

March 4, 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 229 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 229 is respectfully submitted to your committee.

Under SB 229, a person who is wrongfully convicted and is awarded damages would be entitled to receive interest on the damages at the statutory rate from the date the suit for the claim was filed. The bill would also require the Attorney General to seek to recover damages for the state from a person who knowingly contributed to the wrongful conviction and imprisonment. The Attorney General would also prosecute ouster and criminal proceedings as the evidence in a case warrants.

The Office of Judicial Administration states that the bill could result in additional actions being filed that would increase time spent by judges and court staff in hearing and processing those cases. The bill could also result in additional docket fees and other costs collected by the court. However, a fiscal effect cannot be estimated.

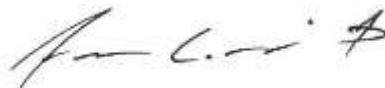
The Office of the Attorney General (OAG) states that the bill does not define “knowingly contributed” and therefore the agency assumes that those individuals would mainly be prosecutors or law enforcement agents acting in their official capacities and would be covered by the Kansas Tort Claims Act, either by the state or the county or municipality where the individual is employed. If the individual is a state official covered by the Kansas Tort Claims Act, the OAG would provide the official defense and would require outside counsel to be hired, to avoid conflict of interest. If the individual involved were a county or municipal official, the cost of the defense or any judgment would be covered by the county or municipality’s Tort Claims Act coverage or insurance coverage.

The OAG states that it currently has the authority to bring ouster proceedings. Therefore, the new authority would be to bring criminal charges without a referral from a county or district attorney. The Office indicates that cases that would warrant criminal prosecution would not be significant and could be absorbed within existing resources; however, it could result in the OAG declining other cases it could be asked to prosecute by county or district attorneys.

The provision regarding payment of interest calculated from the date the claim was filed could increase payments for wrongful conviction claims. The OAG notes that the bill does not specify when the interest calculation ends. The agency cannot estimate the fiscal effect of the bill because it is unknown how many successful wrongful conviction claims would be filed, the amount of the claims, or the interest rate at the time of the claim. Any fiscal effect associated with SB 229 is not reflected in *The FY 2022 Governor's Budget Report*.

The Kansas Association of Counties indicates that the bill could have a fiscal effect if there is a successful civil action. However, there is no data to estimate a fiscal effect. The League of Kansas Municipalities states that the bill could increase expenditures to defend against allegations of wrongdoing; 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