate is centered on the constitutionality of death penalty and the interpretation of the Constitution. To concretely illustrate the dispute and its complexity, the case of Kansas vs. Marsh needs to be considered. The case is the following. In 1996, Michael Marsh broke into the home of a family with a 19 month-old baby.

His goal was to get money to take a trip to Alaska by kidnapping the mother and the child in order to ask for a ransom from the husband and father. Unfortunately, events turned awful when Marsh panicked, killing the mother by shooting her 3 times in the head, stabbing her twice, and doused her with lighter fluid. He then set the body on fire, ran away, leaving the baby inside to burn to death. The mother survived for 6 days in the hospital and died of multiple organ failures. Marsh was charged with capital murder, first-degree premeditated murder, aggravated arson, and aggravated burglary.

A Kansas jury found him guilty on all counts and sentenced him to death for the capital murder of the child. Marsh appealed his sentence to the Kansas Supreme Court. The Court found that the Kansas death penalty statute was in fact unconstitutional because in Kansas, there is no “fundamental fairness” rule. What this means is that if a criminal is sentenced to death while the aggravating factors of the prosecution equal the mitigating factors of the defense, then by fundamental fairness, the death sentence is nullified. However, in Kansas, the fundamental fairness rule does not exist.

In Marsh’s case, the aggravating factors equaled the mitigating factors as determined by the jury and caused the verdict to stand, based on the jury instructions from the Kansas statute,. So, the basic question is: is the Kansas death penalty statute upheld when aggravating factors equal mitigating factors and if it is upheld, is it a violation of the Constitution? The State of Kansas took the case to the U. S Supreme Court in December 1995. The Supreme Court determined that the statute permits death sentences in the event of a tie between aggravating and mitigating factors. (Mandery, 124) However, the key lies with who has the final burden of proof for outweighing the factors.

As a comparison, when there is tie, the death penalty statute in Arizona allows the defendant to reply that the mitigating factors outweigh the aggravating ones and prove it against the prosecution aggravating proof. In Kansas, the burden is still on the prosecution without any additional actions from the defendant. Since the prosecution did not prove the mitigating factors outweighed the aggravating factors, the death sentence was

overturned. Justice Souter commented on what he called the “morally absurd” Kansas death penalty statute that permits a death sentence even if the prosecution has failed to prove that the aggravating factors outweigh the mitigating factors, accusing Kansas law to increase the incidence of death penalty sentences.

Justice Scalia wrote a document on his opinion of the case. Dealing with Justice Souter’s comments, he shamed Souter’s view as regarding the death penalty as “an undesirable situation.” Additionally, he also pointed out that, even if some of his colleagues disagree with the idea of a death penalty, 38 states do impose the penalty while scrutinizing the verdicts for wrongful executions, implying that death penalty sentences are properly assigned. Souter’s point was that death penalty is serious enough that it should be reviewed. (Campbell, Star-Telegram)

As one can see in the above case, many steps had to be completed to get to the final decision. So, a very safe assumption is that this trial and associated inmate expenses must have been very high. One of the chief complaints that Kansas opponents of death penalty have, besides moral or religious reasons, is the cost of the procedures. They claim that death row cases cost a lot more than life without parole cases. The money that would be saved should be spent on crime prevention. (Bedau, 91) Gottfried reports that on average \$20, 000 is spent on life without parole inmates/year, a third less than for capital cases. (Gottfried, 2002)

Kansas is not the only state that reestablished death penalty. However, it was done in 1994, at a time when many Americans supported capital

punishment. It seems true that support or opposition to the death penalty is a reflection of the contemporary morality views of the public. It does not look like people support it now. The U. S. Supreme court seems to agree that this type of punishment should be reviewed, revised or completely eliminated based on moral and legal grounds. Yet, abolishing death penalty in Kansas because it costs too much is not a very serious and moral reason to do it. The problem really resides in the application of the laws. Death penalty may be a way to punish violent criminals but nobody knows how to properly justify using it.

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