

March 10, 2021

The Honorable Kellie Warren, Chairperson
Senate Committee on Judiciary
Statehouse, Room 441B-E
Topeka, Kansas 66612

Dear Senator Warren:

SUBJECT: Fiscal Note for SB 230 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 230 is respectfully submitted to your committee.

SB 230 would create the crime of deprivation of rights under the color of law. The deprivation of rights under the color of law would be an action a person, under color of any law, statute, county resolution, ordinance or regulation, that knowingly subjects another person to the deprivation of any rights, privileges or immunities secured or protected by the constitution or laws of the United States or the State of Kansas, if the deprivation caused one of six different results described in the bill. SB 230 would set penalties for certain violations that range from a class B misdemeanor to a level 4, person felony.

A person injured as a result of conduct of another person that is prohibited under SB 230 could bring action in court against the person or persons engaged in such conduct. A prevailing plaintiff would be entitled to recover up to three times the actual damages or \$10,000, whichever is greater, and the cost of the suit, including reasonable attorney fees. Any action must be filed within three years after the date of discovery of the violation or the conclusion of a related criminal case, whichever is later. The victim could request the Attorney General to pursue cases on behalf of any Kansas victim and all damages obtained would go to the victim. The Attorney General could seek reasonable attorney fees and costs in the suit. A court would order a person convicted of deprivation of rights under color of law to pay restitution to the victim for expenses incurred or reasonably certain to be incurred by the victim as a result of the offense, including reasonable attorney fees and costs.

Estimated State Fiscal Effect				
	FY 2021 SGF	FY 2021 All Funds	FY 2022 SGF	FY 2022 All Funds
Revenue	--	--	--	--
Expenditure	--	--	\$202,067	\$202,067
FTE Pos.	--	--	--	2.00

The Office of Judicial Administration states that the bill could increase the number of cases filed in district courts because it creates a new crime, which would increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. Since a portion of the crime would carry a misdemeanor penalty, there could also be more supervision of offenders required to be performed by court services officers. The bill could also result in the collection of additional docket fees, supervision fees and fines assessed in those cases filed under the provisions of the bill. However, the agency cannot estimate a fiscal effect.

The Sentencing Commission states SB 230 would have an impact on prison admissions and beds as well as the workload of the Commission. However, the agency cannot estimate a fiscal effect because there is not information available regarding a crime of deprivation of rights under color of law. Based upon the Commission’s most recent ten-year projection contained in its FY 2021 Adult Inmate Prison Population Projections report, it is estimated that the year-end population would be 8,880 inmates in FY 2021 and 8,920 inmates in FY 2022. The Department of Correction indicates that the bill would not have a fiscal effect on agency operations. However, any increase in prison population would have a detrimental effect on the limited ability to provide for social distancing among resident population. That inability to socially distance contributes to spread among residents in the facility, staff working at the facility and those residents who are released into the community.

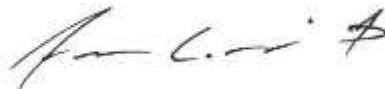
The Office of the Attorney General (OAG) states that the bill creates a new crime, which could allow it to recover costs when the victim requests the OAG to pursue a case. The OAG indicates that if it were to prosecute a case under the new crime at the request of a local county or district attorney, the costs could be borne by the county in which the case is being prosecuted.

In civil cases where the defendant is a state official or employee, the Kansas Tort Claims Act (KTCA) would require the OAG to defend the action. In order to defend state officials and employees, the OAG estimates it would require \$202,067 from the State General Fund in FY 2022. This amount includes hiring 1.00 Assistant Attorney General FTE position at a cost of \$112,604, 1.00 Legal Assistant FTE position at a cost of \$61,101, and related operating costs totaling \$28,362. The OAG states that the types of people against whom the new civil action could be brought is a large group consisting mainly of state, county and local government officials and employees. The injuries suffered and the acts that could lead to claimed injuries are very broad, which could cause a significant number of civil litigation cases. The burden of proof is lower in a civil case and the victim could pursue a civil case even if the criminal case resulted in a not guilty verdict.

The OAG cannot represent both the plaintiff and defendant in the same action and this would require the agency to hire outside counsel to represent one of the parties. Those cases where the civil suit is successful, the state could pay the plaintiff's attorney, the defense attorney, and any other judgment awarded by the court. The agency states that in these cases the cost to the state could be in the millions of dollars. However, the agency has no data to estimate a fiscal effect. Any fiscal effect associated with SB 230 is not reflected in *The FY 2022 Governor's Budget Report*.

The League of Kansas Municipalities and the Kansas Association of Counties indicate that the bill could impact cities and counties in the event a city or county officer or employee was found liable or guilty of actions in the bill. However, a fiscal effect cannot be estimated.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Proffitt", with a stylized flourish at the end.

Adam Proffitt
Director of the Budget

cc: Willie Prescott, Office of the Attorney General
Debbie Thomas, Judiciary
Randy Bowman, Corrections
Scott Schultz, Sentencing Commission
Wendi Stark, League of Municipalities
Jay Hall, Association of Counties