

February 27, 2020

REVISED

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

Dear Senator Wilborn:

SUBJECT: Revised Fiscal Note for SB 333 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following revised fiscal note concerning SB 333 is respectfully submitted to your committee.

SB 333 would specify that after a person has been found to be incompetent and not likely to regain competency within six months, the court would be allowed to dismiss misdemeanor and nonperson felony charges pending against the person without prejudice.

If the person was charged with a person felony, the court would be required to commit the person into the custody of the Secretary for Aging and Disability Services. If the person is committed into the custody of the Secretary, the Secretary must send a written evaluation to the court within 90 days. The court would set a hearing to be held within 30 days after the report is received.

If the court finds the person is likely to cause harm to themselves or others, the court would place the person into a setting with the least restrictive conditions for a period of time no longer than 24 months. If a person who has been placed within the custody of the Secretary no longer appears likely to cause harm to themselves or others, the Secretary could request that the district court order placement in a less secure setting or the court could discharge the person. If the person appears to need a more restrictive setting, the Secretary may request the district court place the person in a more secure setting.

Prior to any change in placement, the Secretary would be required to submit a report to the court that includes: a description of the defendant's current course of treatment; a current assessment of the defendant's mental status or condition; a recommendation for future treatment, if any; and a recommendation regarding the requested change in placement, conditional release, or discharge. After the report is received, the courts would conduct a hearing. The county or

district attorney would provide victim notification regarding the hearing. The court could order the person to undergo an evaluation by a person designated by the court. If there is an evaluation performed, the report must be submitted to the district or county attorney and defense counsel at least seven days before the hearing.

If the court orders conditional release, the person could be remanded to a facility or a community services program. Supervision of the person would be by the district court probation and parole services. If the person is to be conditionally released, the person could be kept in a facility for not more than 45 days while arrangements for reentry are being made.

At any time during the conditional release period, the district or county attorney or defense counsel could file a motion for modification. The court must conduct an evidentiary hearing within 14 days of the date the motion is filed. If the court finds the conditional provisions of release should be modified, the court would so order.

If the court is informed the defendant is not complying with the provisions of conditional release, the court would conduct a hearing and may order additional conditions or place the defendant in a more restrictive setting.

At least annually, the court would be required to conduct a status hearing. If at any time the court finds that the person is no longer a harm to themselves or others or is no longer mentally ill, the court would dismiss the criminal case without prejudice unless the person has attained competency. If a criminal case is dismissed, the statute of limitations would not continue to run until that person is determined to be competent.

The Office of Judicial Administration estimates enactment of the bill could require additional work time and training for court service officers; however, a fiscal effect cannot be estimated until the Judicial Branch has had an opportunity to operate under the bill's provisions.

The Kansas Department for Aging and Disability Services (KDADS) states enactment of SB 333 would create long-term expenditures in the four following areas: in-patient or out-patient services for forensic evaluations; in-patient restoration service costs, including building and staffing costs; out-patient structured facility and staffing costs; and building a robust network of community services and supports. However, KDADS is unable to estimate a long-term fiscal effect.

KDADS also estimates additional expenditures between \$20,000 to \$30,000 from the State General Fund in FY 2021 to secure technical assistance services from the federal Substance Abuse and Mental Health Services Administration GAINS Center to develop an implementation plan and provide solutions using the Sequential Intercept Model (SIM) as a strategic planning tool. According to KDADS, the SIM is an effective tool when used as a community strategic planning tool to assess available resources, determine gaps in services, and plan for community change. These activities are best accomplished by a team of stakeholders that cross over multiple systems, including mental health, substance use, law enforcement, pretrial services, courts, community corrections, and others.

Since the original fiscal note was issued, KDADS has provided additional estimates, based on information the agency has recently received. The revised estimate is based on KDADS not operating the facilities that would require an initial startup and on-going costs. However, the estimate is based on KDADS contracting with existing facilities. Based on coverage for 35 individuals at a daily rate of \$766, the first year of coverage would be approximately \$10.0 million from the State General Fund in FY 2021. For FY 2022, coverage for 70 individuals would be approximately \$20.0 million from the State General Fund. In FY 2023, the agency estimates additional State General Fund expenditures of approximately \$30.0 million for 105 individuals.

The Kansas Department of Corrections states there is a possible drafting error in Section 6 of the bill that specifies that “A defendant on conditional release shall be supervised by the district court probation and parole services.” The Department states it is not familiar with the term “parole” being an activity of the district courts. If the intent of the bill is that the district court provides probation services and the Department provides parole services for individuals who are subject to the bill’s provisions, that would be additional work for the Department, and it would result in additional expenditures. The agency is unable to estimate a fiscal effect because it does not know how many individuals would be subject to the provisions in the bill. The Department states based on FY 2019 actuals, the current cost to supervise a person on parole is \$4.92 per day, per offender. Any fiscal effect associated with SB 333 is not reflected in *The FY 2021 Governor’s Budget Report*.

The Kansas Association of Counties states that the cost of holding individuals that are not competent to stand trial could increase liability and risk for counties, if the bill is enacted.

Sincerely,

A handwritten signature in black ink that reads "L. L. Campbell". The signature is fluid and cursive, with the first and last names being clearly legible.

Larry L. Campbell
Director of the Budget

cc: Mary Rinehart, Judiciary
Connie Hubbell, Aging & Disability Services
Jay Hall, Association of Counties