

HOUSE BILL No. 2782

By Committee on Judiciary

Requested by Dan Burrows on behalf of the Office of the Attorney General

2-8

1 AN ACT concerning criminal procedure; relating to execution of death
2 sentences; requiring the secretary of corrections to select the method of
3 carrying out a sentence of death by hypoxia; requiring the district court
4 to send the secretary a warrant commanding the secretary to proceed to
5 carry out a sentence of death within 30 days after judgment is final;
6 amending K.S.A. 21-6619, 22-4001 and 22-4013 and repealing the
7 existing sections.
8

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

10 Section 1. K.S.A. 21-6619 is hereby amended to read as follows: 21-
11 6619. (a) A judgment of conviction resulting in a sentence of death shall be
12 subject to automatic review by and appeal to the supreme court of Kansas
13 in the manner provided by the applicable statutes and rules of the supreme
14 court governing appellate procedure. The review and appeal shall be
15 expedited in every manner consistent with the proper presentation thereof
16 and given priority pursuant to the statutes and rules of the supreme court
17 governing appellate procedure.

18 (b) The supreme court of Kansas shall consider the question of
19 sentence as well as any errors asserted in the review and appeal and shall
20 be authorized to notice unassigned errors appearing of record if the ends of
21 justice would be served thereby.

22 (c) With regard to the sentence, the court shall determine:

23 (1) Whether the sentence of death was imposed under the influence of
24 passion, prejudice or any other arbitrary factor; and

25 (2) whether the evidence supports the findings that an aggravating
26 circumstance or circumstances existed and that any mitigating
27 circumstances were insufficient to outweigh the aggravating
28 circumstances.

29 (d) The court shall be authorized to enter such orders as are necessary
30 to effect a proper and complete disposition of the review and appeal.

31 (e) *When all appeals and post-conviction proceedings are resolved,*
32 *the supreme court shall notify the district court before which the*
33 *conviction was rendered that such proceedings have been resolved and*
34 *send a copy of the court's final order to such district court. Such order*
35 *shall clearly state whether or not the sentence of death was affirmed.*

1 Sec. 2. K.S.A. 22-4001 is hereby amended to read as follows: 22-
2 4001. (a) The mode of carrying out a sentence of death in this state shall be
3 by intravenous injection of a substance or substances in a quantity
4 sufficient to cause death in a swift and humane manner *or by hypoxia*
5 *administered in such a way to cause death in a swift and humane manner.*

6 (b) The secretary of corrections shall supervise the carrying out of
7 each sentence of death and shall determine the procedures therefor, which
8 shall be consistent with ~~this act~~ *article 40 of chapter 22 of the Kansas*
9 *Statutes Annotated, and amendments thereto*, and the other laws of the
10 state. The secretary of corrections shall designate one or more executioners
11 and other persons necessary to assist in carrying out the sentence of death
12 as provided in this section. The identity of executioners and other persons
13 designated to assist in carrying out the sentence of death shall be
14 confidential.

15 (c) (1) *Not later than December 31, 2024*, the secretary of corrections
16 shall select the:

17 (A) Type of substance or substances to be administered in carrying
18 out a sentence of death by intravenous injection in a swift and humane
19 manner. ~~The secretary of health and environment shall certify to the~~
20 ~~secretary of corrections that the substance or substances selected by the~~
21 ~~secretary of corrections will result in death in a swift and humane manner.~~
22 ~~If the secretary of corrections desires to change the substance or~~
23 ~~substances to be administered from those previously certified by the~~
24 ~~secretary of health and environment, the proposed substance or substances~~
25 ~~also shall be certified as provided in this section; and~~

26 (B) *the method of carrying out a sentence of death by hypoxia in a*
27 *swift and humane manner.*

28 (2) *The secretary may change the substance or substances to be*
29 *administered pursuant to paragraph (1)(A) and the method of carrying out*
30 *a sentence of death by hypoxia pursuant to paragraph (1)(B) at any time*
31 *the secretary deems necessary. The method of carrying out a sentence of*
32 *death by hypoxia shall be adopted by the secretary in rules and*
33 *regulations.*

34 (d) The secretary of corrections may designate in writing a warden of
35 one of the correctional institutions under the secretary's supervision to
36 perform the duties imposed upon the secretary by this section and by
37 K.S.A. 22-4002, 22-4003, 22-4013 and 22-4014, and amendments thereto.

38 (e) *As used in this section, "swift and humane manner" means a*
39 *manner consistent with the requirements of the eighth amendment to the*
40 *constitution of the United States.*

41 Sec. 3. K.S.A. 22-4013 is hereby amended to read as follows: 22-
42 4013. (a) It shall be the duty of the secretary of corrections or the warden
43 designated by the secretary to proceed to execute a sentence of death in the

1 manner prescribed by ~~this act~~ *article 40 of chapter 22 of the Kansas*
2 *Statutes Annotated, and amendments thereto. When executing a sentence*
3 *of death, the secretary shall determine whether to use an intravenous*
4 *injection or hypoxia and shall use the substance or method selected*
5 *pursuant to K.S.A. 22-4001, and amendments thereto.*

6 (b) ~~Upon receipt of an order of the district court as provided by this~~
7 ~~act, the supreme court~~ *During the pendency of an appeal or post-*
8 *conviction proceedings, the execution of a sentence of death shall be*
9 *stayed. Upon receipt of an order of the supreme court pursuant to K.S.A.*
10 *21-6619, and amendments thereto, that all appeals and post-conviction*
11 *proceedings are resolved and the sentence of death is affirmed, the district*
12 *court before which the conviction was rendered shall issue, within 30 days,*
13 *to the secretary of corrections a warrant under seal of the ~~supreme~~ district*
14 *court, commanding the secretary or a warden designated pursuant to*
15 *K.S.A. 22-4001, and amendments thereto, to proceed to carry out the*
16 *sentence of execution during the week designated by the ~~supreme~~ district*
17 *court. The week designated in the warrant shall be sufficient to enable the*
18 *secretary to give notice as provided in subsection (c). A copy of the*
19 *warrant shall be delivered to the secretary of corrections ~~and the clerk of~~*
20 *the ~~district court~~. For purposes of this act article 40 of chapter 22 of the*
21 *Kansas Statutes Annotated, and amendments thereto, the term "week"*
22 *shall mean the time period from 12:01 a.m. Sunday through and including*
23 *11:59 p.m. the following Saturday. If the week designated in the warrant*
24 *commanding the execution of a death sentence begins on a day of the*
25 *week other than a Sunday, or sets out a particular date for the execution,*
26 *the secretary of corrections shall notify the clerk of the ~~supreme court~~*
27 *district court that issued the warrant.*

28 (c) The secretary of corrections shall carry out the execution
29 commanded by the warrant issued by the ~~supreme~~ *district* court during the
30 week designated by the ~~supreme~~ *district* court on a date selected by the
31 secretary. The secretary shall give notice of the date selected by the
32 secretary for the execution at least seven calendar days before the
33 execution to the clerk of the supreme court, the clerk of the district court in
34 which the defendant was convicted, the defendant, the defendant's counsel
35 and the attorney general. The secretary may carry out the execution at any
36 time during the date selected or as soon thereafter as the secretary deems
37 appropriate.

38 Sec. 4. K.S.A. 21-6619, 22-4001 and 22-4013 are hereby repealed.

39 Sec. 5. This act shall take effect and be in force from and after its
40 publication in the statute book.