

KANSAS' DEATH PENALTY IS BROKEN

Rather than Fix it, HB 2389 Threatens Innocent Life

Frustration with Kansas' death penalty continues to grow since its reinstatement in 1994. Kansas' death penalty has suffered from delay, high costs, and ineffectiveness. HB 2389 proposes reforms to "fix" the death penalty. These reforms, however, would only add to the problems with the state's death penalty rather than resolve them.

Making other cases languish in the courts is no way to fix death penalty.

- Under HB 2389, appeals in **all** cases must wait in line behind death penalty cases for their day in court. This proposal delays finality to victims of rapes, non-capital homicides, kidnappings, and other serious crimes.
- Individuals wrongfully convicted of non-capital crimes will spend more time in jail as their appeals are delayed.

"I have a hard time understanding why Kansas and other states dedicate so much time and so many resources to ... the death penalty. There have been over 2,400 murders in Kansas since ... 1994. In just a small handful of cases, prosecutors seek the death penalty."

— **Mary Head of Lawrence, whose sister Patricia was murdered**

The burden for proving innocence is unreasonably high.

- Unless a defendant proves by "clear and convincing evidence" his or her innocence, a court cannot grant relief and stop an execution according to HB 2389. Meeting this high standard is difficult, especially in cases without DNA evidence.
- Even if it is **more than likely that a defendant is innocent**, that is **not** sufficient for a court to stop an execution.

"D.N.A. exonerations do not solve the problem ... but ... prove to us that there is a problem in our justice system.... D.N.A testing is only available in 5-10 percent of criminal cases."

— **Eddie Lowery, exonerated of a rape in Riley County after 10 years in prison**

Shortening appeals is dangerous given how long it takes for evidence of innocence to emerge.

- HB 2389 puts forward provisions to limit the time available for appeals in capital cases. These changes raise the risk of executing an innocent person.
- Of the 143 individuals sentenced to death and later exonerated in the US since 1973, it took on average **over 10 years** for them to prove their innocence. In some cases the wait was 20 or 30 plus years.

"21 years passed after my conviction before I finally proved my innocence.... If [HB 2389] goes forward, you will not see the result immediately, but years later it could put an innocent life in danger. That prospect should scare all of us." — **Curtis McCarty, death row exoneree**

Capital cases are never quick and always prolong the legal process.

- A potential result of HB 2389 is ***more rather than less*** litigation. HB 2389's time restrictions on appeals and high standard for proving innocence may be unconstitutional. These issues likely will lead to legal challenges of the bill.
- Across the US – Texas, Florida, Oklahoma, and elsewhere – the death penalty is characterized by delay, uncertainty, and error. Nationwide, two out of three death sentences are overturned. Even in states with a “quick” death penalty, murder victims' families often wait 10 or 20 plus years for an execution – if one occurs at all.

“In my [mother’s] case, the legal process dragged on for 21 years before it finally ended in an execution.... [I]t is simply a myth to believe that you can construct a quick, foolproof death penalty that will save murder victims’ families from enduring a prolonged legal process.”

— Celeste Dixon of Larned, whose mother Marguerite was murdered in Texas

HB 2389 is a poorly thought out proposal that will only exacerbate rather than solve the problems plaguing Kansas’ death penalty.