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House Judiciary
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House Bill 2782 Hearing

Opponent Testimony of
Heather Cessna, Executive Director
On behalf of the
Kansas State Board of Indigents' Defense Services

Chairwoman Humphries, Members of the Committee, and Legislative Staff,

The Board of Indigents' Defense Services is tasked with providing constitutionally effective and efficient legal representation to all indigent persons in Kansas accused of state felony crimes. As such, maintaining a robust public defense system, staffed with experienced attorneys serving our indigent clients is essential to our state mandate to provide constitutionally effective counsel under the Sixth Amendment and the Kansas Constitution to our clients. Nowhere is this more important in our public defense system than with our death penalty and capital cases. The Board of Indigents Defense Services specifically voted last Friday to oppose House Bill 2782.

While there is plenty to be said regarding the legal ramifications of these proposed amendments to the death penalty statutes and the moral and ethical concerns at the heart of these changes to the method of execution, I know that other opponents here today will speak directly to those issues. My testimony is intended to provide you with insight into the direct consequences this bill will have on the Board of Indigents' Defense Services and what we believe will be the likely impact to state general fund dollars.

House Bill 2782 Will Exacerbate Death Penalty Defense Attorney Shortages

Our public defenders choose to work hard daily to provide dedicated representation to impoverished people, particularly in death penalty cases. However, BIDS's ability to provide this

representation is entirely dependent on having a viable ratio of employees to workload, and on the health and well-being of our individual employees.

The need for public defenders has outstripped the supply. Already, Kansas cannot guarantee constitutionally sufficient criminal defense services in adult felony-level cases, and, specifically in capital cases. Our capital public defender offices are already carrying unacceptable and crushing caseloads. This caseload problem not only obstructs the agency's duty to protect our clients, but it is also a severe inhibitor to employee retention and well-being. High caseloads and inadequate staffing are some of the main reasons listed by Kansas public defense employees year after year as the top contributing factors to their consideration to leave their public defense offices.

The reality is that public defense work is inseparable from exposure to chronic stress and trauma, and this exposure is another reason why many consider leaving the job. This mental health burden is especially heavy for those who defend people facing the death penalty. Capital defenders carry life-or-death responsibility amidst urgent deadlines, sudden crises, and high workloads. Further, capital defense requires a uniquely prolonged level of personal investment in the client's case, both in time and emotion.

HB 2782 would unjustifiably increase both the workload crisis and the toxic mental burden for capital defense. HB 2782 adds more time restraints, confusion, unpredictability, and risk of injustice to our capital defenders' already grueling jobs, while at the same time intensifying the toxicity of capital work by making it clear to capital defenders that their clients, whom they have dedicated their careers to represent, are not deserving of simple human decency.

HB 2782 adds a previously non-existent and arbitrary deadline, opens the door wide to unspecified execution methods, allows changes to execution methods to be made unpredictably, takes away any assurance that oversight by the Kansas Department of Health and Environment might have provided, and exposes humans to possible execution methods that are deemed unacceptable for animals by the American Veterinary Medical Association.¹ The consequences from HB 2782 will directly result in both increased workload and increased mental strain. The direct and immediate impact of this bill and these proposed statutory changes will be increased

¹ American Veterinary Medical Ass'n, AVMA Guidelines for the Euthanasia of Animals, Appendix 2, p. 112 (2020 ed.) lists agents and methods which are unacceptable as primary methods of euthanasia, which include: asphyxiation (i.e. smothering, strangulation) and cyanide. The list specifically notes that "[d]rowning is not a means of euthanasia and is inhumane." Per the AVMA Guidelines, nitrogen is unacceptable for most mammals. *Ibid.*, § II.MI.5, p. 28. According to the National Institute of Health National Center for Biotechnology Information, Hypoxia is defined as "a state in which oxygen is not available in sufficient amounts at the tissue level to maintain adequate homeostasis; this can result from inadequate oxygen delivery to the tissues either due to low blood supply or low oxygen content in the blood." See [https://www.ncbi.nlm.nih.gov/books/NBK482316/#:~:text=Hypoxia%20is%20a%20state%20in,in%20the%20blood%20\(hypoxemia\)](https://www.ncbi.nlm.nih.gov/books/NBK482316/#:~:text=Hypoxia%20is%20a%20state%20in,in%20the%20blood%20(hypoxemia)). Because of the broadness of the term used in these proposed changes, hypoxia could include a variety of methods not acceptable for euthanasia in animals.

burnout and retention problems, constitutionally deficient shortages of death penalty counsel, and will come at a significant monetary cost to the State of Kansas.

House Bill 2782 Could Cost Kansas Taxpayers Millions

The potential fiscal impact of HB 2782 could be millions of dollars. The impact to retention of capital public defenders amongst the already well-documented shortages of criminal defense counsel state-wide would mean the loss of investment in employee training and experience, as well as increased costs in training new capital attorneys and the hiring of capital experienced counsel from other states to help alleviate the shortages of Kansas capital attorneys for our Kansas cases. However, the potential repercussions to employee retention are just one of several costs that HB 2782 would levy at the State's expense.

Even at an initial glance, it appears that this bill is rife with ex post facto problems, vagueness challenges, and arbitrariness issues. HB 2782 would require significant additional litigation in already existing capital cases, which would increase workload and therefore expenses in those cases. Further, it would require additional and lengthy criminal and related civil litigation in both state and federal court, much of which BIDS would be required to pursue and pay for on behalf of our clients. Such litigation would likely go on for years.

The Board of Indigents' Defense Services Asks You Not To Pass HB 2782

HB 2782 is a reckless bill that devalues human life, will exacerbate the already crisis-level shortage of capital attorneys in Kansas, and is fiscally unwise, potentially committing substantial amounts of state general fund dollars to additional litigation costs. The Board of Indigents' Defense Services condemns this bill as fiscally irresponsible, harmful to our ability to meet our core agency mission, and detrimental to providing the due process of law guaranteed to every citizen in this State. We ask that you oppose HB 2782.

I'm always happy to provide any other information that the committee may find helpful. Thank you for your consideration of this testimony and your measured and thoughtful consideration of this bill.

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