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**Testimony of Attorney General Kris W. Kobach
Before the Committee on the Judiciary
of the Kansas House of Representatives
in favor of HB 2782**

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Chairwoman Humphries and members of the Committee:

In Kansas our statutes indicate that we have, and our prosecutors seek to impose, the death penalty. However, we are currently unable to implement that penalty for two reasons: (1) the single prescribed method—lethal injection—is becoming difficult to carry out because the drugs cannot be obtained, and (2) current Kansas law does not specify how a final order of execution should be issued.

Consequently, we are lying to the people of Kansas if we tell them we have the death penalty when we can't actually carry out an execution. That is why Kansas needs to enact HB 2782. It will enable the State of Kansas to carry out the death penalty, as our law requires and as the people of Kansas expect.

The Need to Enact HB 2782 Now

Current law, found at K.S.A. 22-4001, allows only a single method to carry out a death sentence, the “intravenous injection of a substance or substances in sufficient quantity to cause death in a swift and humane manner.” HB 2782 adds an

additional method of execution, hypoxia, and adds procedural revisions to the statute regarding the issuance of a final order of execution.

Lethal injection drugs have become difficult to obtain as drug shortages and pharmaceutical manufacturers have made it more challenging for authorities to obtain the drugs. For instance, Pfizer announced in 2016 that it would block the sale of its drugs being used for executions. Additionally other countries, like those in the European Union, have instituted strict export controls specifically to prevent the use of European drugs in American executions. The inability to obtain lethal injection drugs has posed serious problems in other states. For example, in South Carolina two executions were halted after the state set execution dates without having a supply of drugs to carry them out.

The last execution in Kansas occurred in 1965—59 years ago. Since the death penalty was reinstated in Kansas in 1994, 15 people have been sentenced to death. Of those, four have had their sentences reduced to life in prison – not because they were not guilty, but for various legal reasons. Two others escaped justice because they died of natural causes before their sentences could be carried out. Nine inmates remain on death row with their cases in various stages of appeal.

Many of those murderers were convicted more than twenty years ago. That delay not only denies justice, it imposes a cost on the victims' families. The longer the delay, the greater the likelihood that family members of the victims will die without ever seeing justice for their loved ones. Timeliness matters.

One of the murderers in Kansas sentenced to death—Gary Kleypas—committed murder in 1996. He beat, raped, and killed Carrie Williams, a 20-year-old Pittsburg State University student. Even though he confessed to the murder three days after he committed the act, it took two years before he was sentenced to death in 1998.

Twenty-six years later, he remains in prison. Carrie's father has since passed away, without ever seeing justice for the murder of his daughter.

After suffering for nearly three decades awaiting the execution of their daughter's killer, the rest of the Williams' family shouldn't have to wait even longer because Kansas can't obtain the necessary drugs or because Kansas law doesn't lay out the procedural steps to carry out justice. It's time to fix that law so that justice can be served as quickly as possible when the time comes.

As these cases proceed past the appeal phase and into the execution phase, the State needs to be ready to secure justice. It is possible that one of the cases could be ready for execution as soon as nine months from now. It could also be longer, depending on how quickly the Kansas Court of Appeals acts in the final legal phase. Regardless, it is imperative that the State of Kansas be ready to carry out the execution when that time arrives.

It is also important to understand that once this bill passes, there will be an additional period before we will be ready to carry out a capital punishment. The secretary of corrections would have until December 31, 2024, to specify the procedures for carrying out the execution.

That is why it is important that this bill be passed this session. It is possible that all appeals in one of Kansas's death row cases could be completed before the end of the year. It would be a grave injustice to force victims to continue to wait, simply because lawmakers didn't get this legislation passed.

The Move of States to the Hypoxia Method of Execution

Because of the impediments to carrying out lethal injection, other states have already made the move to hypoxia. At this time, the statutes of three states permit the method of hypoxia for carrying out a death sentence. They are Alabama, Oklahoma, and Mississippi.

This legislative session, at least two other states are contemplating the use hypoxia, Ohio and Nebraska.

Without question, hypoxia is now considered to be is the best method available as far as humaneness. I have attached a study commissioned by the State of Oklahoma that explains the reasons why this method is humane.

Indeed, there have been many cases argued across the country over the past decade in which the death row inmates have claimed that lethal injection is cruel and have specifically argued that hypoxia is a more humane form of execution. It should also be noted that hypoxia has become the preferred method of death advocated by those organizations that assist in, and advocate for, assisted suicide.

I have also spoken personally with the Alabama Attorney General and he assured me that the recent execution by hypoxia in Alabama was carried out humanely and

effectively. Contrary to the misleading claims now being made by death penalty opponents, it did not cause any inhumane effects.

Opponents of this bill may make the claim that this method of execution is inhumane. But that is always their claim, and they make it with any method of execution. Indeed, in the recent Alabama execution case, *Smith v. Hamm*, the inmate Smith demanded that he be executed by hypoxia when arguing that lethal injection was cruel and unusual. Then, after Alabama switched to hypoxia, Smith changed his tune again and asked for death by firing squad. At that point, the judge rejected his claim.

I urge you to read the Oklahoma study if you have any concerns in that regard. Finally, if the opponents of HB 2782 claim that this method is inhumane, I would suggest that you ask them which method of execution they *do* support.

Conclusion

In conclusion, this legislation is not about whether Kansas should have the death penalty. If opponents of the death penalty wish to have that debate, they can bring a bill to eliminate the death penalty in Kansas. If the Legislature wishes to get rid of the death penalty, legislators should have the courage to take that vote and face the people of Kansas at the next election.

This legislation is about being honest with the people of Kansas and with the families of victims. Until this bill is passed, we will not have a death penalty that can actually be carried out. The time has come fix the problem.