

February 14, 2019

The Honorable Rick Wilborn, Chairperson
Senate Committee on Judiciary
Statehouse, Room 541-E
Topeka, Kansas 66612

Dear Senator Wilborn:

SUBJECT: Fiscal Note for SB 106 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 106 is respectfully submitted to your committee.

SB 106 would require the Attorney General to seek to recover damages for the State of Kansas from any person who knowingly contributed to the wrongful conviction and imprisonment of a claimant who has been awarded a judgment in a wrongful conviction case. The bill would require the Attorney General to prosecute ouster and criminal proceedings as warranted by the evidence in such cases.

According to the Office of the Attorney General, enactment of SB 106 would likely result in the agency seeking to recover damages from prosecutors or law enforcement agents who contributed to the wrongful conviction and imprisonment of a claimant in their official capacity. The agency indicates that state prosecutors and law enforcement agents would be covered by the Kansas Tort Claims Act, requiring the agency to provide these officials with legal defense, which would require the agency to hire outside counsel to avoid a conflict of interest. However, if the individual that contributed to the wrongful conviction and imprisonment were to be a county or municipal official, they would be covered by the county or municipality's Tort Claims Act coverage, which would result in a transfer being made from the county or municipal government to the state. The agency indicates that some damages could also be recovered from a county or municipality's insurance coverage. In addition, the agency indicates the bill may result in it seeking to recover damages from individuals who are not government employees.

The agency indicates that the bill would authorize it to file criminal charges without a referral from a county or district attorney. The agency states that such cases would be able to be

absorbed within existing resources, though it may result in the agency declining other cases. However, the fiscal effect cannot be estimated because the number of cases that the agency would be required to prosecute is unknown. Any fiscal effect associated with SB 106 is not reflected in *The FY 2020 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink that reads "L. L. Campbell". The signature is written in a cursive style with a large, stylized initial "L".

Larry L. Campbell
Director of the Budget

cc: Willie Prescott, Office of the Attorney General