



House Judiciary Committee

February 14, 2024

Testimony Regarding HB 2782

**Submitted on behalf of the Kansas Association of Criminal Defense
Lawyers by: Keith Edwards, Legislative Chair
Jeffrey Dazey, Death Penalty Chair**

Chairperson Humphries and Members of the Committee,

On January 25, 2024, Alabama transformed Kenneth Eugene Smith into a human guinea pig to test a method of execution never attempted before: nitrogen hypoxia. Hypoxia is a medical term describing an absence of enough oxygen in the tissues to sustain bodily functions. Hypoxia means death by suffocation. Executioners strapped Kenneth to a gurney, then covered his face with an unfitted off-the-rack mask pumped full of nitrogen. Observers described the “most violent execution” they had ever witnessed. They saw Kenneth shaking, writhing, and thrashing upon the gurney for nearly 10 minutes while visibly conscious. His final words, spoken into the very mask that would kill him: “Tonight Alabama causes humanity to take a step backwards. I’m leaving with love, peace, and light.”

Just two weeks later, Kansas Attorney General Kris Kobach introduced a bill in the Kansas legislature that would enable the Kansas secretary of corrections to use hypoxia as a method of execution. House Bill 2782 promises that death by hypoxia would be administered in such a way to cause death in a swift and humane manner. However, the experimental results of Kenneth Eugene Smith’s execution demonstrate that death by suffocation is cruel, tortuous, and decidedly unusual.

Cynicism must not allow us to overlook the irony of a proud right to life institution experimenting with the machinery of death. As laboratories of democracy, states must recognize when a law or policy has failed. In Kansas the death penalty has failed by any objective measure of success.

Since Kansas reinstated the death penalty in 1994, there have been over 3,500 criminal homicides in Kansas, but no executions. Two men on death row have already died of natural causes before their first appeal was finalized. The two cases

nearest to completing their appeals are still many years away from an execution date, and these two men are now 68 and 80 years old. Is the dubious purpose of retribution advanced by slowly suffocating elderly men to death many decades after their crimes of conviction?

Moreover, the death penalty in Kansas and throughout the United States has failed to deter violent crime. The consensus in the scientific community, including the National Academy of Science, National Research Council's 2012 report, is that there is no reliable evidence of a deterrent effect of the death penalty on homicide rates. The death penalty is particularly ineffective as a deterrent in Kansas. Since 1994, homicide rates in Kansas have continually fluctuated. Thus, there is no statistical correlation between the availability of the death penalty as a possible punishment in Kansas and a corresponding decline in homicide rates. Recent evidence also shows that there are no differences in the murder rates in states before and after abolition of the death penalty.

Finally, the death penalty has utterly failed financially. Available data demonstrate that maintaining the death penalty in Kansas is significantly more costly than pursuing other forms of punishment and costs Kansas taxpayers millions of dollars each year.

HB 2782 is set for a hearing before the House Committee on the Judiciary February 15. Kansans should stop experimenting with the machinery of death and oppose this cruel and inhumane execution method. Instead, the legislature should abolish the death penalty and end this expensive failed experiment once and for all.

Sincerely,



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