

March 1, 2021

The Honorable Brenda Landwehr, Chairperson
House Committee on Health and Human Services
Statehouse, Room 352C-S
Topeka, Kansas 66612

Dear Representative Landwehr:

SUBJECT: Fiscal Note for HB 2210 by Representative Fairchild, et al.

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2210 is respectfully submitted to your committee.

HB 2210 would create a new crime making it unlawful to knowingly perform, or cause to be performed, gender reassignment services on a child under 18 years of age for the purpose of attempting to change or affirm the child's perception of the child's sex. The bill would define what types of services would fall under this crime and would also set the criminal penalty at a level 8, person felony. Violations of unlawful gender reassignment service would also constitute professional incompetency.

The Kansas Sentencing Commission estimates that enactment of HB 2210 may have an impact on prison admissions, bed space, and the workload of the Commission but this effect cannot be determined at this time. The current estimated available bed capacity is 9,420 for males and 948 for females. Based upon the Commission's most recent ten-year projection contained in its *FY 2020 Adult Inmate Prison Population Projections* report, it is estimated that the year-end population for available male capacity will be under capacity by 1,287 inmates in FY 2021 and 1,241 inmates in FY 2022. The Department of Corrections indicates that an increase in the prison population will have a detrimental effect on its ability to provide for social distancing among its population, which could contribute to spread among residents in the facility, staff working at the facility, and residents released into the community.

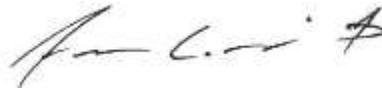
According to the Office of the Attorney General, if HB 2210 were enacted the law would be challenged on constitutional grounds. The case would likely go through the appellate process to get a definitive ruling on the validity of the law. Depending on which court system the case was filed in, federal or state, it could take two to four years to receive a decision. Due to the specialized civil liberty components of the potential litigation, the agency would require outside counsel. If

the case would end up in the Supreme Court of the United States, the litigation costs would further increase, and the case could take an additional one to two years. Depending on the outcome of the case, the state could be ordered to pay plaintiffs' attorney fees and other costs as well. However, the agency is unable to prepare an estimated cost, but notes the costs would be spread over several years and would be paid from the Tort Claims Fund.

The Office of Judicial Administration indicates that HB 2210 could increase the number of cases in district courts because it creates the crime of unlawful gender reassignment services, which would increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. Since this crime carries a severity level 8, person felony penalty, there could also be more supervision of offenders performed by court services officers. The bill could also result in the collection of additional docket fees, supervision fees, and fines assessed. However, the agency cannot estimate a fiscal effect because the number of cases is unknown.

The Kansas Board of Healing Arts states that the bill could increase complaints, investigations, and potential litigation due to adding a new professional discipline and licensure action litigation. However, a fiscal effect cannot be estimated. Any fiscal effect associated with HB 2210 is not reflected in *The FY 2022 Governor's Budget Report*.

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: Susan Gile, Board of Healing Arts
Willie Prescott, Office of the Attorney General
Debbie Thomas, Judiciary
Randy Bowman, Corrections