

## **An act relating to crimes punishable by death**

With the capital punishment law repealed in 1907, the Kansas Legislature made several unsuccessful attempts at reinstatement in 1927, 1931, and 1933. In 1935, the legislature succeeded in reinstating the death penalty with House Bill 10. A companion bill, House Bill 11 (1935), prescribed hanging as the method for inflicting the death penalty in all cases. The bill also provided for the executioner, the time and place of execution, and cases of insanity, pregnancy, and escape. Although Kansas abolished the death penalty in 1907, no executions by state authority had occurred since 1870.

Creator: Kansas. Legislature

Date: 1935

Callnumber: Secretary of State, Legislative Documents, Box 34755 Folder HB11-1935

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KANSAS  
HISTORICAL  
SOCIETY

## An act relating to crimes punishable by death

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H. B. No. 11

HOUSE BILL NO. 11

By Mr. Hatch

AN ACT relating to crimes punishable by death, providing the method of inflicting the death penalty, and making an appropriation therefor.

Be it enacted by the Legislature of the State of Kansas:

Section 1. The mode of inflicting the punishment of death, in all cases in this state, shall be by hanging by the neck until such convicted person is dead. The warden of the state penitentiary, and in case of his death, sickness, absence or inability to act, then the deputy warden, shall be the executioner: Provided, The warden, may in writing specially designate and appoint a suitable and competent person to act for him and under his direction, as executioner in any particular case: Provided, Nothing contained in the provisions of this section shall apply to a crime committed at any time before the day when this section shall take effect. Such crime shall be punished according to the provisions of law existing when it is committed, in the same manner as if this section had not been passed; and the provisions of law for the infliction of the penalty of death upon convicted criminals in existence on the day prior to the passage of this section are continued in existence and are applicable to all crimes punishable by death, which have been or may be committed before the time when this section takes effect. A crime punishable by death committed on or after the taking effect of this act must be punished according to the provisions herein made and not otherwise.

Sec. 2. When any person shall be sentenced to be hanged such punishment shall be inflicted within the walls of the state penitentiary, or within the yard or inclosure adjacent thereto, under the supervision of the warden and in such a manner as to exclude the view of all persons save those permitted to be present as herein provided.

Sec. 3. Besides the warden, the deputy warden, the executioner (in case one shall have been appointed by the warden) and his assistants, the following persons and none others may be present at the execution: The clergyman in attendance upon the prisoner, such other persons, not exceeding three in number, as the prisoner may designate, and such other persons, not exceeding six in number, as the warden may designate.

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Sec. 4. Whenever the warden shall deem the presence of a military force necessary to carry into effect the provisions of this chapter, he shall make that fact known to the governor of the state, who is hereby authorized to call out so much of the military force of the state as in his judgment may be necessary for the purpose.

Sec. 5. Whenever the warden shall inflict the punishment of death upon a convict, in obedience to the command of the court, he shall make return of his proceedings as soon as may be to the clerk of the court where the conviction was had, and the clerk shall subjoin the return of the record of conviction and sentence.

Sec. 6. If any convict under sentence of death shall appear to be insane, the warden or sheriff having him in custody shall forthwith give notice thereof to a judge of the district court of the judicial district in which said convict was tried and sentenced, and said judge shall at once make such investigation as shall satisfy him as to whether a commission ought to be named to examine said convict. If he shall determine that there is not sufficient reason for the appointment of a commission, he shall so find and refuse to suspend the execution of said convict. If the judge shall determine that a commission ought to be appointed to examine such convict he shall make a finding to that effect and cause it to be entered upon the records of the district court in the county in which such convict was sentenced, and, if necessary, the judge shall suspend the execution and appoint the three superintendents of the state hospitals for the insane at Topeka, Osawatimie and Larned as a commission to examine such convict, and the commission shall examine the convict with a view of determining whether he is sane or insane and shall report their findings in writing to said judge within ten days after their appointment. If for any reason any of said superintendents cannot serve in such capacity, said judge shall appoint in his place one of the assistant superintendents of said hospital. If two of said commission shall find said convict insane, said judge shall suspend his execution until further order. Any time thereafter, when it shall be made to appear to said judge that said convict has become sane, he shall appoint a commission in the manner aforesaid, who shall make another investigation as to the sanity of said convict, and in case said convict is again declared insane his execution shall be suspended by the judge until further order, and such proceedings may be had at such times as said judge shall order until it is either determined that said



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convict is sane or incurably insane.

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Sec. 7. In case said judge has suspended the execution of said convict pending an investigation as to his sanity, and said convict shall be found to be sane, said judge shall appoint a day for his execution, which shall be carried into effect in the same manner as provided in the original sentence, a certified copy of which shall be transmitted by mail to the executioner.

Sec. 8. The members of said commission shall each receive mileage at the rate of five cents per mile for each mile actually and necessarily traveled in reaching and returning from the place where said convict is confined and examined, and it is hereby made the duty of said commission to act in this capacity without compensation other than that already provided for them by law. All of the findings and orders aforesaid shall be entered in the district court records of the county wherein said convict was originally tried and sentenced, and the costs therefor, including those providing for the mileage of the members of said commission, shall be allowed and paid in the usual manner by the county in which said convict was tried and sentenced to death.

Sec. 9. If a female convict under sentence of death shall appear to be pregnant, the warden or sheriff shall in like manner notify the judge of the district court of the county in which she was sentenced, who shall in all things proceed as in the case of an insane convict.

Sec. 10. If the commission shall find that said female convict is with child, said judge shall suspend the execution of her sentence. At such time as it shall be determined that such woman is no longer pregnant, said judge shall appoint a time for her execution, which shall be carried into effect in the same manner as provided in the original sentence. The costs and expenses thereof shall be the same as those provided for in the case of an insane convict and shall be paid in the same manner.

Sec. 11. If any person who has been convicted of a crime punishable by death and sentenced to be hanged shall escape and shall not be retaken before the time fixed for his execution, it shall be lawful for the warden, or any sheriff or other officer or person, to rearrest such person and return him to the custody of the warden of the penitentiary, who shall thereupon make return thereof to the governor of the state, and <sup>the</sup> governor shall thereupon issue a warrant fixing and appointing a day for the execution, which shall be carried into effect by the warden

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in the same manner as herein provided for the execution of an original sentence of death.

Sec. 12. Whenever any person has been tried and convicted before any district court in this state of a crime punishable by death, and under said conviction has been sentenced by said court to suffer death, it shall be the duty of the clerk of the court before which said conviction was had to issue his warrant, under the seal of said court, reciting therein said conviction and sentence directed to the warden of the penitentiary, commanding him to proceed at the time named in said sentence to carry the same into execution by causing the person so convicted and sentenced to be hanged by the neck until dead; the clerk shall deliver the warrant to the sheriff of the county in which conviction was had, and such sheriff shall thereupon forthwith remove such convicted person to the penitentiary of the state, and there deliver him together with said warrant, into the custody of the warden who shall receive and safely keep such convict within the penitentiary until the time of execution, or until otherwise ordered by competent authority.

Sec. 13. It shall be the duty of the warden of the penitentiary on receipt of such warrant, provided the supreme court or a judge thereof have not ordered a suspension of the execution, and provided, the governor shall not have commuted such sentence, or granted a reprieve or pardon to such convict, to proceed at the time named in said warrant to carry said sentence into execution in the manner herein provided; and the manner of his executing said warrant and his doings thereon, he shall forthwith make return to said clerk, who shall cause said warrant and return to be recorded as a part of the records of the case.

Sec. 14. In case the supreme court, or any judge thereof, shall order a suspension of the execution of sentence, the suspension shall continue until the proceedings are determined and after determining the same, if the sentence be confirmed, said court shall appoint a day certain for and order the execution of said sentence, it shall be the duty of the clerk of said court to issue to said warden his warrant under the seal of said court, commanding him to proceed to carry said sentence into execution, at the time so appointed by the court, which time shall be stated in said warrant; and upon receipt of said warrant it shall be the duty of said warden to cause said sentence to be executed as herein provided, at the time so appointed by the court, and to make due return of said warrant, and of his proceedings thereunder, forthwith to the clerk of the district



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court before which the conviction was had, who shall cause the same to be recorded as a part of the records of the case.

Sec. 15. Whenever the supreme court shall reverse the judgment of conviction in accordance with which any convict has been sentenced to death and is confined in the penitentiary as herein provided; it shall be the duty of the warden, upon receipt of a copy of such judgment of reversal, duly certified by the clerk of said court, and under the seal thereof, to forthwith comply with the judgment of the court.

Sec. 16. The board of administration shall erect a scaffold at the state penitentiary and purchase such other materials and equipment as they deem necessary to carry out the provisions of this act.

Sec. 17. There is hereby appropriated out of any money in the state treasury not otherwise appropriated the sum of two hundred fifty dollars for the use of the board of administration in carrying out the provisions of section sixteen of this act.

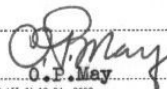
Sec. 18. That this act shall take effect and be in force from and after its publication in the statute book.

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MAKE OUT FOUR COPIES AND INSERT FULL TITLE OF BILL

MR. SPEAKER: Your Committee on Judiciary  
to whom was rereferred House bill No. 11, by Mr. Hatch  
and which was amended by the Committee of the whole House

have had the same under consideration ~~for clarification~~, and instruct me to report the bill back to the House  
with the recommendation that it be passed.

  
O.P. May

, Chairman.

15 6220 (H-1) 12-34-2500



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### STATE OF KANSAS

### HOUSE OF REPRESENTATIVES

Mr. SPEAKER:

I move to amend H.B. Bill No. 11,  
Line 2, Section 13, by striking out  
after the word "provided" the following words:  
"The supreme court or a judge thereof have not  
ordered a suspension of the execution"  
and inserting in lieu thereof the  
following "The sentence has not been  
suspended as by law provided"

Adopted

Harry H. Fisher  
18th District.

15-2220 (H 2) 12-34-2500

John W. Carruthers



## An act relating to crimes punishable by death

1935

House Bill No. 11

By Mr. Hatch

An Act relating to crimes punishable by death, providing the method of inflicting the death penalty, and making an appropriation therefor.

Jan. 2, 1935 read first time.  
Jan. 3, 1935 read second time and referred to  
Com. on Judiciary  
Jan. 15, 1935 committee recom'd. Do Passed  
Jan. 15, 1935 com. whole recom'd. PASSED AS AMENDED, and referred to Judiciary Comm.

engrossed  
read third time and  
Yea ; days  
Messaged to Senate

Chief Clerk of House

SENATE HISTORY

Received on Message  
read first time  
read second time and referred to  
Com. on  
committee recom'd.  
com. whole recom'd.  
read third time and  
Yea ; days  
To House

Secretary of Senate

11-6220 (H 5) 11-64-13M 4-30c

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