

March 25, 2022

The Honorable Kellie Warren, Chairperson
Senate Committee on Judiciary
Statehouse, Room 346-S
Topeka, Kansas 66612

Dear Senator Warren:

SUBJECT: Fiscal Note for SB 558 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 558 is respectfully submitted to your committee.

SB 558 would establish a procedure that would allow a Kansas resident convicted of a specific felony that has been expunged to petition the court to remove the person's disenfranchisement to possess firearms. A person may petition the district court in the district where the person resides to restore their firearms rights. The court may grant a petition to restore a person's firearms rights if the petitioner satisfies all of the criteria specified in the bill and a court would be required to deny the petition if the court finds one of the criteria specified in the bill is not met. The clerk of the district court would be required to provide notice of the hearing to the county or district attorney where the petition is filed at least four weeks prior the date of the hearing.

The petitioner may present evidence in support of the petition and the county or district attorney may present evidence in opposition. The petitioner would have the burden of proof regarding the petition. For a petition for restoration of firearms rights, the bill specifies that the docket fee would be \$176. On and after July 1, 2022, through June 30, 2025, the Supreme Court may impose a charge, not to exceed \$19 per case, to fund the costs of non-judicial personnel. If the court denies the petition, the person may petition the court for restoration of the person's firearms rights not earlier than one year from the date of the denial of the prior petition, unless the denial of the petition is because of the existence of a protection order and in that case the person could file a new petition upon expiration of the protection order.

If the court grants the petition, within ten days after entry of the order, the clerk of the district court would be required to send a certified copy of the order to the sheriff of the county where the petitioner resides, the Attorney General, and the Kansas Bureau of Investigation (KBI).

The KBI would be required to submit each order to the National Instant Criminal Background Check System Denied Transaction File. If a person's rights are restored and the person is subsequently convicted of a second or subsequent felony that disqualifies the person from possessing a firearm, the person's rights would be automatically revoked, and the person would be ineligible for restoration. A person who knowingly submits false information under the bill's provisions would be guilty of a class A nonperson misdemeanor and would also be prohibited from petitioning to have their firearms rights restored.

The bill would remove a provision from current law that courts must consider when reviewing petitions for expungement concerning that the petitioner is not likely to pose a threat to the safety of the public by possessing a firearm. The bill would require individuals with expunged convictions to disclose the conviction in connection with obtaining a license to carry a concealed handgun under the Personal and Family Protection Act. SB 558 would also remove a provision from current law that automatically restores a person's firearm rights upon expungement. The bill would specify that a person must petition to have their firearms rights restored. The bill also adds provisions dealing with when a custodian of expunged records would be authorized to disclose the existence of the records.

The Office of Judicial Administration states enactment of SB 558 could increase the number of cases filed in district court because it would allow a person to petition the court to have their firearms rights restored after felony convictions are expunged, which could increase time spent by court employees and judges processing and deciding these cases. The Office states the bill's enactment could result in the collection of additional docket fees in those cases filed under the bill's provisions. 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 states the bill's enactment would decrease prison admissions and beds; however, the Commission cannot determine what that effect would be. The Department of Corrections states the bill's enactment would not have a fiscal effect on agency operations. The KBI is unable to estimate what, if any fiscal effect, enactment of SB 558 would have on agency operations.

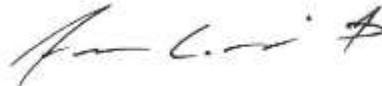
The Office of the Attorney General states enactment of the bill would increase physical and electronic storage space required to maintain the new records for the restoration of firearms rights. The bill would also increase the time required to review conceal carry applications and cross reference the applications with the new records, according to the Office. The agency indicates this may require an additional FTE position to ensure all applications are reviewed within the required statutory timeframe of 90 days. The Office indicates that by creating a new process and new fees associated with the restoration of firearms rights, this could reduce the number of applicants for concealed carry licenses. Since the Conceal Carry Program is a fee-funded program, there could be a long-term fiscal effect; however, the Office is not able to estimate a fiscal effect at this time.

The Office also states if the bill is enacted, it could be subject to legal challenges. If the legislation is challenged, it would likely need to go through the appellate process to get a definitive

ruling on the validity of the law. Depending on which court system, federal or state, the case was filed in, getting to an appellate decision could take two to four years. The defense could be handled by Office staff, but it is possible that specialized outside counsel would need to be hired by the state to defend a lawsuit. The defense could entail expending hundreds of thousands of dollars over the life of the lawsuit. If a challenge were successful, the state could be ordered to pay the plaintiff's attorney fees. Any fiscal effect associated with SB 558 is not reflected in *The FY 2023 Governor's Budget Report*.

The Kansas Association of Counties states the bill's enactment could add costs to county court systems and sheriffs to work through the process of restoration.

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: Vicki Jacobsen, Judiciary
Jay Hall, Association of Counties
Paul Weisgerber, KBI
Scott Schultz, Sentencing Commission
Randy Bowman, Corrections
Willie Prescott, Office of the Attorney General