

February 15, 2024

The Honorable Susan Humphries, Chairperson  
House Committee on Judiciary  
300 SW 10th Avenue, Room 582-N  
Topeka, Kansas 66612

Dear Representative Humphries:

**SUBJECT:** Fiscal Note for HB 2692 by House Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2692 is respectfully submitted to your committee.

HB 2692 would allow a defendant to raise a mental defect as a defense to a criminal prosecution under the Kansas Criminal Code if specific requirements have been met. The bill would create exceptions to this affirmative defense if the defendant's mental defect or mental disease was solely due to alcohol or chemical abuse, antisocial personality disorder, intellectual disability, organic personality syndrome, or an organic disorder.

The defense would be required to file a written notice that the defendant is claiming to have a mental defect that prevents him or her from understanding their action or an element of the crime. The defendant would also be required to give the prosecutor notice within 30 days after entering a not guilty plea. The court could use its discretion to allow a late notice of the defendant's intent to raise mental defects as a defense if good cause is shown for the late notice. A defendant who uses a mental defect would be required to abide by all court orders requiring a mental examination. This would include submitting to a mental health examination by the physician or licensed psychologist chosen by the court.

According to the Kansas Department for Aging and Disability Services (KDADS), enactment of HB 2692 would expand the definitions of conditions that can be used to justify a criminal defense related to lacking mental capacity to stand trial. The bill would add the new criteria of laboring under a mental disease at the time of a criminal act that made the defendant not know the nature and quality of the act or that the act was wrong. This could increase the number of criminal defendants using lack of mental state as a defense that would require admission to the State Security Program at Larned State Hospital (LSH) for this evaluation. This could also increase

the number of individuals ordered for care and treatment at a state hospital pursuant to KSA 22-3428 rather than serving a criminal sentence at a Department of Corrections facility.

Additional defendants ordered to LSH for evaluation of their mental state at the time of the alleged offense would use the same bed space as defendants ordered to LSH for competency restoration and other criminal evaluation and treatment statutes. KDADS believes more defendants would meet the new criteria for lacking culpability and would initially be committed to treatment for an indefinite period of time in a secure hospital facility. Most would need to remain in a secure forensic setting for a minimum of two to three years and some would remain hospitalized forever.

There is a wait list for admission to the State Security Program at LSH. In January 2024 there were a total of 170 defendants waiting for competency treatment or evaluation. Additional defendants that could be referred under HB 2692 would be added to the waitlist for the State Security Program. The average wait time in January 2024 was over 440 days.

The State Security Program has one closed 30-bed unit that could be opened with adequate staffing. If LSH used contract nursing agencies to staff the 30-bed unit to add more capacity, the annual cost would be \$3.8 million from the State General Fund (see table below). These costs are not currently in the LSH budget and could result in an increase in hospital staff turnover.

#### **Cost to Staff Additional State Security Program Unit**

<u>Classification</u>	<u>Number</u>	<u>Bi-Weekly</u>	<u>Annual</u>
RN (Contract)	3.00	\$ 22,800	\$ 592,800
LPN (Contract)	3.00	18,000	468,000
MHDDT (Contract)	17.00	74,800	1,944,800
Psychologist (Contract)	1.00	9,200	239,200
Medical Staff (Contract)	1.00	14,800	384,800
Activity Therapist	2.00	4,375	113,750
Social Worker	<u>1.00</u>	<u>2,843</u>	<u>73,918</u>
	28.00	\$146,818	\$3,817,268

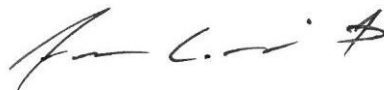
KDADS is currently in a lawsuit challenging the amount of time criminal defendants spend waiting for competency evaluation or restoration. The bill would add people to the wait list by adding defendants that could be ordered to the State Security Program. Adding more people to the waitlist could risk the State's defense that LSH is trying to reduce wait time through mobile competency, community-based competency evaluation and restoration, and adding capacity through the South-Central Regional State Hospital.

The provider impact would be connected to referrals to Community Mental Health Centers (CMHCs) that provide services in local communities. CMHCs also could perform the criminal competency evaluations ordered under the updated definitions under HB 2692. Services performed by these providers are funded in the KDADS budget.

According to the Office of Judicial Administration, enactment of HB 2692 could extend the time length of some trials because it expands criminal defense for a defendant. This, in turn, would increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. Nevertheless, until the courts have had an opportunity to operate under the provisions of HB 2692, an accurate estimate of the fiscal effect on expenditures by the Judicial Branch cannot be given. The bill would not have a fiscal effect on revenues to the Judicial Branch or State General Fund. Any fiscal effect associated with HB 2692 is not reflected in *The FY 2025 Governor's Budget Report*.

The Kansas Association of Counties indicates that enactment of HB 2692 could affect county expenditures in making the determination and providing mental health services to individuals after the determination.

Sincerely,

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

Adam C. Proffitt  
Director of the Budget

cc: Trisha Morrow, Judiciary  
Jay Hall, Kansas Association of Counties  
Leigh Keck, Department for Aging & Disability Services