Kansas
Division of the Budget

February 27, 2019

The Honorable John Barker, Chairperson
House Committee on Federal and State Affairs
Statehouse, Room 285-N
Topeka, Kansas 66612

Dear Representative Barker:

SUBJECT: Fiscal Note for HB 2129 by Representatives Ward, Gartner, and Warfield

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2129 is respectfully submitted to your committee.

HB 2129 would create the Gun Safety Red Flag Act, which would allow the courts to grant an order prohibiting defendants from owning, controlling, or purchasing a firearm or ammunition if the court finds that the defendant poses an immediate danger to themselves or others. The bill would allow a law enforcement officer or a family member of the defendant to file a petition for a Gun Safety Protective Order (GSPO). The bill would allow the court to search criminal and health records of the defendant to examine potential grounds to issue the order. Additionally, the court could issue a GSPO without having the defendant present, but the bill would require that the hearing be held within 14 days of receiving the petition. If the defendant is not present, the court could consider certain crimes the defendant was previously convicted of as grounds to issue the order. After an order has been issued by the court, the bill would require that it be personally served by a law enforcement officer, if possible. A district judge would be able to issue an emergency GSPO when the court is unavailable, but the order would expire at 5:00 p.m. on the first day the court is available.

Once a GSPO has been issued, the defendant would be required to relinquish all firearms and ammunition to law enforcement. The bill would allow the defendant to request a hearing after at least one year has passed since the date of issuance to terminate the order by proving by a preponderance of the evidence that the person does not pose a significant danger to themselves or others. The bill would require that a GSPO include a statement that the defendant cannot control, own, possess, purchase, receive, or attempt to purchase or receive a firearm or ammunition; information on how to relinquish their firearms or ammunition to law enforcement; the grounds that support issuing the order; a statement that the defendant has the right to request a hearing to terminate the order after one year; and a statement that the defendant may request legal counsel regarding the order. The bill would also make fabricating information in the GSPO petition a class C misdemeanor. Violations of a GSPO by a defendant would result in a five-year prohibition from owning, controlling, or purchasing firearms or ammunition.

The Office of the Attorney General (OAG) indicates that enactment of HB 2129 could result in additional expenditures of $100,000 to $500,000 from the State General Fund beginning in FY 2020 and spreading over a three-year period due to the potential filing of a civil lawsuit against the State of Kansas or a state employee to challenge the Act. The OAG indicates that it may have to refer such cases to outside counsel due to in-house caseloads. The OAG also indicates that any potential lawsuits filed in state or federal court would likely require litigation in both district and appellate

courts. Additionally, if a federal lawsuit challenging the Act was accepted by the Supreme Court of the United States, the OAG indicates that the costs of defending the state would likely exceed $500,000 in additional State General Fund expenditures.

The Kansas Bureau of Investigation (KBI) indicates that enactment of HB 2129 would require additional expenditures of $150,000 to $750,000 from the State General Fund in FY 2020 to create and maintain a searchable database in order to provide information to law enforcement regarding the renewal, denial, dissolution, or termination of GSPO's as well as provide aggregate statistical data to the public. Additionally, the KBI specifies that it would need to hire 1.00 Program Consultant FTE position at a cost of approximately $60,305 from the State General Fund, including $54,820 in salaries and wages and $5,485 for other operating expenditures. The Program Consultant would be responsible for reporting GSPOs to the National Instant Background Check System for firearm purchases, managing the GSPO database, and training courts and law enforcement agencies on using the GSPO database.

The Office of Judicial Administration (OJA) indicates that enactment of HB 2129 would increase the amount of time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases as well as supervising offenders convicted of violations of the Act. Additionally, the OJA indicates enactment of the bill could increase revenues from the collection of fines. However, the fiscal effect cannot be estimated because the additional amount of time to process, research, and hear cases as well as supervise offenders and the number of fines that would be issued is unknown.

The League of Kansas Municipalities indicates that enactment of HB 2129 could increase expenditures of local law enforcement agencies due to the increased workload to serve GSPOs and seize firearms and ammunition. Additionally, the bill could increase revenues to local law enforcement agencies because they would be able to charge storage fees to defendants for seized firearms and ammunition. However, the fiscal effect cannot be estimated because the number of GSPOs that would be served and the number of firearms and ammunition that would be seized is unknown.

The Kansas Sentencing Commission and the Kansas Department of Corrections indicate enactment of HB 2129 would not have an effect on prison admissions or beds. Any fiscal effect associated with HB 2129 is not reflected in *The FY 2020 Governor's Budget Report*.

Sincerely,

Larry L. Campbell
Division of the Budget

cc: Paul Weisgerber, KBI
    Janie Harris, Judiciary
    Scott Schultz, Sentencing Commission
    Linda Kelly, Corrections
    Chardae Caine, League of Municipalities
    Jay Hall, Association of Counties
    Willie Prescott, Office of the Attorney General