

March 2, 2012

REVISED

The Honorable Pat Colloton, Chairperson  
House Committee on Corrections and Juvenile Justice  
Statehouse, Room 167-W  
Topeka, Kansas 66612

Dear Representative Colloton:

**SUBJECT:** Revised Fiscal Note for HB 2498, as amended, by House Committee on Corrections and Juvenile Justice

In accordance with KSA 75-3715a, the following revised fiscal note concerning HB 2498, as amended, is respectfully submitted to your committee.

As amended by the House Committee on Corrections and Juvenile Justice, HB 2498 enacts the Mental Health Diversion Program Recognition Act. The bill would establish criteria for a mental health diversion program for certain offenders charged with a crime. The defendant must have a serious mental illness, as defined in the Act, to be eligible for diversion. Any county or district attorney could elect to establish a diversion program in coordination with the Community Mental Health Center (CMHC) in that county or the district attorney's jurisdiction and may establish the program in accordance with this bill.

If a county elected to implement a mental health diversion program, it would become the responsibility of the Community Mental Health Center to administer, monitor and oversee a defendant's participation in the program, including the appointment of a case manager to oversee the defendant's program participation. The bill would allow a defendant to apply to the county or district attorney prior to the filing of a complaint related to the commission of a crime. The bill specifies the types of crimes that would render the defendant ineligible for diversion and lists factors for the county or district attorney to consider when determining whether such a diversion would be in the interests of justice and of benefit to the defendant and the community. The defendant would not have to admit any facts with respect to a criminal charge as a condition of diversion.

HB 2498 also delineates how the evaluation for participation would be handled, as well as how the mental health diversion agreement itself would be structured. If a complaint has been filed against the defendant, the agreement would be filed with the district court; for cases without a complaint, the agreement would be filed with the county or district attorney. It would be the responsibility of the Community Mental Health Diversion Supervisor to ensure that the

defendant is in compliance with the requirements of the program, as described in the agreement. The Supervisor could elect to appoint a case manager to oversee this function.

The diversion agreement may be revoked for noncompliance or lack of good faith effort on the defendant's part to comply. At that point, criminal proceedings may resume. If a defendant completes the terms of the agreement, criminal charges may be dismissed with prejudice. The county or district attorney mental health diversion coordinator would forward a record of fact to the Kansas Bureau of Investigation as to whether the defendant fulfilled the terms of the agreement. This record would be made available to the Attorney General, any county, district or city attorney or to any court.

The county or district attorney, as part of the diversion agreement, could assess fees, restitution or court costs to the defendant in order to participate in the program. The Secretary of the Department of Social and Rehabilitation Services (SRS) would be authorized to adopt rules and regulations to implement and administer the Act.

Finally, the bill also specifies that the case manager, an employee or contractor of the CMHC, must be a licensed psychologist, social workers, marriage and family therapist, professional counselor, master level psychologist or clinical psychotherapist if the person is not an employee of the CMHC.

SRS has revised what it anticipates to be the bill's fiscal effect to state that implementing this new diversion program would require additional expenditures of \$225,000 from the State General Fund to cover additional administrative costs at the community mental health centers. Previous statements had estimated additional costs to the CMHCs to serve this population.

The State Board of Indigents Defense Services (BIDS) states that the proposed legislation would allow mentally ill defendants to receive diversion on lower level felonies that are currently presumptive probation. These defendants are indigent because of their mental illness and become clients of the public defenders and assigned counsel. Each presumptive probation case must go through the court process at a minimum cost per case of \$600. BIDS estimates that 150 of these cases are filed each year. If these defendants receive diversions, State General Fund expenditures for BIDS would decrease by \$90,000 (150 x \$600.)

The Kansas Bureau of Investigation (KBI) now states that it would be required to reprogram the agency's computerized criminal history (CCH) database to capture the new type of diversion and the different stages of the diversion. The KBI would have a one-time increase in SGF expenditures of \$16,000 for this programming work.

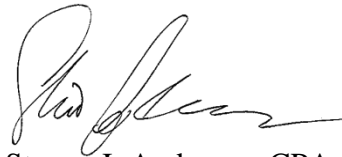
The Department of Corrections believes it would realize no savings from fewer admissions to state prisons, as diversions would likely balance with the non-diversions. For counties, however, to the extent that county jails would not have to house the person in diversion and cover their supervision, food and medical costs, savings would be realized by the county.

The Kansas Association of Counties states that an estimate of the fiscal effect associated with passage of the amended version of HB 2498 cannot be made as it is not possible to predict how many counties would elect to participate. However, the Association states that the majority of the new costs would be for Community Mental Health Centers to provide the supervision. If no additional CMHC funding was provided through SRS, counties would either raise the mill levies related to CMHCs or stop providing services for other uninsured patients.

The Office of Judicial Administration states that mental health diversions resulting from passage of HB 2498 could decrease cases filed in the district courts and therefore decrease court expenditures. The diversions could also result in a reduction of docket fees and criminal fines with some increase in fees permitted by the bill. It is not possible to predict the reduction in court cases and therefore, a precise fiscal effect cannot be determined.

The Kansas Sentencing Commission states that passage of the bill would not affect prison admissions or Commission workload. Any fiscal effect associated with HB 2498 is not reflected in *The FY 2013 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Anderson", written in a cursive style.

Steven J. Anderson, CPA, MBA  
Director of the Budget

cc: Mary Rinehart, Judiciary  
Jackie Aubert, SRS  
Scott Schultz, Sentencing Commission  
Linda Durand, KBI  
Melissa Wangemann, Kansas Association of Counties  
Jeremy Barclay, Corrections