

February 13, 2024

The Honorable Kellie Warren, Chairperson
Senate Committee on Judiciary
300 SW 10th Avenue, Room 346-S
Topeka, Kansas 66612

Dear Senator Warren:

SUBJECT: Fiscal Note for SB 448 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 448 is respectfully submitted to your committee.

SB 448 would create a process for municipal courts to provide evaluations for defendants who could be criminally incompetent to stand trial and, if they were found incompetent, a procedure in which the district or county attorney would be asked to take the case. If the district or county attorney takes the case, the municipal court would dismiss their action to allow the district or county attorney to file. If the district or county attorney declines to file, the municipal court would dismiss the case. The bill would also allow county jails to seek reimbursement from the Kansas Department for Aging and Disability Services (KDADS) for waiting time for defendants held under municipal court charges. KSA 19-1936 allows jails to seek reimbursement from KDADS for time holding defendants waiting for competency evaluation or restoration. The bill would expand that reimbursement program to defendants held on municipal court charges.

According to KDADS, enactment of SB 448 would increase the number of referrals to the State Security Program at Larned State Hospital. There are some municipal courts that order or refer defendants to a state hospital for competency evaluation or restoration. KDADS estimates 10 to 15 cases occur annually from municipal courts that under current law do not clearly allow a municipal judge to order a defendant to a state hospital. SB 448 would create a clear path and authority for municipal courts to order defendants to a state hospital. KDADS estimates that enactment of the bill would result in an additional 20 to 50 defendants ordered under municipal charges. KDADS currently advocates with municipal courts for defendants to identify outpatient treatment or competency evaluation from a community resource since most municipal charges are at the misdemeanor level. A defendant with a misdemeanor charge will wait for state hospital placement for a time that would exceed the amount of a jail sentence. KDADS works with courts and prosecutors to move those competency evaluation and restoration cases to local treatment sources or through mental health courts in those jurisdictions that have them. SB 448 would increase referrals of defendants requiring competency restoration treatment on either an inpatient or outpatient basis.

There is a wait list for admission to the State Security Program at Larned State Hospital (LSH). In January 2024 there were a total of 170 defendants waiting for competency treatment or evaluation with nine waiting for evaluation. Additional defendants that could be referred under SB 448 would be added to the waitlist for the State Security Program. The average wait time in January 2024 was over 440 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). 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 | 113,750 |
| Social Worker | <u>1.00</u> | <u>2,843</u> | <u>73,918</u> |
| | 28.00 | \$146,818 | \$3,817,268 |

KDADS is currently in 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 defense that LSH is trying to reduce wait time through mobile competency, community-based competency evaluation and restoration, and adding capacity through the South-Central Regional State Hospital.

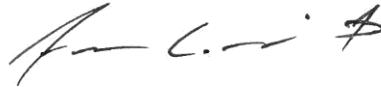
The provider impact would be connected to referrals to Community Mental Health Centers (CMHCs) that provide services in local communities. CMHCs also could perform the criminal competency evaluations ordered under the updated definitions under SB 448. Services performed by these providers are funded in the KDADS budget.

According to the Office of Judicial Administration, enactment of SB 448 would have a negligible effect on expenditures and revenues for the Judicial Branch. Any fiscal effect associated with SB 448 is not reflected in *The FY 2025 Governor's Budget Report*.

According to the League of Kansas Municipalities (LKM), enactment of SB 448 would have a fiscal effect on cities. Municipal courts would experience increased costs associated with enforcement of the provisions of the bill and training made necessary by the change in law. For some cities, this cost could be substantial as it does create a significant shift in how the courts currently operate regarding this issue. However, LKM is unable to determine the fiscal effect of the bill. The Kansas Association of Counties indicates that enactment of SB 448 could affect

county expenditures in making the determination and providing mental health services to individuals after the determination.

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
Leigh Keck, Department for Aging & Disability Services
Jay Hall, Kansas Association of Counties
Wendi Stark, League of Kansas Municipalities