

COUNTY-LEVEL FISCAL CONSERVATIVES AGAINST THE DEATH PENALTY

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Win or lose, bringing a death penalty prosecution costs county government some serious money it didn't have to spend. To pursue a successful death penalty prosecution, county governments in Kansas must spend on average an estimated \$198,000 over and above the costs of non-death penalty murder trials¹—and costs are rising. (The costs are much lower if the jury fails to support a death sentence.) More than seventy individuals have been charged with capital murder since 1994. That means Kansas county governments were willing to spend some \$15M that could have been saved by seeking a “hard 50” life imprisonment. In the past decade Kansas counties have been authorizing an extra \$1M or so on the death penalty each year (not all of which gets spent).

Yet no one has actually been put to death in Kansas since 1994, when the death penalty was re-enacted. The first execution under that law appears to be more than six years away, based on expected time for all appeals to be exhausted.² Meanwhile, polls³ show Kansans are growing increasingly uneasy about trusting a messy, politicized,⁴ and unreliable⁵ government bureaucracy to make life and death decisions. Whether or not one supports capital punishment in principle, in

¹ Source: Calculated by AAI from data in Appendix E, Kansas Legislative Division of Post Audit, *Performance Audit Report: Costs Incurred for Death Penalty Cases: A K-GOAL Audit of the Department of Corrections*, December 2003 (accessed May 27, 2008 at www.kslegislature.org/postaudit/audits_perform/04pa03a.pdf).

² Source: estimated by capital penalty defense attorney Ron Wurtz (private communication, 2008).

³ Source: Scott Rothschild, 2007, “Kansans opt against death penalty,” *Lawrence Journal-World*, February 13.

⁴ The decision to seek or not seek the death penalty is made in each case by an elected local official, the District Attorney. Death penalty decisions have been political issues in a number of Kansas District Attorney races. A convicted murderer's chances of receiving a death sentence depend largely on which county the murder was committed in. From 1994 through 2004, Sedgwick County imposed 5 death sentences out of 17 potential death penalty cases (about 29%), while Wyandotte County imposed no death sentences at all out of 25 potential death penalty cases. The entire rest of the state imposed 2 death sentences out of 44 potential death penalty cases (about 5%). Source: Kansas Judicial Council Death Penalty Advisory Committee, 2004, *Report On Certain Issues Related to The Death Penalty* (accessed May 27, 2008 at www.kscourts.org/pdf/studies/death_penalty_rpt11-12-04.pdf).

⁵ Since 1973, at least 129 individuals in 26 states have been released from death row with some evidence of innocence. Source: Death Penalty Information Center, “Innocence and the Death Penalty” (accessed June 17, 2008 at <http://www.deathpenaltyinfo.org/article.php?did=412&scid=6>).

practice it has turned out to be an expensive and unsettling luxury.⁶

Abolishing the Kansas death penalty could take many years. In the mean time, there is one important step fiscal conservatives can take to help reduce the burden on local taxpayers: ask your county District Attorney not to seek the death penalty.

A death penalty case is expensive for county taxpayers because they foot the bill for extra items such as:

- specialized prosecution team
- enlarged voir dire (around 100 potential jurors must be summoned and paid for their time)
- increased police presence at the trial
- longer and more complex trial procedures (over three times as long, by one estimate).⁷

That all adds up to some \$200 thousand in extra expenses. For most counties, this is a significant burden. Requests by responsible taxpayers that money not be spent in this way would be hard for local officials to brush off.

However, lobbying a district attorney in the midst of a murder trial would not be effective. The time to talk to DAs about their death penalty policies is during or shortly after their election. A low key, off-the-record, one-on-one approach is best.

Even more effective, however, may be to quietly lobby your County Commissioners. Make them aware of what a death penalty trial will cost out of their budget, then ask them to meet with the DA on the topic of how to minimize death penalty trials. Anecdotally, this approach has been effective in at least one county in Kansas.

In counties where the death penalty practice is deeply entrenched, quiet lobbying may not work. In that case, reaching out to the public with letters to the editor might at least dampen the enthusiasm of big spending politicians.

Two other steps short of abolition that on the surface seem to offer possibilities for taxpayer relief are, in practice, unlikely to help:

- First, the governor can be petitioned to commute a particular death penalty to life without parole. However, in practice, governors are very reluctant to commute sentences, and

⁶ Moreover there is a consensus of many experts that the death penalty has no measurable deterrence effect. Source: review of literature in Kansas Judicial Council Death Penalty Advisory Committee, *op. cit.*

⁷ Source: Cook and Slawson, 1993, "The Cost of Prosecuting Murder Cases in North Carolina," Duke University, Terry Sanford Institute of Public Policy.

typically do so only after all appeals run out. At that point the money has already been spent and there are no significant cost savings to be had.

- Second, the county or state can try to reduce the very substantial funds that are being spent on trial evidence and procedures. Any efforts to do so, however, are likely to prove counterproductive, by providing a new basis for appeals that are very likely to succeed, leading to new trials. Trial expenditures are mostly driven by US Supreme Court standards for a fair trial.

Bottom line: Kansas counties should get out of the death penalty business and get some tax relief.