

March 16, 2015

The Honorable John Barker, Chairperson
House Committee on Judiciary
Statehouse, Room 149-S
Topeka, Kansas 66612

Dear Representative Barker:

SUBJECT: Fiscal Note for HB 2206 by House Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2206 is respectfully submitted to your committee.

HB 2206 would enact the Gun Violence Restraining Order Act. The bill would allow a person to file a petition with the court for a gun restraining order. A gun restraining order would prohibit a person from possessing a firearm, rifle, or shotgun when the court determines that the person poses a risk of personal injury to him or herself or others. The court would be required to consider the following when deciding whether to issue a gun restraining order: Any recent threat or act of violence by the person directed towards others; any recent threat or act of violence by the person directed toward him or herself; any recent violation of a restraining order; and any conviction for a crime involving a weapon under the Kansas Criminal Code.

The court would be allowed to consider the following when deciding whether to issue a gun restraining order: the reckless use, display, or brandishing of a firearm, rifle, or shotgun by the person; the history of use, attempted use, or threatened use of physical force by the person against another person; any prior arrest of the person for a felony offense; any history of a violation by the person of a protection order issued under the Protection from Abuse Act; evidence of recent or ongoing abuse of alcohol, a controlled substance, or controlled substance analog; and evidence of a recent acquisition of a firearm, rifle, shotgun, or other deadly weapon.

HB 2206 would outline the content of a gun restraining order, which would include language informing the person that he or she is entitled to submit one written request for a hearing at any time during the effective period of the order regarding whether the person should be permitted to own, possess, purchase, or receive a firearm, rifle, or shotgun.

The bill would create a new gun seizure warrant to be issued by the court when there is probable cause to believe a person who is subject to an order possesses or owns a firearm, rifle, or shotgun. The court would be required to find probable cause, supported by an affidavit,

naming or describing with reasonable specificity the facts and circumstances justifying the warrant and listing any weapon to be seized under the warrant. The bill outlines certain procedures that would be required to be followed by a law enforcement officer who searches for or seizes a weapon pursuant to a warrant.

HB 2206 would require the court to hold a hearing no later than 14 days after the execution of a gun restraining order and a gun seizure warrant to determine whether the person who is subject to the order may possess, own, purchase, or receive a weapon, and when applicable, whether a seized weapon should be returned to the person. At the hearing, the state would have the burden of proof of proving by clear and convincing evidence that the person poses a significant risk of personal injury to him or herself or others by purchasing, owning, or possessing a weapon. If this is proven at the hearing, any weapon seized would be retained by the law enforcement agency for a period not to exceed one year and the person would be prohibited from purchasing, owning, possessing, or controlling a weapon for a period not to exceed one year. If the state does not meet its burden, the weapon would be returned to the person. HB 2206 would not require the court to conduct a hearing if the person subject to the order is already barred by state or federal law from purchasing, owning, possessing, or controlling a firearm for a period of one year or more.

If a law enforcement agency has probable cause to believe that a person subject to a gun violence restraining order continues to pose a significant risk to him or herself or to others, the agency could initiate a request for renewal of the order. A hearing on the request would be held in the same court that issued the initial order and the person named in the order would be given written notice and an opportunity to be heard. The court would be allowed, upon its own motion or upon request of another person, to renew an order when there is probable cause to believe that the subject to the order continues to pose a significant risk to him or herself or others. This motion would also require written notice to the person subject to the order and giving the person an opportunity for a hearing.

The bill would permit a law enforcement officer to take temporary custody of a firearm or other deadly weapon in plain sight or discovered under a consensual or other lawful search when the officer is on the scene of certain domestic violence incidents. The bill outlines the process for the handling and returning of the firearm.

HB 2206 would create and define the new crime of “criminal distribution of firearms to a domestic batter.” The crime would be classified as a class A nonperson misdemeanor. The bill would also create and define the new crime of “criminal possession of a firearm by a domestic batter.” A violation would be classified as a severity level 8 nonperson felony. The bill would define “gun seizure warrant” and “gun violence restraining order.”

The Office of Judicial Administration indicates passage of HB 2206 would have a fiscal effect on expenditures to the Judicial Branch. The bill would create two new crimes, one a class A nonperson misdemeanor and one a severity level 8 nonperson felony. The Office states it is unknown how many of these hearings would be required or how many criminal cases would

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result. However, because the agency estimates that the gun violence restraining orders would be in the nature of a protective order and based upon the court's experience with similar orders, it is estimated that additional staff time would be needed to assist the public in responding to questions and filling out the necessary petition requesting an order.

If only 1,500 to 2,000 of these petitions were filed statewide, the number of individuals sentenced to probation each year does not exceed 60, and if only one hour were needed to assist the public and process the necessary documents, the Office estimates additional State General Fund expenditures of \$174,555 in FY 2016 and \$188,436 in FY 2017 would be required. Of those amounts for both FY 2016 and FY 2017, \$36,480 in FY 2016 and \$40,822 for FY 2017 is estimated for salaries and wages for an additional Trial Court II FTE position; \$85,260 in FY 2016 and \$88,184 in FY 2017 is estimated for two additional senior judge contracts; and \$52,815 in FY 2016 and \$59,430 in FY 2017 is estimated for salaries and wages for an additional Court Services Officer FTE position. The Office indicates if filings exceed 2,000 and the number of individuals sentenced to probation each year exceeds 60, additional staff would be needed.

The Kansas Sentencing Commission states enactment of HB 2206 would not have an immediate effect on prison admissions or bed space. Enactment of the bill would have an effect on the probation population and on the journal entry workload of the Commission; however the Commission cannot estimate a precise fiscal effect at this time.

The League of Kansas Municipalities indicates enactment of HB 2206 could have a fiscal effect on Kansas cities because of additional investigation and reporting duties for local law enforcement.

The Office of the Attorney General states passage of HB 2206 could result in additional expenditures for the agency from any legal challenges to the bill's provisions. If a challenge were made, the agency states it would likely be required to utilize outside counsel because of the constitutional issues involved, the number of cases estimated to be filed, and the amount of discovery required to defend any action. Any fiscal effect associated with HB 2206 is not reflected in *The FY 2016 Governor's Budget Report*.

Sincerely,



Shawn Sullivan,
Director of the Budget

cc: Mary Rinehart, Judiciary
Scott Schultz, Sentencing Commission
Willie Prescott, Attorney General's Office
Larry Baer, LKM
Kim Torrey, KHP
Jeremy Barclay, DOC