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Testimony Before the House Committee on General Government Budget

**By Kansas Attorney General Kris Kobach
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Chairman Hoffman and Members of the Committee:

Thank you for the opportunity to provide this testimony to you on the budget recommendations from the Office of Attorney General.

The summary of my message is this: we must restore the budget cut that was imposed when the governor executed the 10% across-the-board cut in July 2021. Specifically, that means restoring the \$650,000 that was cut out of our budget in 2021. The economy is back on track, and Kansas has a significant budget surplus.

Before I explain why that is necessary, I want to briefly explain what our office does and the broad contours of our budget.

The Core Missions of the Attorney General's Office (AGO)

The overarching mission of the Attorney General's office is to seek justice for all Kansans, protect their God given rights and to enforce the law. Seeking justice and enforcing the law come in many different forms. Below is a short summary of the various divisions and what they do.

Office of the Solicitor General

- represents the State in civil and criminal appeals;

- has agreements with many county attorneys to handle all the county's criminal appeals.

Civil Litigation

- defends the state in tort claims, prisoner litigation, and other cases where the state is the Defendant;
- assists other state agencies with administrative proceedings, license revocations, etc.;
- handles civil commitments pursuant to the Kansas Sexually Violent Predator Act;
- reviews/investigates KORA and KOMA complaints and brings enforcement actions against other governmental units when necessary;
- administers Kansas' obligations under the Tobacco Master Settlement Agreement.

Criminal Litigation Division

- Prosecutes cases referred to the office by county and district attorneys;
- primarily handles homicides and off-grid sex crimes, which many county attorneys do not have the experience or resources to prosecute.

Crime Victims Compensation Board

- provides victims with financial assistance to help with losses that are the direct result of a crime.

Victim Services

- works to educate crime victims and community members on victims' rights and coordinates statewide victims' service programs;
- houses the Human Trafficking Advisory Board and the Child Death Review Board.

Legal Opinions and Government Counsel

- researches and prepares legal opinions in response to requests from elected officials or government agencies seeking interpretation and advice on state laws;
- provides general counsel services to numerous state agencies.

Consumer protection and antitrust

- investigates scams;

- brings enforcement actions for violations of the Consumer Protection Act, the No-Call Act, the Roofing Registration Act, the Charitable Organization and Solicitations Act, and the Kansas False Claims Act;
- manages licensing and inspections for roofers and scrap metal dealers;
- works with other states in large, multistate price fixing and consumer protection suits;
- brings in hundreds of thousands of dollars to the state every year through fines and settlements, and bring restitution to consumers.

Fraud and Abuse litigation

- prosecutes economic/white-collar crimes (often involving abuse, neglect, and exploitation of the elderly);
- under agreement with the Departments of Revenue and Insurance, prosecutes tax and securities fraud.

Medicaid Fraud and Abuse

- investigates and prosecutes Medicaid provider fraud, as well as physical abuse, neglect, and financial exploitation of dependent adults in residential care facilities and board and care facilities that receive Medicaid funding;
- receives 75% its from the federal government.

Medicaid Inspector General

- provides increased accountability and integrity through full-time program of audit, investigation, and performance review of the Kansas Medicaid program (KanCare), the MediKan program, and the State Children's Health Insurance Program (SCHIP);
- assists in improving state agency and program operations and help deter and identify fraud, waste, abuse, and illegal acts related to those programs.

Overview of the Budget of the AGO

Using round numbers, the overall budget of the AGO is quite a bit larger than the component of the AGO budget financed by State General Funds (SGF).

The AGO spends approximately \$62 million annually. However, \$34 million of that consists of opioid settlement funds that are passed through to recipients of the funds.

Of the remaining \$28 million, the SGF provides \$6.8 million. The remainder comes from fees, fines, and federal funds.

In addition, the AGO sends a significant amount of money into the SGF every year. The he OAG has sent the following to the SGF in the current and previous fiscal years:

- So far in FY23:
 - \$13,794,012 from Civil Division (Pharmacy Benefit Managers case, payment 2 of 2)
 - \$1,554,703 from Consumer Protection Division
 - \$4,577 from Medicaid Fraud and Abuse Division
 - \$6,412 from Carolina Tobacco Settlement
- In FY2022:
 - \$13,794,012 from Civil Division (Pharmacy Benefit Managers case, payment 1 of 2)
 - \$595,419 from Consumer Protection Division
 - \$7,382 from Medicaid Fraud and Abuse Unit
 - \$13,178 from Carolina Tobacco Settlement

The Attorney Hiring and Retention Problem that the AGO Has Had in Recent Years

In the governor's FY23 budget, she recognized the importance of financially supporting our law enforcement officials, calling for increased salaries at the Kansas Highway Patrol. It is important, however, that we support *all* aspects of law enforcement—including the prosecution side.

The Attorney General's Office has had difficulty retaining and recruiting attorneys for the past several years. That problem has been developing slowly over time, but now we are at a point where we must take action to rebuild the number of attorneys in the office.

The numbers tell the story. Right now, 33 of our 178.6 FTEs are unfilled. And 23 of those 33 unfilled positions are attorneys. Or to put it in terms looking only at attorneys, there are 65 attorney FTEs in the office. Of those, 42 are filled, and 23 are unfilled. In other words, our attorney workforce is down by more than 35% from where it needs to be.

In the past calendar year, for example, the criminal division, which needs to have 10 prosecutors to do all that we ask of it, has lost 7 prosecutors. We are down to 3 prosecutors. And that is hurting our state. Let me also make clear that I am not in any way blaming the previous attorney general for this. The attorney general cannot solve the problem alone. It is a systemic problem that will take both the legislature and the attorney general working together to solve it.

Why this is happening is simple: the OAG is not competitive in terms of salary; and it has not been competitive for some time. If we look at our neighboring-state attorney general offices the contrast is clear:

- In Colorado a starting Assistant Attorney General is paid \$176,000.
- In Oklahoma a starting Assistant Attorney General is paid \$112,000.
- In Missouri a starting Assistant Attorney General is paid \$105,000.
- But in Kansas, a starting Assistant Attorney General is paid about \$80,000 and, in some cases, as little as \$65,000.

The substantial difference with Missouri is probably the most telling. Missouri and Kansas are in direct competition for the same pool of talent. If we are not able to even come close to their starting salaries, this office will continue to be understaffed.

But it's worse than that. Even county attorneys in our state are able to pay more than the OAG. In the six months before I was sworn in, the office lost at least three prosecutors to county attorneys' offices, where they are now being paid substantially more.

All of this is happening in an environment where a brand new, not-yet-licensed attorney can go to a large Kansas City firm and make \$180,000 right off the bat. Consequently, we are way out of line with what the private sector pays attorneys as well.

This is costing Kansans. Due to its staff shortage, the criminal division has limited the scope of cases they will consider taking to solely two types of crimes: murders and off-grid child sex crimes. In other words, the staffing shortage has made us unable to take on other serious cases or cases where, for example, the local prosecutor has a conflict of interest. Put simply, the Attorney General's Office is unable to fulfill its core mission of supporting county and district attorneys in prosecuting criminal cases.

Despite limiting the scope of cases this division will consider, the criminal division had to kick back over 20 cases back to County Attorneys in just the past 6 months. This has forced the County Attorneys to either attempt to take on the case themselves or hire expensive outside counsel.

And these are heinous crimes—ones in which the expertise of the AGO is extremely important in ensuring that these criminals are convicted.

It pains our prosecutors to have to turn these cases down. But they're already working long hours in a division that has seen severe attrition. You can only do "more with less" for so long—eventually you just get less with less. And that's the point we're at now.

You will find no more dedicated attorneys than those who work in my office. They want to take on these cases. These men and women spend their time protecting Kansans by putting the away the most dangerous and violent predators this state sees. Restoring the

budget will help give them the assistance and supporting manpower they need to take on these cases.

It's not just prosecutions, though. The budget cuts also affected our Victim Services Division. This division assists both victims and victim-service professionals across the state. But the FY22 cuts have meant that certain key positions have gone unfilled. Currently we have no grant monitor, and no batterer intervention program coordinator—important jobs that are necessary resources for people throughout the state.

The Kansas Attorney General's Office must have the resources to ensure the perpetrators are prosecuted to the full extent of the law and that the victims and their families receive the justice they deserve. And I also want us to be able to fully support the victim services that our office provides. Restoring the \$650,296 cut from 2021 will help us do that.

The OAG is also requesting \$375,000 for the Fraud and Abuse Criminal Prosecution Fund for 4.00 FTE positions in the Fraud and Abuse Litigation Division. The enhancement would support the sports wagering legislation passed last year by allowing our office to investigate and prosecute criminal offenses related to sports betting and economic crimes related to unauthorized gambling. Of the amount requested, \$366,259 would be for salaries and wages and \$8,741 would be for capital outlay to purchase computer equipment and software.

I feel very blessed that Kansans chose me to carry this responsibility and to have inherited a great staff in the OAG from attorney general Schmidt. With your help, I look forward to building on former AG Schmidt's success.