

February 13, 2025

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 237 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 237 is respectfully submitted to your committee.

SB 237 would require the court, when determining the amount of child support that must be paid, to consider and order the use of the total value of any individual retirement account that is qualified under certain sections of the Internal Revenue Code of 1986 if the person has experienced a loss of income or termination from employment due to criminal conduct, loss, revocation, suspension or surrender of a professional license due to misconduct, or voluntary underemployment. The bill would require the court to order the use of the qualified individual retirement plan accounts mentioned above to maintain existing child support obligations until the funds in the account were exhausted or the parent established other means to pay the support. The claims for child support against such individual retirement accounts would take priority over all other claims, would not be subject to early withdrawal penalties if used for child support, and would be executed through direct payment from the retirement account through the Kansas Payment Center.

The bill would also amend KSA 23-3005 to state that a “material change of circumstance,” as used in this section for when the court may modify prior child support orders within three years of the date of the order, does not include a loss of income or termination from employment due to criminal conduct, loss, revocation, suspension or surrender of a professional license due to misconduct, or voluntary underemployment. KSA 60-2308 would be amended to add a provision that qualified retirement accounts are not exempted from claims of a child support order. SB 237 would take effect after publication in the *Kansas register*.

According to the Department for Children and Families (DCF), enactment of SB 237 could have fiscal effect on revenue, but the total effect could not be estimated. The bill would place the DCF Child Support Services (CSS) in direct violation of 45 CFR 302.56(c)(1) (“the Final Rule”) which requires that state child support guidelines “must provide that a child support order be based

on the noncustodial parent’s earnings, income, and other evidence of ability to pay.” CSS has had a longstanding interpretation of this regulation that state guidelines should be “income based.” Additionally, the Final Rule states, “Without an evidentiary basis, imputed income is fictitious income.” Kansas modified its child support guidelines in 2020 and 2024 to comply with the final rule.

While the bill does not specifically say “incarceration,” DCF is assuming that is what is meant by “criminal conduct.” 45 CFR 302.56(c)(3) prohibits states from treating incarceration as voluntary unemployment. It further prohibits states from barring modification of support obligations during incarceration.

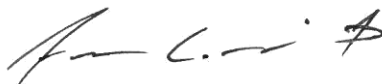
Failure of CSS to comply with the regulations and the Final Rule could result in a letter of noncompliance from the Federal Office of Child Support and the implementation of penalties potentially resulting in a loss of federal funding for the CSS program. The Federal Office of CSS Central Office Division of Policy reviewed states in 2022 and found Kansas to be in compliance with the Final Rule in the Child Support Guidelines as they are currently written.

Finally, consideration of individual retirement accounts for purposes of calculating child support, could pose additional expenditures and burdens for CSS contractors and the courts. It would require extensive discovery and more litigation to obtain and enforce the provisions. It would also require the courts to consider federal penalties to withdraw funds from accounts as those would still be in place. This does not have an immediate impact to CSS but could in the future as contracts are renegotiated.

The cost for contracts used to administer the DCF Child Support Program are currently in place through September 30, 2025, with three additional renewals. The bill would not increase these contracts until such time as they were re-bid. If in violation of “the Final Rule” DCF would risk loss of the Federal Funding to support child support services. DCF CSS received federal funding for child support services totaling \$24,634,490 in FY 2023 and \$25,521,805 in FY 2024, with a projection of \$25,843,038 for FY 2025. Any loss of revenue would need to be replaced with State General Fund.

The Office of Judicial Administration indicates that enactment of SB 237 would have no fiscal effect on the Judicial Branch. Any fiscal effect associated with SB 237 is not reflected in *The FY 2026 Governor’s Budget Report*.

Sincerely,



Adam C. Proffitt
Director of the Budget

cc: Trisha Morrow, Judiciary
Kim Holter, DCF