



# ***Death Penalty Guide***

## **Provisions of the 1994 Death Penalty Law**

### **Eligibility for the Death Penalty**

Kansas' 1994 death penalty law provided the option of a death sentence for intentional, premeditated murders that contain one or more of these seven factors

- kidnapping or aggravated kidnapping for ransom;
- contract murder;
- murder of any person by an inmate in a correctional facility;
- murder of a victim of rape, criminal sodomy, or aggravated criminal sodomy in the attempt to commit or the commission of, subsequent to the crime;
- murder of a law enforcement officer;
- murder of more than one person during the same act, or in two or more acts connected as part of a common scheme;
- murder of a child under the age of 14 in the commission of kidnapping when the kidnapping is done with the intent to commit an unlawful sex offense upon or with the child, or with the intent that the child commit or submit to a sex offense.

### **Death Penalty Applicability**

To be eligible for the death penalty, the defendant must be at least age 18 at the time of the crime. Persons who are found to be mentally retarded are not subject to the death penalty.

### **Alternative Sentences**

Persons convicted of capital murder prior to July 1, 2004, who were not given a death sentence were sentenced to either 25, 40, or 50 years in prison. These are "hard" sentences, meaning that a number of years must be served before the prisoner may be considered for parole. There is no "good time" credit.

The law was changed in 2004, and for murders occurring after July 1 of that year, the alternative to a death sentence is life in prison without parole. Like the death penalty, that sentence (life without parole) does not apply to individuals determined to be mentally retarded.

### **Death Row**

Men who have been sentenced to death are held at the El Dorado Correctional Facility in the Administrative Segregation Unit. Any women sentenced to death would be held at the Topeka Women's Correctional Facility.

### **Executions**

Executions will be by lethal injection at the Lansing Correctional Facility's execution chamber in the old Administration Building.

# Kansas Death Penalty Stats

## 85 Capital Cases Filed in 31 Counties

Top Four Counties: Wyandotte (20), Sedgwick (12), Johnson (7), Shawnee (5)

The rest: Atchison (1), Barton (2), Bourbon (1), Butler (1), Cherokee (2), Clay (1), Cowley (1), Crawford (2), Dickinson (2), Doniphan (1), Douglas (1), Geary (2), Grant (1), Greenwood (1), Harvey (1), Haskell (1), Leavenworth (2), McPherson (1), Miami (1), Montgomery (3), Osage (1), Pottawatomie (1), Reno (4), Riley (1), Saline (3), Seward (1), Wichita (1)

## Death Sentence Distribution by County

Cheyenne	Rawlins	Decatur	Norton	Phillips	Smith	Jewell	Republic	Washington	Marshall	Nemaha	Brown	Doniphan	Leavenworth	
Sherman	Thomas	Sheridan	Graham	Rooks	Osborne	Mitchell	Cloud	Clay	Pottawatomie	Jackson	Atchison	Jefferson	Wyandotte	
Wallace	Logan	Gove	Trego	Ellis	Russell	Lincoln	Ottawa	Riley	Geary	Wabaunsee	Shawnee	Douglas	Johnson	
Greeley	Wichita	Scott	Lane	Ness	Rush	1	Ellsworth	Saline	Dickinson	Morris	Osage	Franklin	Miami	
Hamilton	Kearny	Finney	Hodgeman	Pawnee	Edwards	Stafford	Rice	McPherson	Marion	Chase	Lyon	Coffey	Anderson	Linn
Stanton	Grant	Haskell	Gray	Ford	Kiowa	Pratt	Reno	6	Harvey	Greenwood	Woodson	Allen	Bourbon	
Morton	Stevens	Seward	Meade	Clark	Comanche	Barber	Harper	Sumner	1	Butler	Elk	Wilson	Neosho	1
										Cowley	Chautauqua	Montgomery	LaBette	Cherokee

As of January 1, 2011, cases with the potential for a death sentence are pending in Osage, Riley, Saline, and Wyandotte counties.

## 25 Capital Trials since 1994

### 12 men have received death sentences for capital murder.

1. Gary Kleypas. Death of Carrie Williams in 1996. Crawford Co. Death sentence thrown out by KS Supreme Court. New penalty phase held. Resentenced to death in 2008.
2. Michael Marsh. Deaths of Marry Ane and Marry Elizabeth Pusch in 1996. Sedgwick Co. Capital conviction thrown out by KS Supreme Court. Marsh then pled guilty to felony murder on the charge which had originally been capital.
3. Gavin Scott. Deaths of Doug and Beth Brittain. Sedgwick Co. in 1996. Death sentence thrown out by KS Supreme Court. Scott pled in 2010 to two first degree murder counts or at least 80 years in prison.
4. Stanley Elms. Death of Regina Gray in 1998. Sedgwick Co. District Attorney's office later agreed to drop the death penalty if Elms dropped his appeal alleging prosecutorial misconduct and other errors.
5. Jonathan Carr. Deaths of Jason Befort, Brad Heyka, Heather Muller, Aaron Sander in 2000. Sedgwick Co.
6. Reginald Carr. Deaths of Jason Befort, Brad Heyka, Heather Muller, Aaron Sander in 2000. Sedgwick Co.
7. John Robinson. Deaths of Izabela Lewicka and Suzette Trouten in 2000. Johnson Co.
8. Douglas Belt. Death of Lucille Gallegos in 2002. Sedgwick Co.

9. Phillip Cheatham. Deaths of Annette Roberson and Gloria Jones in 2003. Shawnee Co.
10. Sidney Gleason. Death of Darren Wornkey and Mikiala Martinez in 2004. Barton Co.
11. Scott Cheever. Death of Matt Samuels in 2005. Greenwood Co.
12. Justin Thurber. Death of Jodi Sanderholm in 2007. Cowley Co.

**13 men were not sentenced to death after trial for capital murder.**

1. Robert Verge. Deaths of Kyle and Chrystine Moore in 1997. Dickinson Co. Hard 40 + 19 years.
2. Virgil Bradford. Deaths of Kyle and Chrystine Moore in 1997. Dickinson Co. Hard 40 years.
3. Frank Deiterman. Death of Patrick Livingston in 1998. Cherokee Co. Hard 40. (Prosecution didn't seek death in the penalty phase.)
4. Richard Powell. Deaths of Mark and Melvin Mims in 1998. Wyandotte Co. In penalty phase, Court ruled him mentally retarded so case then proceeded with non-capital sentencing.
5. Gordon Martis. Convicted of first degree murder of Alphonse Moore, second degree murder of Jerry Seals in 1999. Wyandotte Co.
6. Jeffrey Hebert. Death of James Kenney in 1999. Clay Co. Hard 50 years + 46 months, 12 months, and 7 months.
7. Cornelius Oliver. Convicted of two premeditated first degree and two felony first degree murders in the deaths of Jermaine Levy, Quincy Williams, Dessa Ford, and Raeshawnda Wheaton in 2000. Sedgwick Co. Life, two Hard 50 year + two 20-year sentences. Co-defendant was acquitted on four counts of murder.
8. Christopher Trotter. Deaths of Traylenea Huff and James Darnell Wallace in 2001. Wyandotte Co. At least 50 years in prison.
9. Darrell Stallings. Convicted in the deaths of Tameika Jackson, Melvin Montague, Samantha Sigler, Destiny Wiles, Trina Jennings in 2002. Wyandotte Co. Five hard 50 year sentences.
10. Greg Moore. Convicted in death of Kurt Ford in 2005. Harvey Co. Life in prison without parole.
11. Ted Burnett. Convicted in death of Chelsea Brooks in 2006. Sedgwick Co. Life in prison without parole.
12. Elgin Robinson. Convicted in the death of Chelsea Brooks in 2006. Sedgwick Co. Life in prison without parole.
13. Nathaniel Hill. Convicted in the deaths of April Milholland and Samuel Yanofsky in 2003. Montgomery Co. Hard 50 years plus additional time for drug crimes. (Death was not sought in the penalty phase.)

**The Death Penalty in Kansas**

Significant problems have been documented with the Kansas death penalty process.

- **Jury Misconduct** – In 1999, Judge Kennedy threw out a jury recommendation of death in Sedgwick County due to juror misconduct in the penalty phase of Gavin Scott's trial.
- **Prosecutorial Misconduct** – In 2001, the Kansas Supreme Court found that there were "numerous" instances of prosecutorial misconduct in the case of Gary Kleypas in Crawford County.
- **Cost** – Legislative Post Audit reported to the 2004 Legislature that the death penalty can cost up to 70% more than a non-death-penalty case, even with incarceration costs included.
- **Judicial Error** – In 2004, the Kansas Supreme Court ruled that the capital murder conviction of Michael Marsh had to be vacated due to error by the Judge in this Sedgwick County case. The judge had refused to allow critical evidence to be heard in court.
- **Disparity of Application** – The Judicial Council November 2004 report noted that geographic disparity exists. The Council found that persons who go to trial on capital murder charges in Sedgwick County are more likely to get a death sentence than those in Wyandotte County.
- **Withheld Evidence** – In 2006, the first trial of Bob Fox ended in a mistrial in Seward County. The ruling came when it was learned that a key piece of evidence favorable to the defendant had been withheld from the defense.

- **Inadequate Assistance of Counsel** - In 2009, the State stipulated in a Shawnee County case that the defendant had not received adequate representation during the penalty phase. This case remains before the Court for a final ruling on all issues presented.

**These are the findings of state courts and agencies, and not merely claims of those concerned about the death penalty. It is a serious matter when a state with so few death sentences has this many confirmed problems.**

## **The Dilemma of Arbitrariness in Kansas Capital Cases**

The public often assumes that the death penalty law in Kansas results in similar cases having similar outcomes. A review of Kansas cases shows a different picture.

Multiple victim homicides: Alan White was charged with a triple homicide in Salina in 1996. His case never even went to trial but rather was resolved with a plea bargain.

Meanwhile, in Barton County, the deaths of two persons in 2004 resulted in a death sentence for one defendant, while another pled to a non-death sentence.

In Wyandotte County, a defendant was charged in the deaths of 5 persons. His case went to trial. The jury came back with five hard 50 year sentences.

Single female homicide with sexual assault or rape: A review of the capital cases shows that some of these cases go to trial, while others do not. In one case, Cowley County, the defendant was willing to plead but the prosecutor refused to accept a plea.

The November 2004 report of the Kansas Judicial Council Death Penalty Advisory Committee said "... it is obvious that a capital defendant in Sedgwick County is much more likely to proceed to trial than one in Wyandotte County." There is a good reason there is variance from county to county: prosecutorial discretion.

**The reality is that the prosecutor in each county holds the ultimate power. It is the District Attorney who makes decisions on how cases are charged, how they are handled (trial or resolved without trial), and many other critical issues.**

***For more information contact:***

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