



**OFFICE OF THE DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT**

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**Testimony Regarding HB 2782
Submitted by Marc Bennett, District Attorney
Eighteenth Judicial District**

Honorable Chairwoman Humphries and Members of the House Committee on Judiciary, thank you for the opportunity to offer my support for House Bill 2782.

HB 2782 seeks to add clarity to both the procedural and practical means by which the death penalty is to be imposed in Kansas. I support the procedural aspects of this bill details as set forth below. As to the portions that seek to either expand or clarifying the instrumentality by which the death penalty might someday be implemented, I take no position—other than to say it is past time we resolve whether the death penalty can be implemented in this State.

As to the procedural impact of the bill, section 1§(e) when read in conjunction with the changes to Section 3, §(b) streamlines an important procedural component of the appellate process. The Supreme Court's final determination of appellate issues (whether through its own decision, or following remand from a higher court) would be sent back to the District (local) court. The jurisdiction of the case would no longer bounce back to the Supreme Court as it does under the existing statute. If a defendant filed a new appellate pleading at that stage, (a motion to stay, for instance), the Supreme Court would have jurisdiction to address the legal issue posed. But, as is the case in all other criminal matters, the Supreme Court would not assume general jurisdiction of the case or oversee the implementation of sentence.

Sec. 2,(c)(1) (A) would first add a timeline--*December 31, 2024*--to the existing obligation of the Kansas Secretary of Corrections to select the type of substance to be administered in carrying out a death sentence. To date, the Secretary has had no reason to formally select the process or assess the availability of the necessary drugs because no cases have moved far enough along in the appellate process to warrant such a step.

At Sec. 2, (c)(1)(B), the bill would add hypoxia as an available mechanism for imposing a death sentence. Whether the state of Kansas wants to join Alabama by adding hypoxia is fundamentally, a public policy question for the state. The move to lethal injection from other means of imposing death sentences (hanging, firing squad or the electric chair) has been the product of what the United State Supreme Court first coined "evolving standards of decency" in *Trop v. Dulles*, 356 U.S. 86 (1958). This is the notion that the 8th Amendment's prohibition against "cruel and unusual punishment" is judged against

the reality that as society grows and evolves, lawmakers will continually assess and refine the acceptable means by which they impose punishment.

Whether hypoxia or any other method of ending the life of an inmate convicted of capital murder is an acceptable mechanism deserves a proper vetting. If that cannot be accomplished in one legislative session, then I would recommend the issue be referred to a special subcommittee or task force to properly vet the issue.

My motive in offering my support of this bill is simple – to speak on behalf of the families of the victims of these heinous crimes to ask that we carefully and clearly determine whether we truly want to have a death penalty in Kansas and if so, to clearly and specifically define how it will be imposed.

Having personally tried six capital murder cases, and resolved more than ten others, I have had the unique responsibility of sitting with over twenty families of *capital* murder victims to try to explain this byzantine process. It is my unequivocal position that we owe them a clear answer as to whether there is asking them to continue to wait on what feels to them like a never-ending burden to await justice for their loved ones.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Marc Bennett", is written over the typed name.

Marc Bennett
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