

February 4, 2022

The Honorable Fred Patton, Chairperson
House Committee on Judiciary
Statehouse, Room 582-N
Topeka, Kansas 66612

Dear Representative Patton:

SUBJECT: Fiscal Note for HB 2536 by Representatives Lynn and Hoheisel

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2536 is respectfully submitted to your committee.

HB 2536 would establish certain rights to survivors of sexual assault. The bill would require a survivor to be informed of certain rights prior to a medical evidentiary or physical exam or before any law enforcement officer, prosecutor, or defense attorney interviews the survivor. The bill would require the law enforcement officer or medical provider who initially interacts with a survivor to provide the survivor with a document that explains the survivor's rights. A survivor would have the right to have retained counsel present during all stages of any medical or physical examination, interview, investigation, or other interaction with the legal or criminal justice system. Survivors who are aggrieved by a violation of this bill would have a civil cause of action against the person or entity that violated provisions of the bill. The bill would allow a court to order injunctive or other equitable relief.

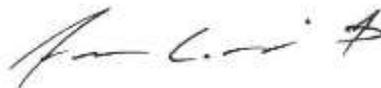
The Office of the Attorney General (OAG) indicates that enactment of the bill would require it to develop a notice to survivors. The OAG states that the requirements of the notice are extensive and some of the information included would be variable based upon the location that the notice is provided. As a result, the OAG estimates significant staff time would be required to develop notices and keep them updated for local law enforcement and medical providers across the state. In addition, the OAG would likely have to provide training to local law enforcement, medical providers, and victim support agencies to ensure compliance.

The OAG also indicates that the legal cause of action against a person that could have violated the bill would create additional legal liability for the state, in particular for agencies and individuals covered by the Kansas Tort Claims Act. This could include the Attorney General, a

district attorney, or a state law enforcement agency, such as the Kansas Bureau of Investigation or the Highway Patrol. The OAG would be required to provide legal defense against such lawsuits. The OAG indicates that, depending on the workload of in-house attorneys, it is possible that outside counsel would need to be hired by the state to defend the lawsuits. The OAG also states that, while the bill is unclear on what remedy an individual could seek in such lawsuits, it is possible that the state could be required to pay damages and attorney fees if it is found in violation of the bill. In addition, some provisions of the bill could be issues on appeal in criminal cases, which could increase the workload of the OAG criminal appellate attorneys in defending criminal convictions. However, a fiscal effect cannot be determined because the additional staff time, number of cases, and potential need for outside counsel expenditures cannot be estimated.

The Office of Judicial Administration indicates that enactment of HB 2536 could increase the number of cases filed in district courts because it allows for a civil cause of action. This could increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. The bill could also result in the collection of additional docket fees in those cases filed under the provisions of the bill. However, a fiscal effect cannot be determined because the number cases and docket fees cannot be estimated. Any fiscal effect associated with HB 2536 is not reflected in *The FY 2023 Governor's Budget Report*.

Sincerely,



Adam Proffitt
Director of the Budget

cc: Willie Prescott, Office of the Attorney General
Vicki Jacobsen, Judiciary
David Fye, Behavioral Sciences