

February 27, 2026

The Honorable Susan Humphries, Chairperson
House Committee on Judiciary
300 SW 10th Avenue, Room 582-N
Topeka, Kansas 66612

Dear Representative Humphries:

SUBJECT: Fiscal Note for HB 2538 by House Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2538 is respectfully submitted to your committee.

HB 2538 would allow a defendant to raise a mental disease or defect as a defense to a criminal prosecution under the Kansas Criminal Code if specific requirements have been met. The bill would create exceptions to this affirmative defense if the defendant's mental defect or mental disease was solely from alcohol or chemical abuse, antisocial personality disorder, intellectual disability, organic personality syndrome, or an organic disorder.

The defense would be required to file a written notice that the defendant is claiming to have a mental disease or defect that prevents him or her from understanding their action or an element of the crime. The defendant would also be required to give the prosecutor notice within 30 days after entering a not guilty plea. The court could use its discretion to allow a late notice of the defendant's intent to raise mental disease or defects as a defense if good cause is shown for the late notice. A defendant who uses a mental disease or defect would be required to abide by all court orders requiring a mental examination, including submitting to a mental health examination by the physician or licensed psychologist chosen by the court.

According to the Kansas Department for Aging and Disability Services (KDADS), enactment of HB 2538 would expand the definitions of conditions that can be used to justify a criminal defense related to lacking mental capacity to stand trial. The bill would add the new criteria of laboring under a mental disease at the time of a criminal act that made the defendant not know the nature and quality of the act or that the act was wrong. This could increase the number of criminal defendants using lack of mental state as a defense that would require admission to the

State Security Program at Larned State Hospital (LSH) for this evaluation. This could also increase the number of individuals ordered for care and treatment at a state hospital pursuant to KSA 22-3428 rather than serving a criminal sentence at a Department of Corrections facility.

Additional defendants ordered to LSH for evaluation of their mental state at the time of the alleged offense would use the same bed space as defendants ordered to LSH for competency restoration and other criminal evaluation and treatment statutes. KDADS believes more defendants would meet the new criteria for lacking culpability and would initially be committed to treatment for an indefinite period in a secure hospital facility. Most would need to remain in a secure forensic setting for a minimum of two to three years, and some would remain hospitalized forever.

Currently, KDADS reports that there is a wait list for admission to the State Security Program at LSH. In January 2026, there were a total of 200 defendants waiting for competency treatment or evaluation. Additional defendants that could be referred under HB 2538 would be added to the waitlist for the State Security Program. The average wait time in January 2026 was 290 days.

The State Security Program has one closed 30-bed unit that could be opened with adequate staffing. If LSH used contract nursing agencies to staff the 30-bed unit to add more capacity, the annual cost would be \$3.8 million from the State General Fund (see table below) in FY 2027 and FY 2028, along with an additional 28.00 positions for both fiscal years. These costs are not currently in the LSH budget and could result in an increase in hospital staff turnover.

Cost to Staff Additional State Security Program Unit

<u>Classification</u>	<u>Number</u>	<u>Bi-Weekly</u>	<u>Annual</u>
RN (Contract)	3.00	\$ 22,800	\$ 592,800
LPN (Contract)	3.00	18,000	468,000
MHDDT (Contract)	17.00	74,800	1,944,800
Psychologist (Contract)	1.00	9,200	239,200
Medical Staff (Contract)	1.00	14,800	384,800
Activity Therapist	2.00	4,375	113,754
Social Worker	<u>1.00</u>	<u>2,843</u>	<u>73,918</u>
	28.00	\$146,818	\$3,817,272

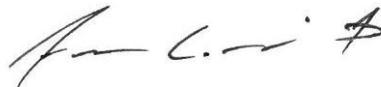
KDADS is subject to a lawsuit challenging the amount of time criminal defendants spend waiting for competency evaluation or restoration. The bill would add people to the wait list by adding defendants that could be ordered to the State Security Program. Adding more people to the waitlist could risk the state's ability to meet the requirements of the settlement agreement. The state is working to reduce waiting time through mobile competency, community-based competency evaluation and restoration, and adding capacity through the South Central Regional Mental Health Hospital.

The provider impact would be connected to referrals to community mental health centers that provide services in local communities. There would be further effects as individuals ordered under KSA 22-3428 would eventually need to transition out of the state hospital and into the community, requiring intensive level services to reintegrate and housing resources.

According to the Office of Judicial Administration, enactment of HB 2538 could extend the time length of some trials because it would expand criminal defense for a defendant. This, in turn, would increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases; however, a fiscal effect on expenditures by the Judicial Branch cannot be estimated. The bill would not have a fiscal effect on revenues to the Judicial Branch or State General Fund. Any fiscal effect associated with HB 2538 is not reflected in *The FY 2027 Governor's Budget Report*.

The Kansas Association of Counties indicates that enactment of the bill would have a fiscal effect on counties. According to the Association, counties could see increased costs for mental health evaluations and changes to procedures to implement the bill's provisions. The Association did not estimate a fiscal effect.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam C. Proffitt", with a stylized flourish at the end.

Adam C. Proffitt
Director of the Budget

cc: Trisha Morrow, Judiciary
Bruce Chladny, Kansas Association of Counties
Leigh Keck, Department for Aging & Disability Services
Jennifer King, Department of Corrections