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MEMORANDUM

To: House Committee on Judiciary
From: Office of Revisor of Statutes
Date: February 15, 2024
Subject: Bill Brief on HB 2782

HB 2782 authorizes the secretary of corrections to use hypoxia for the purpose of carrying out a sentence of death and requires the district court to issue a warrant to the secretary of corrections to carry out a sentence of death.

Section 1 amends K.S.A. 21-6619, the statute that requires automatic review of sentences of death by the supreme court. A new subsection (e) is added to provide that when all appeals and post-conviction proceedings are resolved, the supreme court shall notify the district court before which the conviction was rendered that such proceedings have been resolved and send a copy of the court's final order to such district court. Such order shall clearly state whether or not the sentence of death was affirmed.

Section 2 amends K.S.A. 22-4401, the statute related to executing a death sentence. Current law requires a sentence of death to be executed by intravenous injection of a substance or substances in a quantity sufficient to cause death in a swift and humane manner. This bill would allow a sentence of death to be executed by hypoxia administered in such a way to cause death in a swift and humane manner.

Current law in subsection (c) requires the secretary of corrections to select the type of substance to be administered in carrying out a sentence of death by intravenous injection. The secretary of health and environment is required to certify to the secretary of corrections that the substance will result in death in a swift and humane manner. The secretary of corrections may change the substance used and certify a new substance in accordance with this section. Subsection (c) is amended to require the secretary of corrections, not later than December 31, 2024, to select a type of substance to be administered in carrying out a sentence of death by intravenous injection and the method of carrying out a sentence of death by hypoxia. The

provisions related to certification by the secretary of health and environment are removed. The bill maintains the current law ability for the secretary to change the substance or methods to be used. The method of carrying out a sentence of death by hypoxia is required to be adopted by the secretary of corrections in rules and regulations.

Finally, subsection (e) is added to provide a definition of “swift and humane manner” which would mean a manner consistent with the requirements of the eighth amendment to the constitution of the United States.

Section 3 amends K.S.A. 22-4013, the statute that puts the duty to execute a death sentence on the secretary of corrections. The section is amended to provide that when executing a sentence of death, the secretary shall determine whether to use an intravenous injection or hypoxia. Subsection (b) is amended to provide that during the pendency of an appeal or post-conviction proceedings, the execution of a sentence of death shall be stayed.

Current law provides that upon receipt of an order of the district court, the supreme court shall issue to the secretary of corrections a warrant to proceed to carry out the sentence of execution during the week designated by the supreme court. This is amended to provide that when the district court receives an order from the supreme court pursuant to the new requirement added to K.S.A. 21-6619, affirming the sentence of death, the district court shall issue the warrant described above, including a week designated by the district court in which the sentence shall be executed, within 30 days.