

March 8, 2022

The Honorable Robert Olson, Chairperson
Senate Committee on Federal and State Affairs
Statehouse, Room 144-S
Topeka, Kansas 66612

Dear Senator Olson:

SUBJECT: Fiscal Note for SB 406 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 406 is respectfully submitted to your committee.

SB 406 would enact the Back the Blue Act. Under the Act, the district courts would have jurisdiction over all proceedings under the Act. The bill would allow the spouse of the defendant; a former spouse of the defendant; an individual who has a child in common with the defendant; an individual who is or has been in a dating relationship with the defendant; an individual who resides or has resided in the same household with the defendant; a family member of the defendant; or an individual who has a close relationship with the defendant to file a verified petition with any judge of the district court or clerk of the court seeking relief under the Act. The bill outlines the factors that would have to be included in the verified petition.

Within 21 days of the filing of the petition, the court would be required to hold a hearing where the plaintiff would be required to prove the allegations by a preponderance of the evidence and the defendant would have an opportunity to present evidence on their behalf. Prior to the hearing, upon good cause shown, the court on the motion of a party may enter temporary relief orders that the court would deem necessary to prevent irreparable injury. If the hearing is continued, the court may make or extend temporary orders as it deems necessary.

The bill would allow the court to issue a gun violence restraining order if the court determines there is reasonable cause to believe that the defendant poses a significant risk of personal injury to self or others by possessing a firearm. The bill specifies what factors the court would consider in determining whether reasonable cause exists. Also, the bill outlines what factors the court would consider if the court determined that a gun violence restraining order should be issued. A gun violence restraining order would be effective and enforceable immediately after the

order is served on the defendant or after the defendant receives actual notice of the order. The order may be enforced anywhere in the state by a law enforcement agency that receives a true copy of the order, is shown a copy of the order, or has verified the order's existence.

The bill would allow an individual under an order issued to file a motion to modify or rescind the order and request a hearing. The motion would be required to be filed within 14 days after the order is served on the defendant or after the defendant receives actual notice of the order, unless good cause is shown for filing the motion after the 14 days have elapsed. SB 406 would specify that the court would be required to assess costs against the defendant and may award attorney fees to the plaintiff in any case in which the court issues a gun violence restraining order. The court may award attorney fees to the defendant in any case where the court finds that the petition to seek relief pursuant to the Act is without merit.

SB 406 outlines the steps a defendant would be required to take if a gun violence restraining order is issued and the duties of law enforcement officers and agencies concerning gun violence restraining orders. Depending on where the defendant resides, the clerk of the court would be required to notify the police department or county sheriff if the clerk receives proof that the defendant has been served or the order is rescinded, modified, or extended. Any proceedings under the Act would be in accordance with Chapter 60 of the *Kansas Statutes Annotated* and would be in addition to any other available civil or criminal penalties. If a court finds a violation of any order issued pursuant to the Act, the court could find the defendant in contempt. If the court finds a plaintiff has knowingly made a false statement to the court in a petition for a gun violence restraining order, a motion for an extension of any order, or in support of a petition or motion, the court could find the plaintiff in contempt. The bill would make it unlawful for an individual to possess a firearm or concealed carry license issued to the individual while there is a valid gun restraining order in effect against the individual. A violation would be a severity level eight, nonperson felony.

The Office of Judicial Administration states enactment of SB 406 would have a fiscal effect on Judicial Branch operations because the bill's provisions allow petitions to be filed with the district courts and require numerous court hearings for cases, which could increase time spent by court employees and judges processing and deciding these cases. The Office indicates that the bill's provisions would increase a court clerk's workload because of the additional filings and notifications the bill would require the court to perform. Since the crime included in the bill carries a severity level eight, nonperson felony, there could be additional supervision required to be performed by court service officers. According to the Office, a fiscal effect cannot be estimated until the Judicial Branch has had an opportunity to operate under the bill's provisions.

The Kansas Sentencing Commission indicates the bill may have an effect on prison admissions and bed space; however, the Commission does not have enough information to provide an estimate.

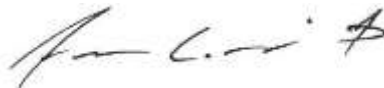
The Office of the Attorney General states the Concealed Carry Licensing Unit would incur additional expenditures to modify its data base to track persons subject to gun violence restraining orders who are not eligible for concealed carry licensure. In addition, the Office states the state

could face a civil lawsuit challenging the constitutionality of the legislation. The Office would be responsible for defending the lawsuit and if the litigation necessitates the Office using outside counsel, because of in-house caseloads, the estimated cost to defend a lawsuit would be between \$100,000 to \$500,000 from the State General Fund over a one to three-year period.

The Office states if a lawsuit is filed in state court, the case would likely be in litigation for at least one to three years. The Office estimates determinations being made at both the district court and Court of Appeals levels with possible litigation to the Kansas Supreme Court being necessary. If a lawsuit is filed in federal court, the case would likely be in litigation for at least one to three years with determinations made at the district court and 10th Circuit Court of Appeals. If the U.S. Supreme Court were to accept the case, the case time frame would extend beyond three years. If a challenge is successful, the state would also have to pay the legal fees for the challenger, which would likely exceed \$500,000 from the State General Fund. In addition to a constitutional challenge, the Office states there are a number of possible challenges that could arise regarding the implementation of the processes outlined in the bill. Any fiscal effect associated with SB 406 is not reflected in *The FY 2023 Governor's Budget Report*.

The League of Kansas Municipalities states enactment of the bill would increase costs to local law enforcement agencies because the bill would require officers to retrieve firearms from certain offenders. The added duties would require additional time and training. The Kansas Association of Counties states the bill's enactment could increase costs for county sheriffs to store firearms.

Sincerely,



Adam Proffitt
Director of the Budget

cc: Vicki Jacobsen, Judiciary
Willie Prescott, Office of the Attorney General
Janelle Williams, Judicial Council
Scott Schultz, Sentencing Commission
Randy Bowman, Corrections