Homicides, Capital Prosecutions, and Death Sentences in Kansas, 1994 to 2021

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Introduction

In this report, I review statistical comparisons of homicides and capital prosecutions.

I use data on homicides from the Centers for Disease Control (CDC) and the Federal Bureau of Investigation (FBI) to assess their characteristics in terms of numbers over time, distribution across the counties of the state, and demographic characteristics of the offenders and victims. I then compare these with the 129 cases where capital charges have been filed in Kansas, the 75 cases where death notices were filed, and the 15 cases where a death sentence was imposed. This allows a comparison of rates of capital prosecution at three stages from filing charges to imposing a sentence of death. My study finds important disparities both with regards to the race and gender of the victims of the crime, and in the combined racial characteristics of the offender and victim of the crime. It further demonstrates a very low rate of usage of the death penalty, no statistical correlation at all between homicides and death sentences over time, and very little correlation across counties. I conclude with a discussion of the implications of these facts.

Kansas Death Sentences in the Modern Era

Kansas has imposed 15 death sentences in the period since the current death penalty law took effect in 1994. Table 1 lays out summary demographic factors associated with these cases. All of those sentenced to death were male; 11 were white and four were black; two have passed

[1] My qualifications are set forth in my report entitled Media Coverage of Sedgwick County Capital Prosecutions, submitted on February 4, 2022.

away while under sentence of death, four had their death sentences reversed on appeal, and nine remain on death row today. The 15 offenders were sentenced for crimes involving 37 victims.[2] These victims had the following demographic characteristics: 24 female and 13 male; 33 white, two black and two Hispanic; 20 white females, 13 white males, two black females, two Hispanic females, and no black or Hispanic males. Every offender but one (Scott Cheever) had at least one female victim, and 11 of the 15 offenders had at least one white female victim. Looking at the combined races and genders of the offenders and the victims, and remembering that all the offenders are male, we see ten cases involving a white offender with at least one white victim; three cases with a black offender and at least one white victim (of which two included a white female victim); one case with a black offender and two black female victims; and one case with a white offender and Hispanic victim. No cases of a white offender killing a black victim led to a sentence of death and no cases with a black male victim led to a sentence of death. Table 1 summarizes the demographics and dates associated with the 15 modern death sentences in Kansas. [3] [4]

[2] Note that Jonathan and Reginald Carr were each convicted of the same crime, involving 5 victims; these victims are counted twice in the present analysis. Including them only once leads to a total of 32 victims.

[3] Note that in my media report, the victim of Douglas Belt was listed as a white female. In light of her Hispanic surname and the classification by the BIDS counsel, I have classified her here as a Hispanic female. This change only reinforces the point in my media study that homicides with white female victims generate greater news coverage; the Belt case generated 60 news stories (see Table 1, p. 14, of my media report), lower than the average of 77 stories for cases with white female victims, and much lower than the average of 124 stories with a death sentence, all of which (other than the Belt case,) had a white female victim.

[4] The CDC, census, and police reports ask about Hispanic ethnicity separately from race, asking whether individuals are "White/Hispanic" or "White/Non-Hispanic." Generally, the FBI and CDC data does not consistently record the Hispanic ethnicity category. In the Kansas murder data set of capitally charged cases, two female victims have Hispanic surnames, but only one of these victims was identified in the police reports as "White/Hispanic." As noted below, because of the lack of reliable CDC homicide data by ethnicity I am not able to calculate reliable CDC or FBI percentage rates. For this reason, I excluded Hispanic victims from all analyses after Table 1. It is possible that there is additional discrimination against Hispanic victims or defendants not captured here.

Table 1. Death Sentences in Kansas since 1994

Name	County	Status	Sex	Race	Birth	Crime	Sentence	Exit	Victims
Michael Marsh	Sedgwick	Resentenced to Life with possibility of parole (Hard 40)	M	W	8/12/1975	6/17/1996	4/16/1998	4/3/2009	2WF
Gavin Scott	Sedgwick	Resentenced to Life with possibility of parole (Hard 40)	M	W	3/4/1978	9/13/1996	8/21/1998	3/24/2010	1WM; 1WF
Stanley Elms	Sedgwick	Resentenced to Life with possibility of parole (Hard 40)	M	W	8/19/1976	5/4/1998	2/10/2000	11/19/2004	1WF
Johnathan Daniel Carr	Sedgwick	Currently On Death Row	M	B	3/30/1980	12/11/2000	11/15/2002		3WM; 2WF
Reginald Dexter Carr	Sedgwick	Currently On Death Row	M	B	11/14/1977	12/11/2000	11/15/2002		3WM; 2WF
John Edward Robinson Sr.	Johnson	Currently On Death Row	M	W	12/27/1943	6/3/2000	1/21/2003		3WF
Douglas Stephen Belt	Sedgwick	Natural Death	M	W	11/19/1961	6/24/2002	11/17/2004	4/13/2016	1HF
Phillip Cheatham	Shawnee	Resentenced to Life with possibility of parole (Hard 25)	M	B	1/6/1973	12/13/2003	10/28/2005	3/20/2010	2BF
Sidney John Gleason	Barton	Currently On Death Row	M	B	4/22/1979	2/21/2004	8/28/2006		1WM; 1 HF
Scott Denver Cheever	Greenwood	Currently On Death Row	M	W	8/19/1981	1/19/2005	1/23/2008		1WM
Gary Wayne Kleypas	Crawford	Currently On Death Row	M	W	10/8/1955	3/30/1996	12/3/2008		1WF
Justin Eugene Thurber	Cowley	Currently On Death Row	M	W	3/14/1983	1/5/2007	3/20/2009		1WF
James Kraig Kahler	Osage	Currently On Death Row	M	W	1/15/1963	11/28/2009	10/11/2011		4WF
Glenn Cross Frazier	Johnson	Natural Death	M	W	11/23/1940	4/13/2014	11/10/2015	5/15/2021	2WM; 1WF
Kyle Trevor Flack	Franklin	Currently On Death Row	M	W	6/18/1985	4/20/2013	5/18/2016		2 WM; 2WF

Homicides

How do Kansas death sentences compare to homicides? We can use FBI statistics to note the general characteristics of homicides in Kansas. While Kansas reinstated the death penalty in 1994, it did not report homicide statistics to the FBI Supplemental Homicide Reports system during the years of 1994 through 2004.

In order to estimate whether the lack of reporting from 1994 through 2004 affects any conclusion, I also summarize homicide reports from the Centers for Disease Control (CDC), which uses death certificates for all US deaths to compile a list which includes the cause of death. Homicide is listed as a specific cause of death and this data is available for the period of 1959 through 2004. I have compiled a list of all Kansas homicides from the CDC reports from 1994 through 2004. Note that the CDC and FBI numbers differ in certain important ways. The CDC data relate to the state and county of residence of the decedent, where the FBI numbers refer to where the crime occurred. The CDC data have information about the victim but include no information about the offender. The CDC data captures slightly more cases than the FBI data, as the FBI data relate only to those homicides that are known to the police, whereas the CDC data are derived from death certificates, which are nearly universal. In spite of these differences, the two data sources tend to produce very similar numbers when aggregated on a yearly basis or by county (particularly for larger counties). In particular, as the following analysis demonstrates, the proportions of victims of a given demographic group tend to be very similar.

Table 2 shows the number of homicides across different demographic groups. Both CDC and FBI homicide numbers are reported, with the CDC numbers referring to the period of 1994 to 2004 and the FBI numbers relating to the period of 2005 to 2019. Table 2 also shows the numbers of death sentences, using the same information as in Table 1 above for white and black

victims. This allows the calculation of a rate of death sentencing per 100 homicides of each type, and these rates are presented in the final two columns, separately for the CDC and FBI comparisons.

Table 2. Kansas Homicides and Death Sentences Compared.

Label	CDC		FBI		Death Sentences		Rate per 100 (CDC)	Rate per 100 (FBI)
	N	%	N	%	N	%		
Total by Victims	*1,572*	*100.0*	*2,137*	*100.0*	*37*	*100.0*	*2.35*	*1.73*
By Victim Gender[5]								
Male	1,145	72.8	1,577	73.8	13	35.1	1.14	0.82
Female	427	27.2	558	26.1	24	64.9	5.62	4.30
By Victim Race[6]								
Black	643	41.9	739	37.0	2	5.4	0.31	0.27
White	892	58.1	1,260	63.0	33	89.2	3.70	2.62
By Victim Race and Gender[7]								
Black Male	528	34.4	618	30.9	0	0.0	0.00	0.00
White Male	595	38.8	848	42.4	13	37.1	2.18	1.53
Black Female	115	7.5	121	6.1	2	5.7	1.74	1.65
White Female	297	19.3	412	20.6	20	57.1	6.73	4.85
Total by Offenders			*2,014*	*100.0*	*15*	*100.0*		*0.74*
By Offender Gender[8]								
Male			1,535	87.9	15	100.0		0.98
Female			211	12.1	0	0.0		0.00
By Offender Race[9]								
Black			675	40.4	4	26.7		0.59
White			996	59.6	11	73.3		1.10
By Offender-Victim Race Combinations[10]								
White kills Black			103	6.5	0	0.0		0.00
Black kills Black			447	28.0	1	7.1		0.22
White kills White			842	52.8	10	71.4		1.19
Black kills White			202	12.7	3	21.4		1.49
Black male kills White female			66	4.1	2	14.3		3.03

Note: CDC data cover the period of 1994 through 2004. FBI data cover the period of 2005 through 2019. Homicide data not shown for Hispanics, as these are not consistently recorded in

[5] N = 1,572 (CDC); 2,135 (FBI); and 37 (Death Sentences)
[6] N = 1, 535 (CDC); 1,999 (FBI); and 35 (Death Sentences)
[7] N = 1, 535 (CDC); 1,999 (FBI); and 35 (Death Sentences)
[8] N = 1,746 (FBI) and 15 (Death Sentences)
[9] N = 1,671 (FBI) and 15 (Death Sentences)
[10] N = 1,594 (FBI) and 14 (Death Sentences). Douglas Belt's victim was a Hispanic female and is not included.

the FBI and CDC databases. Percentages by race, gender, and by offender-victim combination exclude those with missing information and therefore sum to 100.0 within each group. (See the footnotes to the table for the N's, which are generally close to the overall Ns, indicating small numbers of missing observations.) Rates are calculated as the number of death sentences per 100 homicides. CDC homicide data relate to the victim only, as the CDC collects no information about homicide offenders.

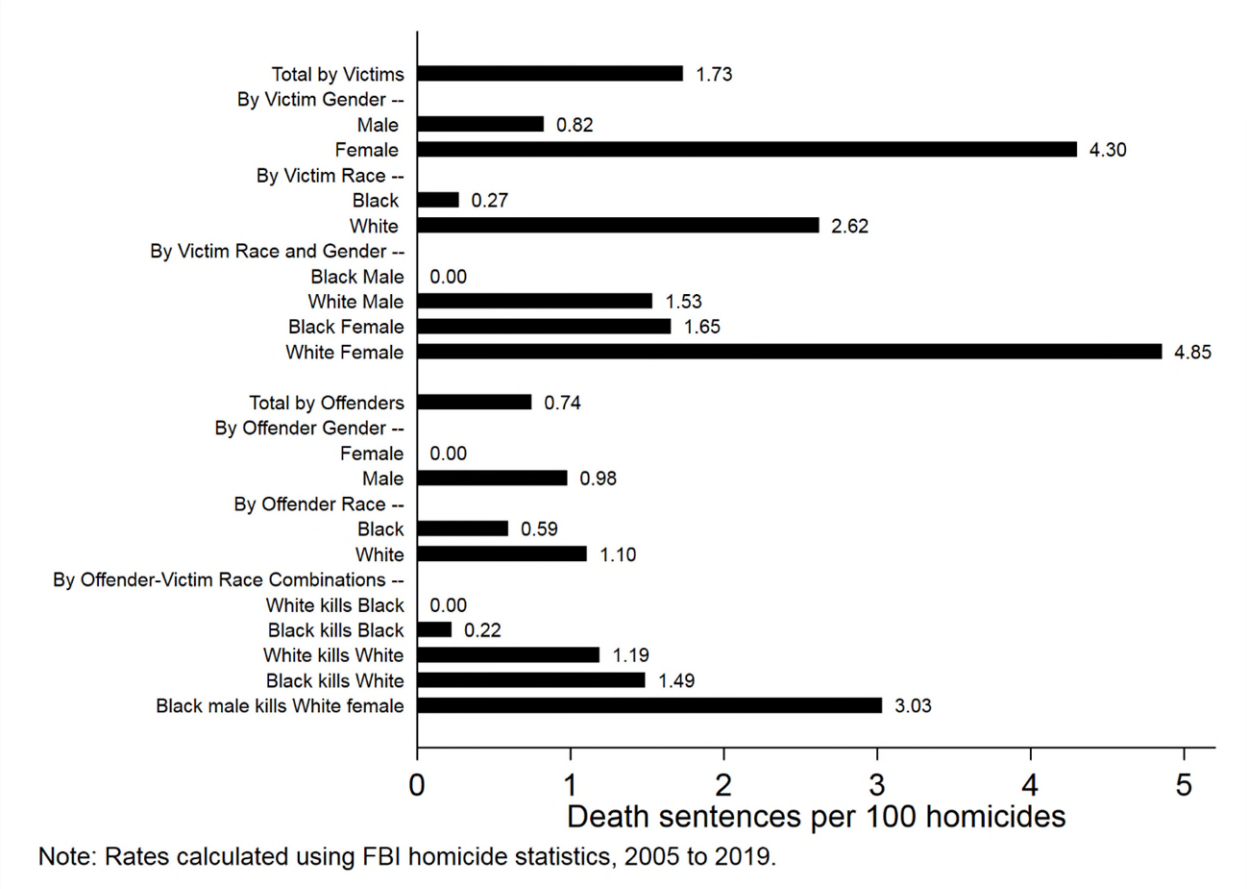
Although the FBI data is missing for some years of interest, the data above demonstrates that the demographic characteristics of the homicides in the missing years would likely have been similar to the years that the FBI reported, so we can rely on the FBI reports. I reach this conclusion by comparing the shares of homicides with different types of victims in the CDC and the FBI reports, knowing that these cover different time periods. We can see these comparisons by looking at the first few rows of Table 2. Looking first at the rows labeled "Male" and "Female," the CDC reports 72.8 percent of all homicide victims in Kansas are male, and the FBI reports 73.9 percent. Looking at the rows indicating the race of the victims (which exclude a small number of victims of other races), the CDC reports 41.9 percent black victims, where the FBI reports 37.0 percent black. Black males are 34.4 percent of all victims in the CDC data, and 30.9 percent in the FBI reports. White females constitute 19.3 percent of all victims in the CDC dataset, and 20.6 percent in the FBI reports. Without reviewing each individual cell in the table, the point is that there is a high correspondence between the two data sources.

I focus here on the FBI dataset because it contains something the CDC dataset does not have: information about the offender. My focus will be on rates of death sentencing per 100 homicides. Recall that the FBI dataset covers only the period from 2005 to 2019, so it excludes homicides in the relevant years of 1994 to 2004, as well as 2020 and 2021, when data are not yet reported. Thus, the rate per 100 homicides that I report is likely to be higher than the actual rate that I would report if the FBI dataset covered all relevant years. The conclusions I will draw in this report, however, do not depend on this overall rate. Rather, the relevant inquiry is the

comparison of how the rates differ from one another. (That is, if the rate of death sentencing per 100 homicides with male victims is *x*, and the rate of death sentencing per 100 homicides with female victims is *y*, how do these two rates, *x* and *y*, compare?). I am therefore confident, given the close correspondence between the FBI statistics and the CDC statistics discussed above, that this is a valid methodology.

Figure 1 presents a graphical summary of the numbers shown in the last column of Table 2. That is, it presents a graphical illustration of the most important elements of Table 2. For the actual numbers underlying Figure 1, the reader can therefore refer to the cell entries in Table 2. (See the appendix, Figure A-1 for a similar figure using the CDC numbers, drawing from the CDC rates shown in Table 2.)

Figure 1. Death Sentences per 100 Homicides, by Demographics of Victim and Offender.



Note: Rates calculated using FBI homicide statistics, 2005 to 2019.

Figure 1 first shows that 1.73 percent of all homicide victims in Kansas were associated with a crime leading to a death sentence.[11] Looking across victim gender, this rate was 0.82 for male victims and 4.30 for female victims; clearly, very different rates of use. Looking next at the comparison by victim race, homicides with white victims have a death-sentencing rate of 2.62, which is almost 10 times that of homicides with black victims, 0.27. Although 618 black males were the victim of homicide according to the FBI in the period of 2005 to 2019, and an additional 528 were reported by the CDC in the period of 1994 through 2004, not a single homicide with a black male victim has led to a death sentence. By contrast, 1.43 percent of those with white male victims, 1.65 percent of those with black female victims, and 4.85 percent of those with white female victims have led to a death sentence.

Looking at offenders in the bottom half of Figure 1, the overall rate of death sentencing is 0.74. (There are fewer offenders than victims, which explains why the rate is higher when looking at victims as compared to when comparing by offenders.) This rate is zero for female homicide offenders, and 0.98 for male offenders; Table 2 shows that the FBI reports 211 female homicide offenders since 2005. Looking next at the race of the offenders, white offenders have a higher rate of death sentencing than black offenders, 1.10 compared to 0.59. This may be related to the fact that most homicides occur among the same racial group, and there has been no death sentence in Kansas for a crime involving a black male victim, as discussed in the previous paragraph. Looking at the offender-victim combinations shows that crimes with white offenders and black victims have a death sentencing rate of zero and crimes with black offenders and black victims have a rate of 0.22. White-on-white crimes, by contrast, have a rate of 1.19, and crimes

[11] Note that if we add the CDC homicides from the earlier period to the FBI homicides listed, the rate is much lower, approximately 0.4 percent. However, the main interest here is how the rates compare across different race- and gender-based categories.

with a black offender and a white victim have a rate of 1.49 percent. In the special and historically significant subset of cases where a black male offender has a white female victim, the rate is 3.03 percent. Table 2 and Figure 1 clearly show very substantial differences in the rates of use of the death penalty depending on the demographics of those involved, particularly the victims.

Capital Charging, Death Notices, and Death Sentences Compared

The data reported in the section above relate to death sentences actually imposed. The state has seen 129 cases charged with capital murder in the period since 1994, and prosecutors have filed death notices in 75 of these cases.[12] Therefore, we can perform a similar analysis to that above with regard to which types of cases lead to capital charges, death notices, and death sentences. This allows us to assess whether the differences in rates of use of the death penalty relate to the first stage (which cases are deemed capital-eligible); the second stage (whether a death notice is served); or the third stage assessed above (whether a death sentence is imposed). Table 3 shows data similar to Table 2 above, but shows the numbers of homicides as well as the numbers of cases charged capitally, where death notices were served, and death sentences imposed. It then shows the rates of each of these three outcomes per 100 homicides. Note that the homicide and death sentencing data shown here are identical to that reported in Table 2. Table 3 simply adds the other two stages of the death-sentencing process. For clarity of presentation, it omits the CDC homicide data. Also note that because the FBI homicide values

[12] Fifty-two capital-charged individuals saw no death notice, and decisions regarding whether to file a death notice are pending in two additional cases. In the following sections, I analyze the numbers of capital charges, death notices, and death sentences. Data for capital charges is complete, but two cases are missing with regard to whether the state plans to file a death notice, and these are categorized as no death notice having yet been filed. Similarly, six cases have a death notice but are pending, with no sentence yet having been imposed. They are treated as cases without a death sentence.

for Hispanics are not comparable to the capital charging information, these numbers are not reported.

Table 3. Homicides, Capital Charges, Death Notices, and Death Sentences in Kansas.

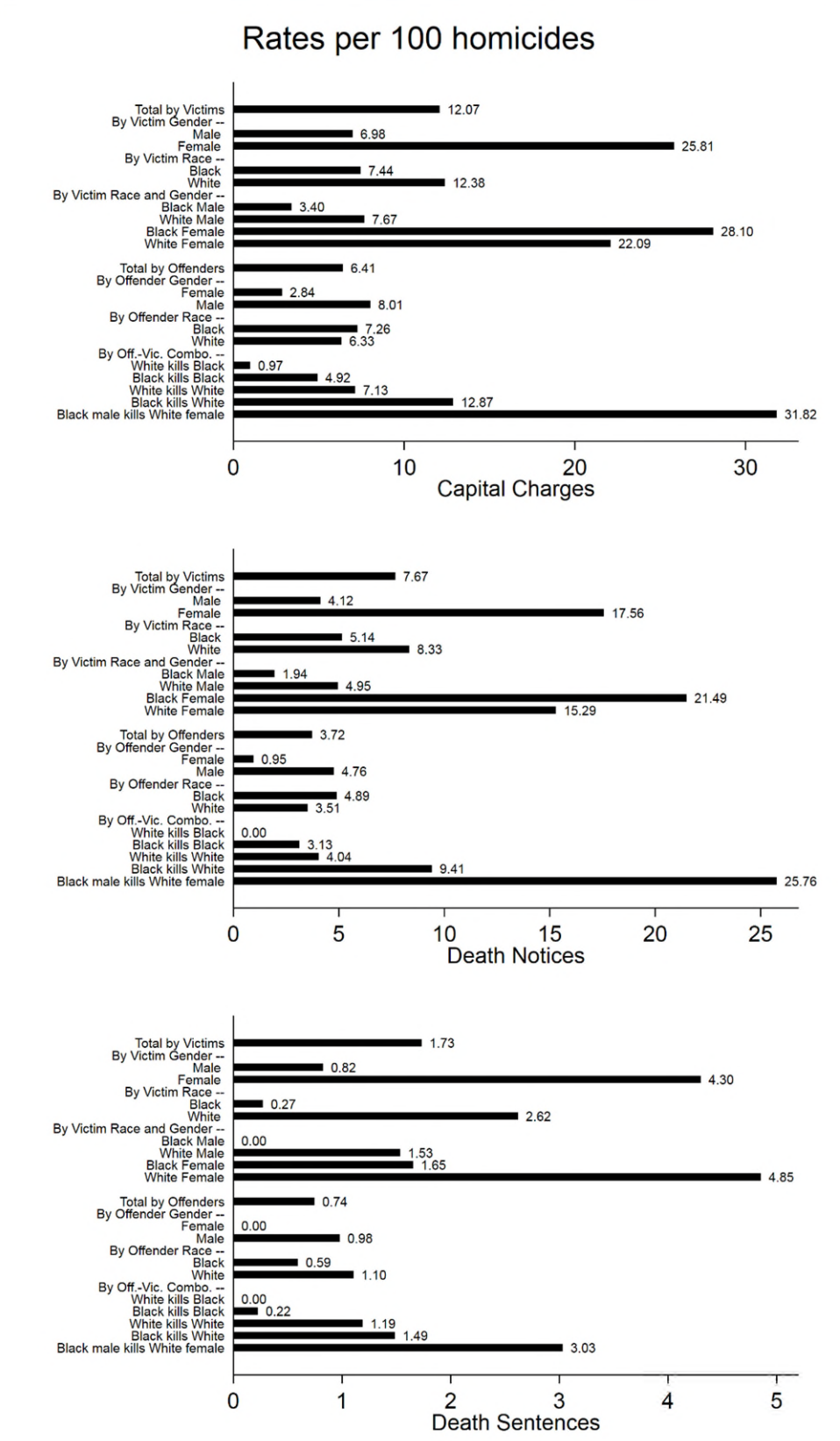
		Capital	Death	Death	Rate per 100 Homicides		
Label	**Homicides**	**Charges**	**Notices**	**Sentences**	**Charges**	**Notices**	**Sentences**
Total by Victims	*2,137*	*258*	*164*	*37*	*12.07*	*7.67*	*1.73*
By Victim Gender							
Male	1,577	110	65	13	6.98	4.12	0.82
Female	558	144	98	24	25.81	17.56	4.30
By Victim Race							
Black	739	55	38	2	7.44	5.14	0.27
White	1,260	156	105	33	12.38	8.33	2.62
By Victim Race and Gender							
Black Male	618	21	12	0	3.40	1.94	-
White Male	848	65	42	13	7.67	4.95	1.53
Black Female	121	34	26	2	28.10	21.49	1.65
White Female	412	91	63	20	22.09	15.29	4.85
Total by Offenders	*2014*	*129*	*75*	*15*	*6.41*	*3.72*	*0.74*
By Offender Gender							
Female	211	6	2	0	2.84	0.95	-
Male	1535	123	73	15	8.01	4.76	0.98
By Offender Race							
Black	675	49	33	4	7.26	4.89	0.59
White	996	63	35	11	6.33	3.51	1.10
By Offender-Victim Race Combinations							
White kills Black	103	1	0	0	0.97	-	-
Black kills Black	447	22	14	1	4.92	3.13	0.22
White kills White	842	60	34	10	7.13	4.04	1.19
Black kills White	202	26	19	3	12.87	9.41	1.49
Black male kills White female	66	21	17	2	31.82	25.76	3.03

Note: Homicides data from the FBI; see Table 2. As noted above, reliable homicides rate data is not available for Hispanic victims. In the capital murder data set there were 23 Hispanic male victims in cases with capital charges, 10 Hispanic male victims in case with death notices filed, and 0 Hispanic male victims in cases where the death penalty was imposed. There were 16 Hispanic female victims in cases with capital charges, 6 Hispanic female victims in cases with death notices filed, and 2 Hispanic female victims in cases where the death penalty was imposed. There were 15 Hispanic defendants charged with capital murder, and death notices were

filed in 6 cases with Hispanic defendants. There have been no death sentences in cases with Hispanic defendants. There were no Native American cases in the Kansas capital murder data set, and only two (2) Asian defendant cases. In cases with capital murder charges filed there were only three Asian victims, two Asian women and one Asian man. The three Asian victim cases stem from the same case, with an Asian-American offender; this case was death noticed and remains pending in district court.

Each of the categories laid out in the columns described in Table 3 is a subset of the previous one; in order for a capital charge to occur, there must first be a homicide; for a death notice to be served, there must first be a capital charge, and in order for a death sentence to be imposed, there must first be a death notice. Looking at rates per 100 victims, capital crimes constitute 12.07 percent of all homicides; death notices are served in 7.67 percent of the cases; and death sentences are imposed in 1.73 percent of the cases. Looking at the rates per offender, these numbers are 6.41, 3.72, and 0.74 percent, respectively. Table 3 then shows these rates for each of the categories shown, just as in Table 2. Figure 2 summarizes the information in Table 3.

Figure 2. Rates of Capital Charges, Death Notices, and Death Sentences.



Note: Rates calculated from Table 3.

Figure 2 makes clear that there are great similarities across the three stages of the capital prosecution process. Looking first at victim gender, crimes with female victims are much more likely to lead to capital charges, death notices, and death sentences: rounding to the nearest whole number, they show rates of 26, 18, and four percent respectively whereas crimes with male victims show rates of seven, four, and one percent. Similarly, crimes with white victims show higher rates at all three stages: 12, eight, and three, as compared to seven, five, and 0.3 when the victims are black. Crimes with male offenders show a similar pattern compared to those with female offenders: eight, five, and one percent of homicides with male offenders, compared to three, one, and zero percent of those with female offenders. By offender race, we see a more complicated story, but this could be because only four black and 11 white people have been sentenced to death. Two of the four black offenders had white victims, and two had white female victims. Such crimes among black offenders, are relatively rare. Of the 675 black offenders listed in Table 3, 447 (or 66 percent) had black victims. In this group, 0.2 percent received a death sentence (a single person). Whites constituted 30 percent of the victims of black offenders (202 cases), and three of these offenders were sentenced to death, a rate of 1.5 percent. Finally, within that last group, two of the offenders sentenced to death had a white female victim, though there were just 66 such victims state-wide (white female victims constitute 66 of 675 killed by black offenders). The death-sentencing rate there is three percent.

When we look at the race-gender combinations of the victims of homicide, Figure 2 shows very stark differences in all cases: crimes with male victims, especially black male victims, are much less likely to lead to capital charges, death notices, or death sentences. Crimes with female victims have much higher rates. Crimes with black female victims lead to high rates of capital charges and death notices, but not to death sentences. Crimes with white female

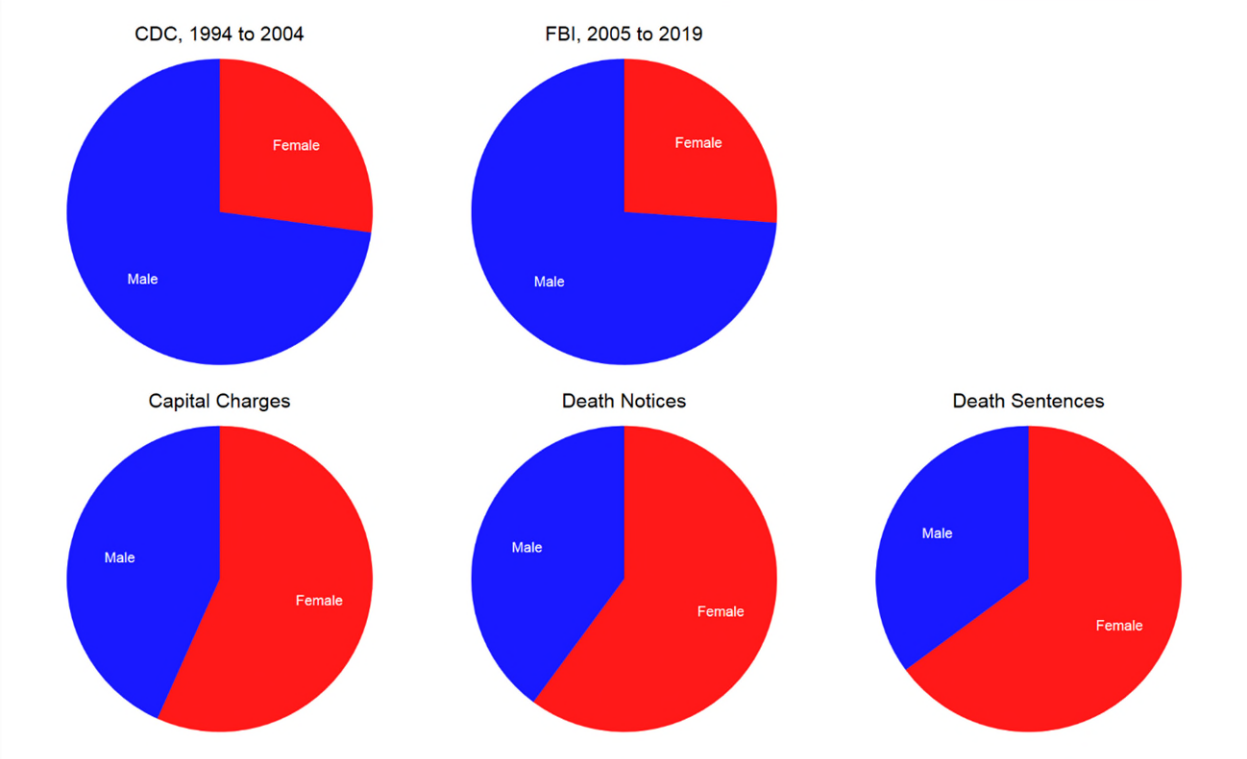
victims have rates of capital charging and death noticing similar or even slightly lower than those with black female victims. They are much more likely to lead to a death sentence, however. Note for example that Table 3 shows rates of 28.1 and 21.5 percent of charges and notices for black female victim cases compared to 22.1 and 15.3 percent for white female cases. Looking at the last stage, however, the imposition of a death sentence, just two cases had black female victims (a rate of 1.7 percent), whereas 20 cases had white female victims, 4.9 percent.

Finally, looking at the combined offender-victim races and genders, as shown in the bottom panels of Table 3 and Figure 2, a very consistent pattern emerges. Rounding to the nearest whole number, black offenders with black victims have rates of five percent capital charges, three percent death noticed, and 0.2 percent death sentenced, whereas black male offenders with white female victims have rates of 32, 26, and three percent, respectively. Note that Kansas homicide statistics show 103 cases where a white offender killed a black victim, but just one of these cases was deemed capital-eligible by prosecutors. The case was never death noticed, however, and the state has not condemned a single white offender for the crime of killing a black victim. The rate of capital eligibility in this category, just one out of 103 (0.97 percent), compares to 4.9 percent of cases with a black-black combination, 7.1 percent of white-white homicides, 12.8 percent of black-white cases, and 31.8 percent of black male–white female homicides.

We can visualize the patterns apparent in Table 3 in another way. The following section shows a series of simple pie charts. These charts convey visually the relative make-up of different groups of cases: homicides cases, capitally charged cases, cases with death notices, and cases with a death sentence. In each pie chart, the share of cases sums to 100 percent, so it illustrates the relative composition of each subset. Gender data is available for almost all cases,

and a small number of cases are excluded here that involve individuals of races other than white or black. So the race comparisons can be considered as the share, summing to 100 percent, of all cases with white or black offender and/or victims. This is the vast majority of cases in the state of Kansas. The data are the same as those reported in Table 3. Figure 3 shows victim gender.

Figure 3. Homicides and Capital Cases Compared: Victim Gender.

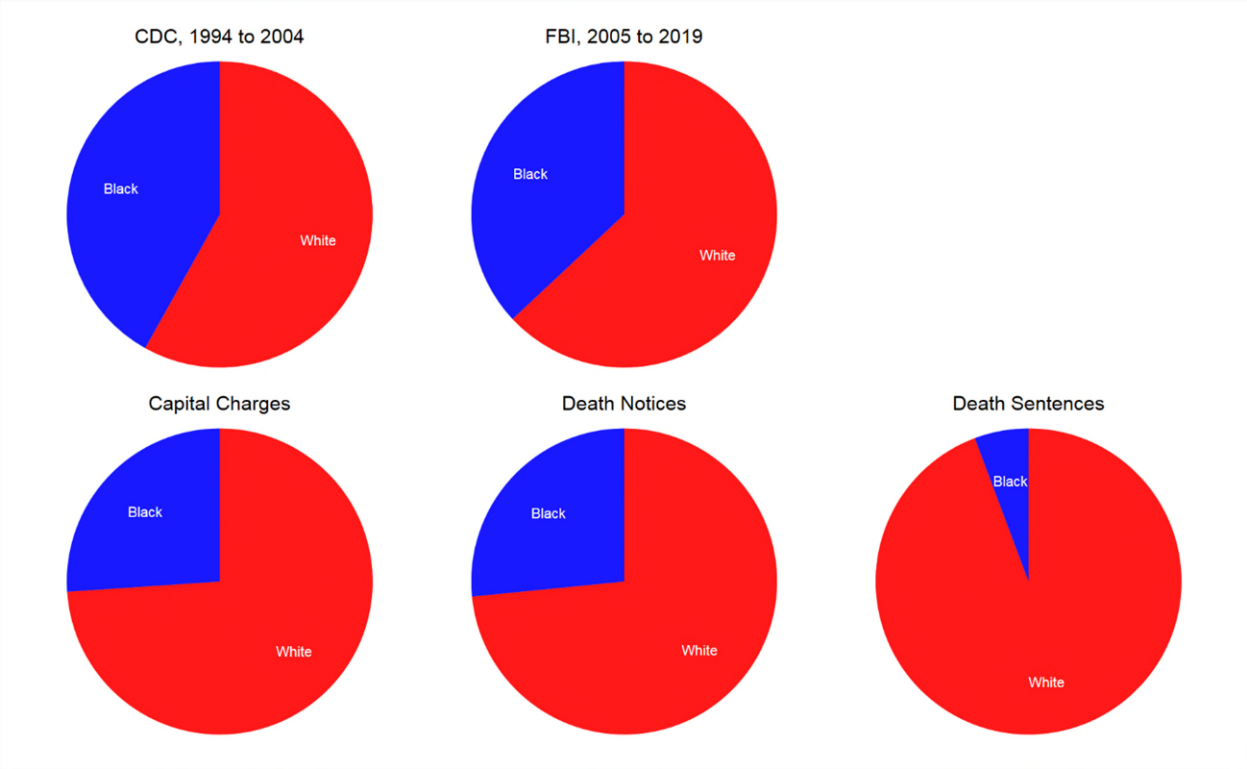


Source: Table 3.

The top row of Figure 3 shows that women constitute roughly a quarter of homicide victims in Kansas (CDC and FBI). In the bottom row, we see that they constitute a much larger share of cases with capital charges, death notices, or death sentences.

Figure 4 shows the equivalent comparison by race; note it includes only black and white victims, excluding victims of other races.

Figure 4. Homicides and Capital Cases Compared: Victim Race.

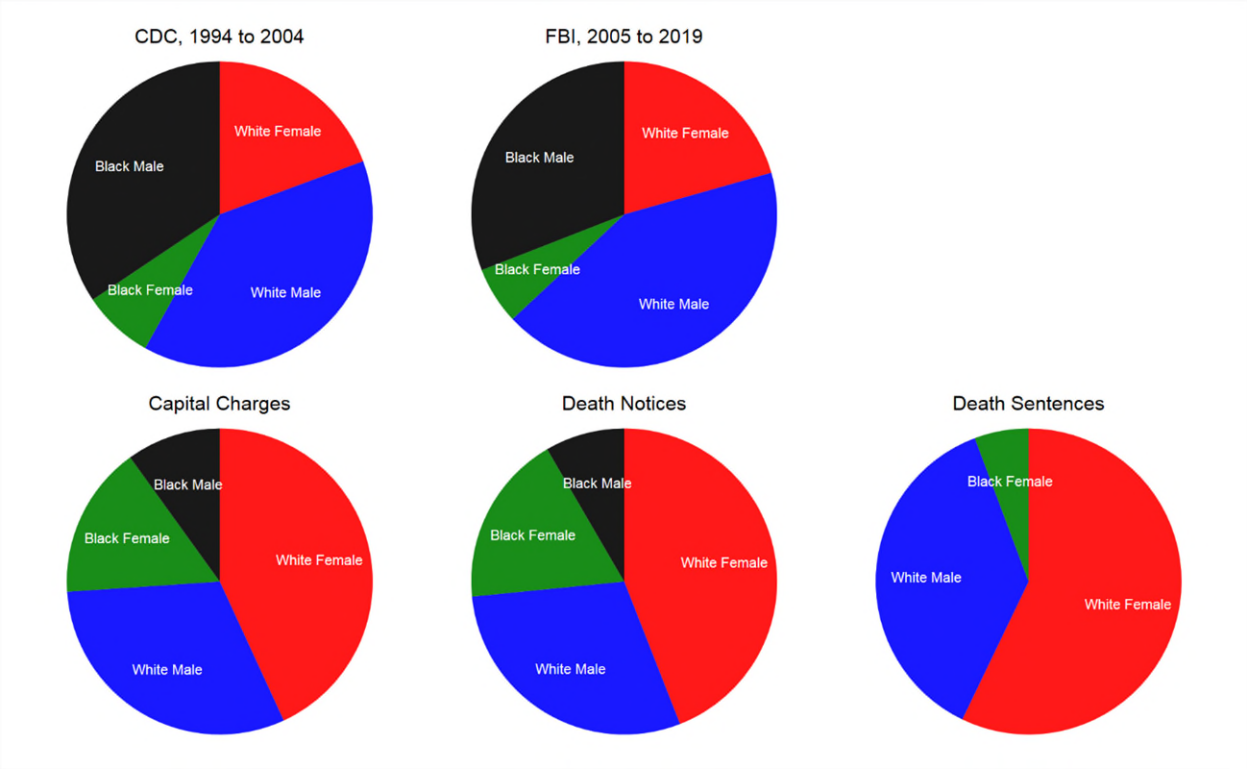


Source: Table 3.

Blacks represent roughly 40 percent of all homicide victims in Kansas, but many fewer in those cases that proceed capitally, and a tiny share of those where a death sentence is imposed.

Figure 5 shows combined race-gender statistics in the same format.

Figure 5. Homicides and Capital Cases Compared: Victim Race and Gender.



Source: Table 3.

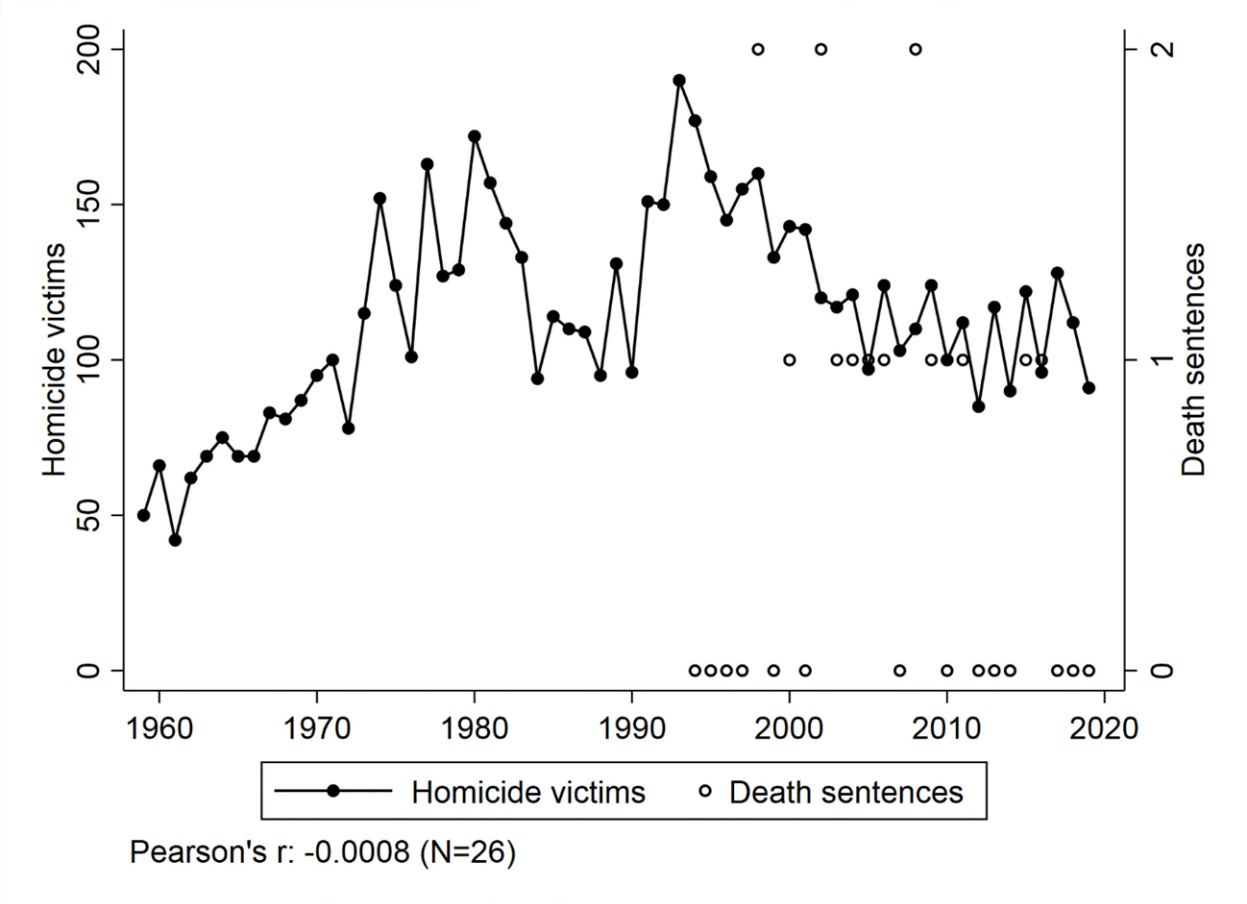
Black men completely disappear from the graph at the bottom-right, reflecting the fact that no death sentence has been imposed on an offender with a black male victim. Black men represent approximately a third of all homicide victims, shown in the upper row, but only small shares of those with capital charges and death notices. White female cases, on the other hand, move from a relatively small share of homicides (shown in the upper row; roughly 20 percent) to a plurality of those with capital charges and death sentences, and a majority of the death-sentenced cases. White male victims are the single largest group in the homicides charts at the top; they constitute smaller shares of the capital charges and death notices, but return to approximately their original share of homicides when considering death sentences actually imposed. Thus, for white male victims, we see a roughly equal share of death sentenced cases as homicides in general, and similarly for black female victims. White female victims are dramatically over-represented in the death sentenced cases compared to homicides, and black

males, who represent the second-largest share of all homicide victims, completely disappear from the cases where death sentences are imposed. These are dramatic and important differences.

Homicides and Death Sentences over Time

The 15 death sentences imposed by the State of Kansas are listed in Table 1. Figure 6 compares the timing of these with the numbers of homicide victims by year. It uses the CDC homicide figures through 2004 and the FBI totals for the period after 2004.

Figure 6. Homicide Victims and Death Sentences over Time.



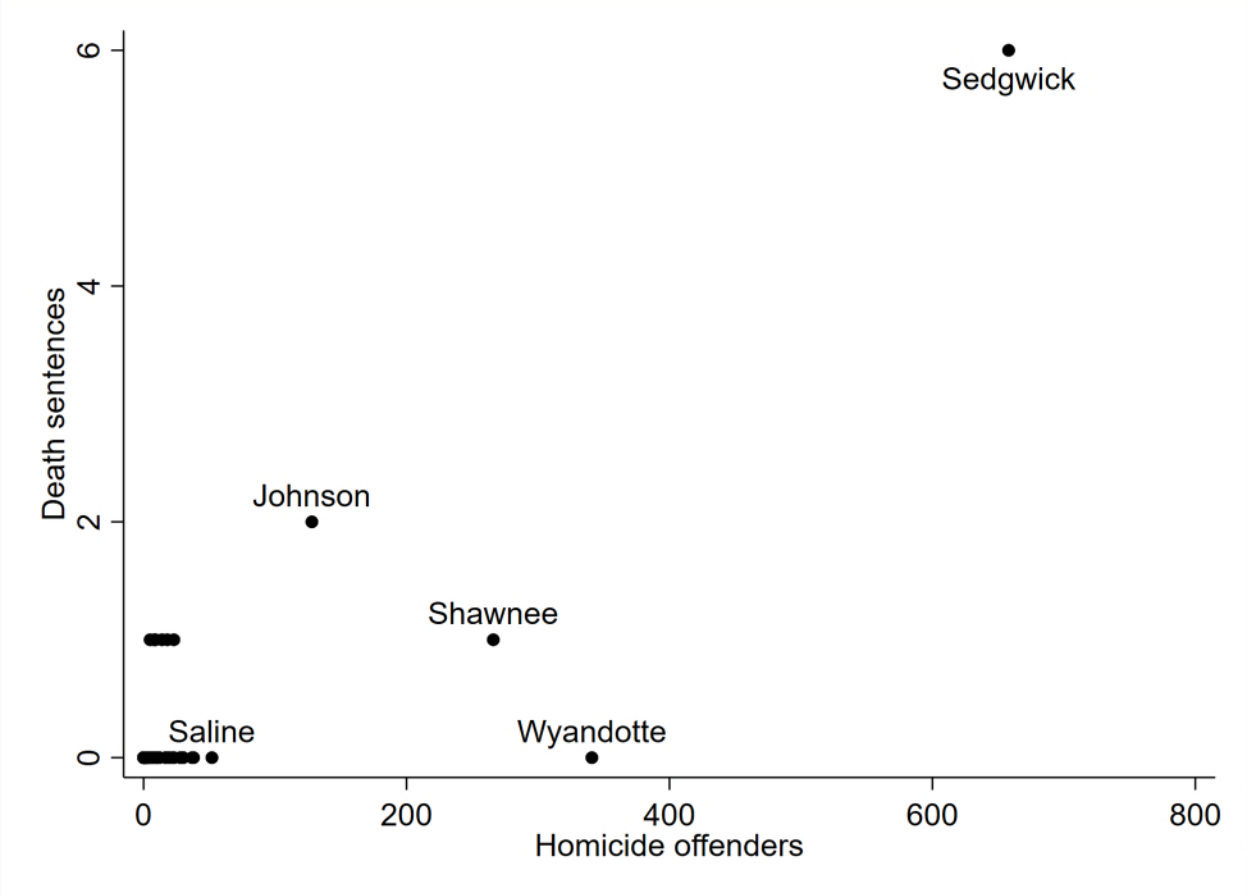
The hollow circles at the bottom of Figure 6 represent the 14 years during which no death sentences were imposed across the state of Kansas. During those years, there was an average of 124 homicide victims per year. A single death sentence was imposed in nine years, represented in Figure 6 with the hollow circles corresponding to 1 death sentence (on the right-hand axis); in

these nine years there was an average of 117 homicide victims. Three years saw the imposition of two death sentences each (indicated by the hollow circles at the top of the graph, corresponding to two on the right-hand axis), and these years saw an average of 130 homicide victims. Overall, the correlation between homicides and death sentences is almost exactly zero (-0.0008), meaning that there is no tendency for homicides to be higher or lower depending on the number of death sentences. The complete lack of connection between homicides and death sentences suggests no causal relation between the two.

Homicides, Capital Prosecutions, and Death Sentences by County

Just as there is little connection between homicides and death sentences across time, there is little connection from place to place either. Table 1 made clear that Sedgwick County has seen six death sentences; Johnson, two; several others have seen just one; and the vast majority of the 105 counties in Kansas have seen none. Figure 7 shows how these numbers correlate with the number of homicide offenders in each of these counties.

Figure 7. Homicide Victims and Death Sentences by County.



Note: Many Kansas counties have very few homicides, and zero or just one death sentence across the entire time period from 1994 through 2021. Each is represented by a dot in the figure, but many of these dots overlap; these appear in the lower-left area of the Figure. Table A-1 in the Appendix provides the exact numbers for all Kansas counties.

Sedgwick County has the greatest number of homicide offenders and is the outlier with regards to death sentences, with six imposed since 1994. Wyandotte County is the second highest with regards to homicides, but it has seen no death sentences at all. Shawnee, Johnson, and Saline counties are next with regards to homicides, but there is no correlation with death sentences, as they have one, two, and no death sentences, respectively.

Table 4 shows the homicide values described above as well as the numbers and rates of capital charges, death notices, and death sentences for the largest counties in the state. The data

are the same used in previous sections, but presented here separately for each of the top homicides counties in the state.

Table 4. Homicides, Capital Charges, Death Notices, and Death Sentences by County, Selected Counties.

County	Victims	Offenders	Capital Charges	Death Notices	Death Sentences	Charge Rate	Notice Rate	Sentence Rate
Wyandotte	364	341	27	18	0	7.9	5.3	-
Sedgwick	664	658	25	18	6	3.8	2.7	0.9
Johnson	138	128	11	8	2	8.6	6.3	1.6
Shawnee	287	266	9	3	1	3.4	1.1	0.4
Saline	57	52	5	2	0	9.6	3.8	-
All Others	624	566	52	26	6	9.2	4.6	1.1

Note: See Appendix Table A-1 for a complete version of this Table, showing all 105 counties in the state.

Table 4 shows that the patterns, or lack thereof, shown in Figure 7 are the result of complex processes associated with prosecutorial decision-making. Wyandotte County has more capital charges than Sedgwick; 27 compared to 25. It has the same number of death notices (18). It has zero death sentences, however, whereas Sedgwick has six. The column labeled Charge Rate shows the number of capital charges per 100 homicide offenders; these rates vary quite substantially, from 3.4 percent in Shawnee County to 9.6 percent in Saline. Death Notice Rates also vary widely, with Shawnee County having a rate of just 1.1 and Johnson County having a rate of 6.3. Finally, Sentence Rates are quite variable as well, with many counties having rates of zero but Johnson County having a rate of 1.6 and Sedgwick 0.9. Table A-1 lays out the full data for all 105 counties in the state, making clear that there is significant variability across the geographic units of the state. Of course, because so many counties have seen very few homicides across the period of study, some of the numbers may be affected by random fluctuations. Table 4, with its focus on the larger counties, provides a more substantive demonstration of the wide variability in application of the death penalty across the counties of Kansas. While Sedgwick County does have the highest number of homicide offenders and the highest number of death

sentences, it is not the highest user of the death penalty by other metrics. Wyandotte has the greatest number of capital charges; Saline has the highest rate of capital charges per 100 homicide offenders; Johnson has the highest rate of death notices and death sentences per 100 homicide offenders. In sum, the patterns are inconsistent.

Not only are the patterns laid out in Table 4 inconsistent, but they also show substantively wide variability. Whether we look at capital charging rates, death notice rates, or death sentencing rates per 100 homicide offenders, there is little consistency across the counties of the state. These differences are greater at the death sentencing stage than at the capital charging stage, but even there, some counties have charging rates equal to 8 percent or more of all homicides occurring in the county, whereas other counties have rates below 4 percent. The fact that Table 4 is limited the largest counties in the state, but nonetheless shows differences of this magnitude, suggests that there is substantively very wide variability in the use of the death penalty across the geographic units of the state, rather than equal application with some small residual random variability.

Figures 8, 9, and 10 illustrate the extremely low use of the death penalty across Kansas counties and the lack of connection between homicides and its use. Figure 8 shows the number of death sentences, generally zero. Figure 9 shows the number of homicides, which is considerably more variable. And Figure 10 shows the rate of death sentences per 100 homicide offenders (see Table A-1 for the raw numbers). In each Figure, these comparisons make clear that there is little connection between homicides and the use of the death penalty.

Figure 8. Death Sentences.

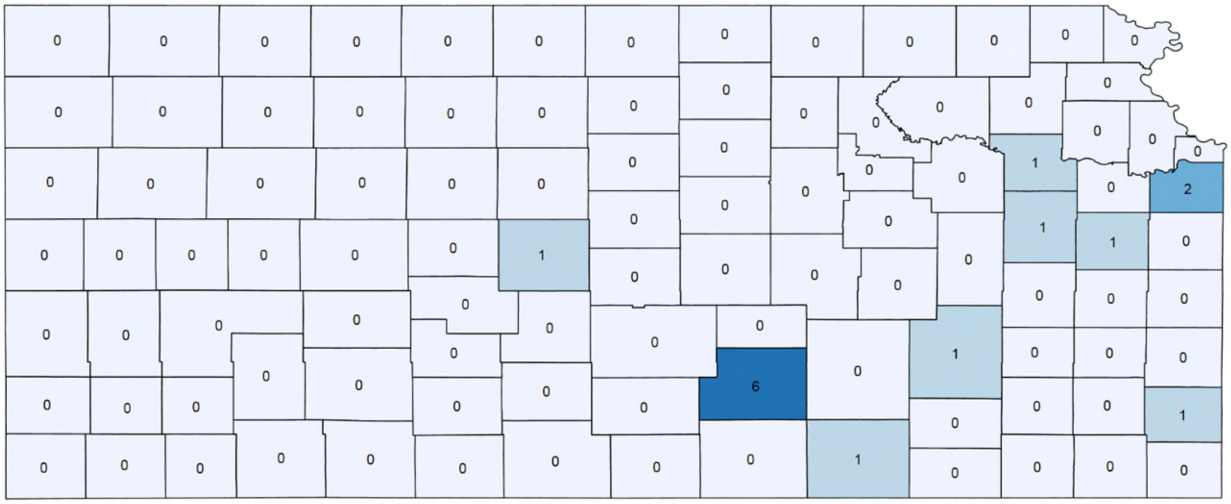


Figure 9. Homicide Offenders.

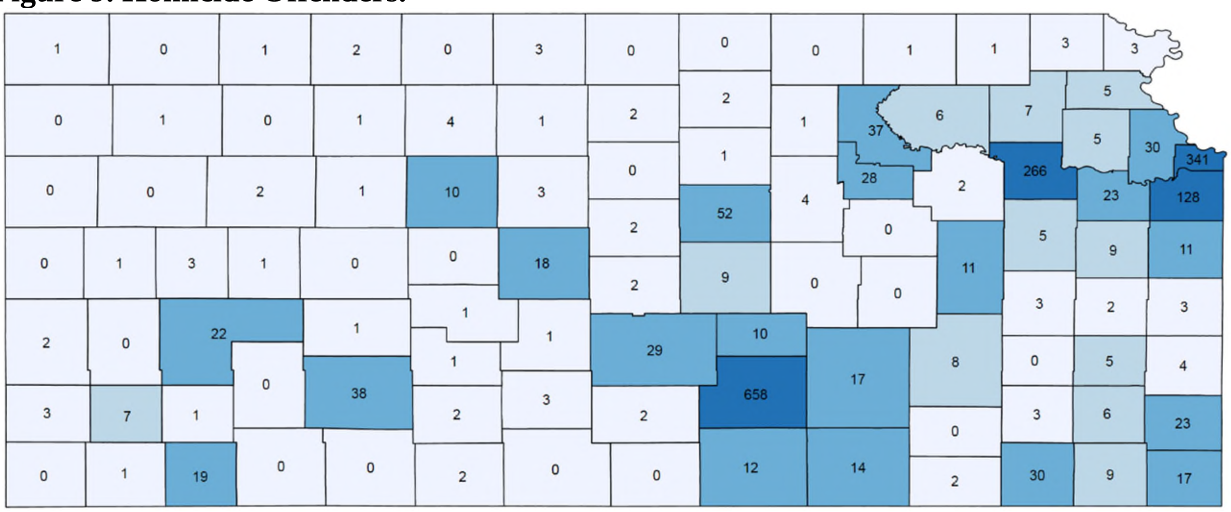
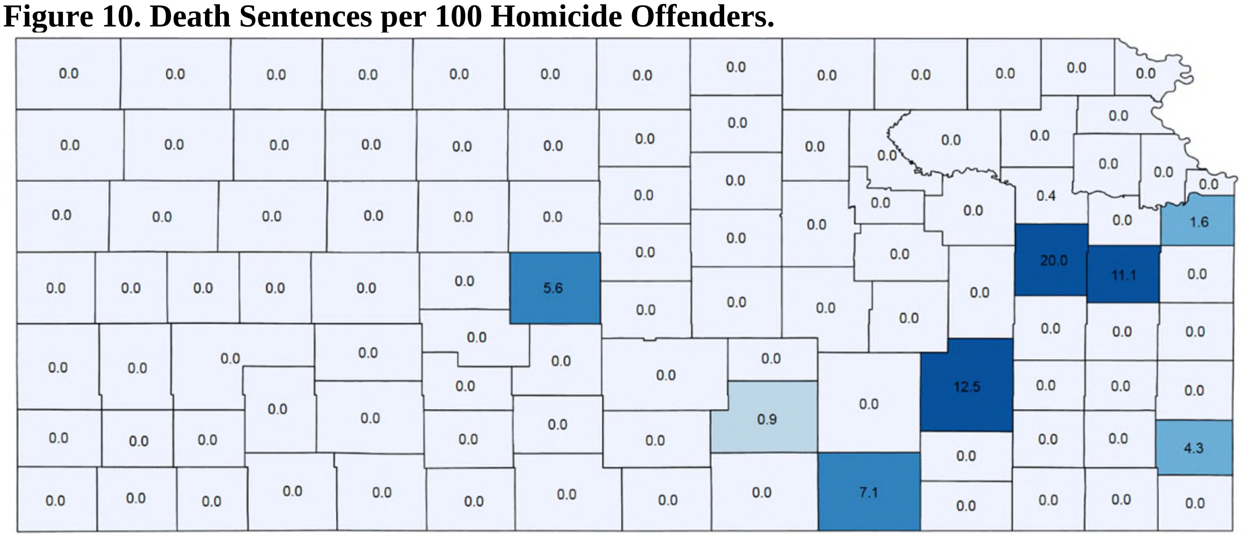


Figure 10. Death Sentences per 100 Homicide Offenders.



Conclusions

In completing this analysis, I have identified three important issues with respect to use of the death penalty in Kansas: general lack of use; capricious or random and arbitrary selection of cases for death sentencing; and racial and gender biases affecting the process.

First, capital punishment is extremely rare. Table 1 showed that there have been 15 death sentences in the state since 1994, but Table 2 showed that there have been 3,709 homicides (1,572 as reported by the CDC during the period of 1994 through 2004 and an additional 2,137 reported by the FBI from 2005 through 2019). Of course, none of those death sentences has led to an execution, so the rate of executions is zero, and the rate of sentencing is 0.4 percent: fewer than one-half of one percent of homicides have led to a death sentence. [13]

Second, I have reviewed correlations among homicides and death penalty usage numbers (capital charging, death noticing, and death sentencing) across time as well as across the geographical units of the state, counties. There is virtually no correlation between homicides and death sentencing behavior, when considered over time. Figure 6 showed that correlation to be almost exactly zero: -0.0008 to be exact. Figure 7 showed what appears to be a correlation between homicides and death sentencing, but further analysis showed that that was driven by just a single county: Sedgwick County has the most homicides as well as the most death sentences, by far. But when we consider the different stages of the process and consider all the counties of the state, or even only the largest five counties, this apparent correlation falls apart. Further, the variability of death sentencing across even the largest counties is not a matter of small random fluctuation around some consistent rate, as might be expected in any naturally occurring variable. Rather, the random component is very high. Rates of charging, noticing, and sentencing, when

[13] 15 death sentences / 3,709 homicides = 0.00404, or 0.404 percent.

considered per 100 homicide offenders, differ widely. These substantively large variations in rates of death penalty use, even controlling for the number of homicides, suggest a system that is substantially driven by random chance.

Finally, what factors seem to be driving these differences, other than randomness? Unfortunately, here we see something like what the US Supreme Court saw in the *Furman v. Georgia* decision that caused the Court to invalidate all existing US death penalty laws. As here, rates were very low; the justices were concerned about a small number of offenders being selected from a large number of homicide offenders as if they were "struck by lightning." Moreover, like at the time of *Furman*, very significant racial and gender biases are apparent. Not a single one of the 15 individuals selected by the State of Kansas for the death penalty killed a black male victim, yet black male victims are present in over 30 percent of all homicides in the state.[14] By contrast, crimes with white female victims were by far the most likely to lead to a death sentence. My analysis above showed strong race effects, gender effects, and race-gender effects with regard to the characteristics of the victims. These effects were also apparent when considered alongside the race and gender of the offender, a significant factor since most crimes have offenders and victims of the same race.

The Kansas death penalty system has never led to a single execution in the almost 30 years it has been in operation. Only a miniscule proportion of homicides have led to a death sentence (0.4 percent). There is strong reason to believe that the distinguishing features that separate the death-sentenced cases from those not leading to a death sentence are the racial and gender characteristics of the victims in the crime, as well as the combined race and gender of the offender and victim, considered together. A system used extremely rarely, and that appears to be

[14] See Table 2, showing 34.4 percent of all homicides with known race and gender of the victims being black males during the CDC reporting period, and 30.9 percent during the FBI reporting period.

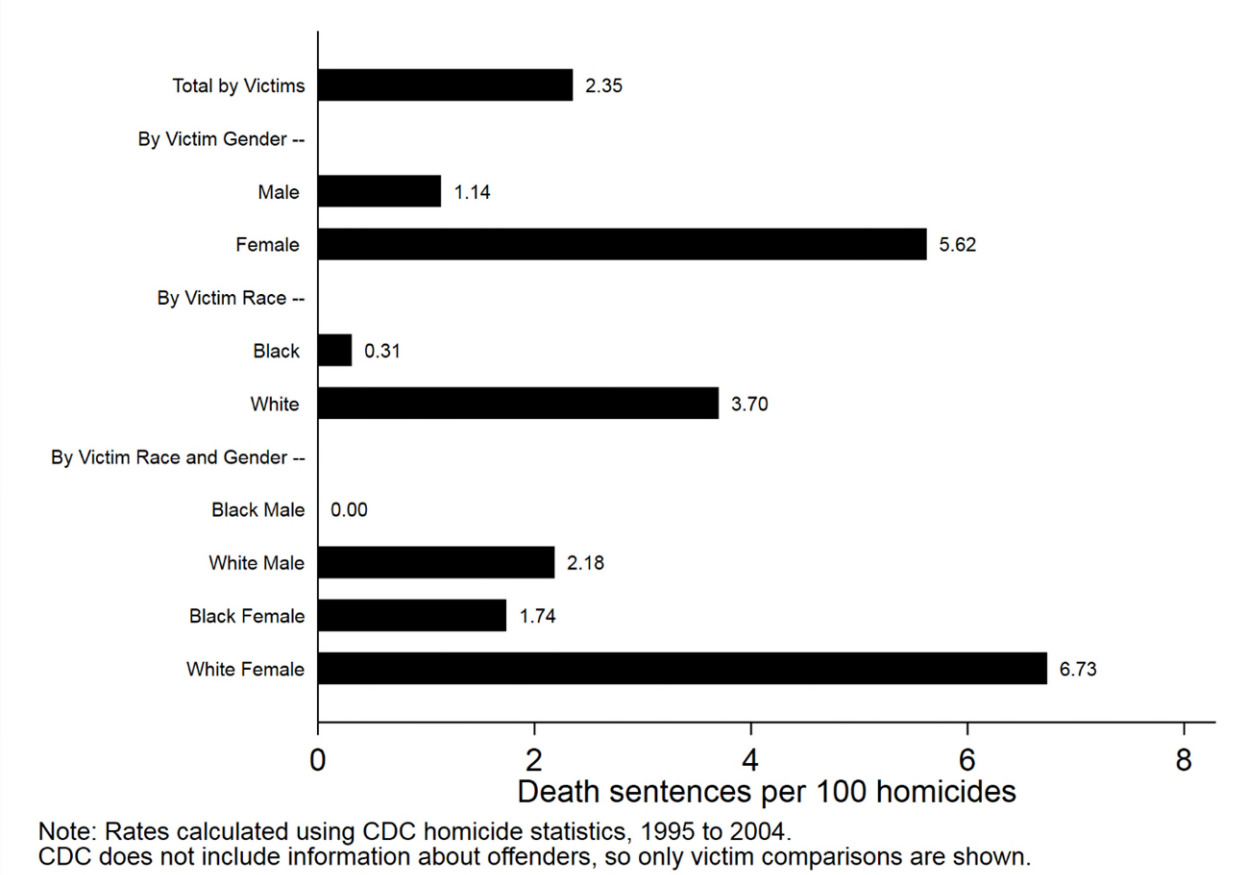
statistically disconnected from patterns of homicides, but potentially has much to do with race and gender, is far from the "evenhanded, rational, and consistent imposition of death sentences under law," imagined by the Supreme Court when it upheld reinstatement of the death penalty in *Jurek v. Texas.*

Submitted,

Frank R. Baumgartner

Appendix

Figure A-1. Homicides and Death Sentences Compared, CDC Homicide data.



Note: Data from Table 2. See Figure 1 for the corresponding figure based on FBI homicides data. Note that the CDC does not have information about offenders, so this Figure refers only to victims.

Table A-1. Homicides, Charges, Death Notices, and Death Sentences by County.

County	Victims	Offenders	Charges	Notices	Sentences	Charge Rate	Notice Rate	Sentence Rate
Sedgwick	664	658	25	18	6	3.8	2.7	0.9
Wyandotte	364	341	27	18	0	7.9	5.3	-
Shawnee	287	266	9	3	1	3.4	1.1	0.4
Johnson	138	128	11	8	2	8.6	6.3	1.6
Saline	57	52	5	2	0	9.6	3.8	-
Ford	41	38	0	0	0	-	-	-
Riley	38	37	1	1	0	2.7	2.7	-
Montgomery	38	30	3	2	0	10.0	6.7	-
Leavenworth	32	30	3	1	0	10.0	3.3	-
Reno	30	29	4	1	0	13.8	3.4	-
Geary	28	28	3	0	0	10.7	-	-
Douglas	29	23	1	1	0	4.3	4.3	-
Crawford	24	23	2	2	1	8.7	8.7	4.3
Finney	22	22	0	0	0	-	-	-
Seward	23	19	1	1	0	5.3	5.3	-
Barton	21	18	6	2	1	33.3	11.1	5.6
Cherokee	17	17	4	1	0	23.5	5.9	-
Butler	17	17	1	0	0	5.9	-	-
Cowley	14	14	1	1	1	7.1	7.1	7.1
Sumner	13	12	0	0	0	-	-	-
Lyon	11	11	0	0	0	-	-	-
Miami	11	11	1	0	0	9.1	-	-
Ellis	10	10	0	0	0	-	-	-
Harvey	19	10	4	2	0	40.0	20.0	-
McPherson	10	9	1	0	0	11.1	-	-
Labette	12	9	1	1	0	11.1	11.1	-
Franklin	12	9	1	1	1	11.1	11.1	11.1
Greenwood	9	8	1	1	1	12.5	12.5	12.5
Grant	8	7	1	0	0	14.3	-	-
Jackson	7	7	0	0	0	-	-	-
Pottawatomie	6	6	1	1	0	16.7	16.7	-
Neosho	6	6	0	0	0	-	-	-
Jefferson	6	5	0	0	0	-	-	-
Osage	10	5	1	1	1	20.0	20.0	20.0
Allen	6	5	0	0	0	-	-	-
Atchison	5	5	1	0	0	20.0	-	-
Bourbon	5	4	1	1	0	25.0	25.0	-
Dickinson	4	4	2	2	0	50.0	50.0	-
Rooks	4	4	0	0	0	-	-	-

Wilson	4	3	0	0	0	-	-	-
Stanton	3	3	0	0	0	-	-	-
Pratt	3	3	0	0	0	-	-	-
Doniphan	3	3	1	0	0	33.3	-	-
Russell	3	3	0	0	0	-	-	-
Coffey	3	3	0	0	0	-	-	-
Scott	3	3	0	0	0	-	-	-
Smith	3	3	0	0	0	-	-	-
Linn	3	3	0	0	0	-	-	-
Brown	3	3	0	0	0	-	-	-
Cloud	2	2	0	0	0	-	-	-
Hamilton	2	2	0	0	0	-	-	-
Anderson	2	2	0	0	0	-	-	-
Rice	2	2	0	0	0	-	-	-
Wabaunsee	2	2	0	0	0	-	-	-
Kiowa	2	2	0	0	0	-	-	-
Chautauqua	2	2	1	0	0	50.0	-	-
Comanche	2	2	0	0	0	-	-	-
Ellsworth	2	2	0	0	0	-	-	-
Kingman	2	2	0	0	0	-	-	-
Norton	2	2	0	0	0	-	-	-
Mitchell	2	2	0	0	0	-	-	-
Gove	2	2	0	0	0	-	-	-
Ottawa	1	1	0	0	0	-	-	-
Nemaha	1	1	0	0	0	-	-	-
Trego	1	1	0	0	0	-	-	-
Haskell	1	1	2	1	0	200.0	100.0	-
Pawnee	1	1	0	0	0	-	-	-
Osborne	1	1	0	0	0	-	-	-
Stevens	1	1	0	0	0	-	-	-
Decatur	1	1	0	0	0	-	-	-
Hodgeman	1	1	0	0	0	-	-	-
Marshall	1	1	0	0	0	-	-	-
Edwards	1	1	0	0	0	-	-	-
Lane	1	1	0	0	0	-	-	-
Clay	1	1	1	1	0	100.0	100.0	-
Wichita	1	1	1	1	0	100.0	100.0	-
Thomas	1	1	0	0	0	-	-	-
Cheyenne	1	1	0	0	0	-	-	-
Graham	2	1	0	0	0	-	-	-
Stafford	1	1	0	0	0	-	-	-

Wallace	0	0	0	0	0			
Sheridan	0	0	0	0	0			
Rawlins	0	0	0	0	0			
Washington	0	0	0	0	0			
Lincoln	0	0	0	0	0			
Morris	0	0	0	0	0			
Chase	0	0	0	0	0			
Gray	0	0	0	0	0			
Logan	0	0	0	0	0			
Marion	0	0	0	0	0			
Phillips	0	0	0	0	0			
Ness	0	0	0	0	0			
Meade	0	0	0	0	0			
Greeley	0	0	0	0	0			
Republic	0	0	0	0	0			
Clark	0	0	0	0	0			
Elk	0	0	0	0	0			
Woodson	0	0	0	0	0			
Morton	0	0	0	0	0			
Jewell	0	0	0	0	0			
Harper	0	0	0	0	0			
Kearny	0	0	0	0	0			
Sherman	0	0	0	0	0			
Rush	0	0	0	0	0			
Barber	0	0	0	0	0			

Note: Rates are calculated per 100 offenders.