



**STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL**

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Representative Susan Humphries
Kansas House Judiciary Chair
Capitol Office
Topeka, KS 66612

Dear Representative Humphries:

Nearly 30 years after the death penalty was restored in Kansas, House Bill (HB) No. 2782 provides necessary procedural revisions as the limited number of capital murder cases begin to progress past the appeal phase into the execution phase.

Of the nine men currently awaiting execution, over my 17-year tenure within the Kansas Attorney General's Office, I have overseen the prosecution of one (Kahler) and personally prosecuted two (Thurber and Flack). From these experiences and through my interactions with the small, close knit group of capital litigation prosecutors, I have learned that in Kansas, the death penalty statutory scheme has been applied in a disciplined way to a narrow band of horrendous cases.

The questions with these types of cases are: what is justice and who makes that decision? Last month, the Kansas Supreme Court affirmed the conviction and sentence of Kyle Flack. He was convicted of capital murder in the spring of 2016 for the 2013 premeditated murder of Kaylie Bailey (age 21) and her 18-month-old daughter, Lana. Flack drew Kaylie to the house in Franklin County through deception, bound her legs and arm with zip ties, stripped her from the waist down, and gagged her. With Kaylie lying face down on the floor, with her child close by somewhere in the small house, Flack, using a shotgun, fired one home defender round into the back of Kaylie's head. At some point within a few hours, Flack took Lana, had her stand over her dead mother, and fired another home defender round into Lana's back with the shotgun. He then wrapped Lana's body in a blanket, put her body in a suitcase, took the suitcase to a nearby river, and threw it in the river.

Based on these facts, what is justice in Kansas? Twelve well-vetted jurors, all residents of Kansas from Franklin County, decided that the appropriate justice was death. Like the other narrow band of cases in Kansas, this difficult decision by 12 unanimous jurors, came after hearing all of the relevant and appropriate evidence, using a statutory scheme found constitutional by the Kansas and United States Supreme Courts, and

considering allowed aggravating factors and any mitigating factor that each individual juror wanted to ponder.

With 30 years of time and several cases now past direct appeal, we are moving beyond the question of whether there should be a death penalty in Kansas. Cases are progressing toward the execution phase. HB No. 2872 clarifies the procedures for that phase and brings the mode of execution into a modern and functional design.

Sincerely,

A handwritten signature in blue ink that reads "Victor J. Braden". The signature is written in a cursive, flowing style.

Victor J. Braden
Deputy Attorney General
Criminal Division