

March 6, 2023

The Honorable Kellie Warren, Chairperson
Senate Committee on Judiciary
300 SW 10th Avenue, Room 346-S
Topeka, Kansas 66612

Dear Senator Warren:

SUBJECT: Fiscal Note for SB 280 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 280 is respectfully submitted to your committee.

SB 280 would modify when justification for the use of force is not available. The initial aggressor standard would be changed from when someone otherwise initially provokes the use of force to when someone knowingly engages in conduct reasonably likely to provoke the use of force. Under the bill, someone who is justified in the use of force could raise such justification as an affirmative defense instead of being immune from criminal prosecutions and civil actions.

When an agency investigates the use of deadly force and declines to arrest the person who used deadly force or when a prosecutor declines to prosecute someone for the use of deadly force because there is not probable cause for a prosecution, the agency and prosecutor would be required to submit a report to the Kansas Bureau of Investigation (KBI) that documents all investigative efforts. Each December 1, starting in 2024, the KBI would be required to publish an annual report on its public website that analyzes the reports received in the previous calendar year. The Judicial Administrator would be required to collect and compile statistics on all criminal cases in which someone asserts that he or she was justified in the use of force, which would be published every December 1 on the Judicial Branch's public website, starting in 2024. The bill details what would be included in the KBI's and Judicial Administrator's reports.

The Judicial Branch indicates that the bill could increase the number of cases filed in district courts because it makes the use of force an affirmative defense instead of immunity from criminal prosecution or civil action, which would increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. In addition, there is currently no mechanism to track cases when a defendant asserts that he or she is justified in the use of force.

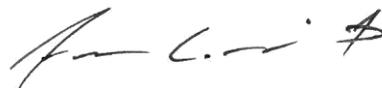
The Supreme Court would have to issue an order or rule that requires a form to be submitted to the court when the use of force assertion is being made. The centralized case management system (CCMS) would need to be modified to create a new document type for this form so these cases could be tracked for reporting purposes. This would create additional workload for Judicial Branch staff and could increase costs for programming expenses. The bill could also result in the collection of docket fees, which would be deposited into the State General Fund. However, the Judicial Branch cannot estimate the fiscal effect of the bill.

The Kansas Bureau of Investigation states that justifiable homicides can be reported into the Kansas Incident Based Reporting System (KIBRS); however, none are currently being reported. Since there is an unknown amount of deadly force reports, the KBI does not know if additional staff would be required for data entry and to create and publish an annual report. However, it is anticipated that the requirements of the bill would be handled by the new KIBRS system currently under development, and any new costs could be absorbed within existing resources.

The Attorney General states that the bill would have negligible fiscal effect on its operations, which could be absorbed within existing resources. The Kansas Highway Patrol states that the bill would not have a fiscal effect. Any fiscal effect associated with SB 280 is not reflected in *The FY 2024 Governor's Budget Report*.

The League of Kansas Municipalities states that the bill could affect cities if they are required to assist with the implementation and enforcement of the bill. However, the League cannot estimate a fiscal effect. The Kansas Association of Counties states that the bill could impact prosecutions and investigations; however, the Association anticipates that it would be a negligible effect that could be absorbed within existing resources.

Sincerely,



Adam Proffitt
Director of the Budget

cc: Sherry Macke, Highway Patrol
Wendi Stark, League of Kansas Municipalities
Jay Hall, Kansas Association of Counties
John Milburn, Office of the Attorney General
Vicki Jacobsen, Judiciary
Paul Weisgerber, Kansas Bureau of Investigation