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GOVERNOR JEFF COLYER, M.D.
LARRY L. CAMPBELL, CHIEF BUDGET OFFICER

March 13, 2018

The Honorable Rick Wilborn, Chairperson
Senate Committee on Judiciary
Statehouse, Room 541-E
Topeka, Kansas 66612

Dear Senator Wilborn:

SUBJECT: Fiscal Note for SB 431 by Senate Committee on Ways and Means

In accordance with KSA 75-3715a, the following fiscal note concerning SB 431 is respectfully submitted to your committee.

SB 431 would create the Extreme Risk Protective Order Act, which would allow the courts to grant an order prohibiting defendants from owning, controlling, or purchasing a firearm or ammunition for up to one year, if the court finds that the defendant poses an immediate danger to themselves or others. The bill would allow a law enforcement officer or a family member of the defendant to file a petition for an Extreme Risk Protective Order (ERPO). The bill would allow the court to search criminal and health records of the defendant to examine potential grounds to issue the order. Additionally, the court could issue an ERPO without having the defendant present, but the bill would require that the hearing be held within 14 days of receiving the petition. If the defendant is not present, the court could consider certain crimes the defendant was previously convicted of as grounds to issue the order. After an order has been issued by the court, the bill would require that it be personally served by a law enforcement officer, if possible. A district judge would be able to issue an ERPO when the court is unavailable, but the order would expire at 5:00 p.m. on the first day the court is available.

Once an ERPO has been issued, the defendant would be required to relinquish all firearms and ammunition to law enforcement. The bill would also allow the defendant to request a hearing to terminate the order by proving by a preponderance of the evidence that they do not pose a significant danger to themselves or others. Conversely, plaintiffs would be able to submit a request for a renewal of the ERPO within three months of termination of the order. The bill would require that an ERPO include a statement that the defendant cannot control, own, possess, purchase, receive, or attempt to purchase or receive a firearm or ammunition; information on how to relinquish their firearms or ammunition to law enforcement; the grounds that support issuing the order; a statement that the defendant has the right to request a hearing to terminate the order; and

a statement that the defendant may request legal counsel regarding the order. The bill would also make fabricating information in the ERPO petition a class C misdemeanor. Violations of an ERPO by a defendant would result in a five-year prohibition from owning, controlling, or purchasing firearms or ammunition.

The Office of the Attorney General (OAG) indicates that enactment of SB 431 could result in additional expenditures of \$100,000 to \$500,000 from the State General Fund beginning in FY 2019 and spreading over a three-year period due to the potential filing of a civil lawsuit against the State of Kansas or a state employee to challenge the Act. The OAG indicates that it may have to refer such cases to outside counsel due to in-house caseloads. The OAG also indicates that any potential lawsuits filed in state or federal court would likely require litigation in both district and appellate courts. Additionally, if a federal lawsuit challenging the Act was accepted by the Supreme Court of the United States, the OAG indicates that the costs of defending the state would likely exceed \$500,000 in additional State General Fund expenditures.

The Kansas Bureau of Investigation (KBI) indicates that enactment of SB 431 would require additional expenditures of at least \$198,300 from the State General Fund in FY 2019 to create and maintain a searchable database in order to provide information to law enforcement regarding the renewal, denial, dissolution, or termination of ERPOs, as well as provide aggregate statistical data to the public. The KBI indicates additional costs could include \$150,000 to \$750,000 from the State General Fund in FY 2019 to build a database system. Additionally, the KBI specifies that it would need to hire 1.00 Program Consultant FTE position at a cost of approximately \$48,300 from the State General Fund, including \$44,000 in salaries and wages and \$4,300 in travel costs. The program consultant would be responsible for reporting ERPOs to the National Instant Background Check System for firearm purchases, managing the ERPO database, and training courts and law enforcement agencies on using the ERPO database.

The Office of Judicial Administration (OJA) indicates that enactment of SB 431 would increase the amount of time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases as well as supervising offenders convicted of violations of the Act. Additionally, the OJA indicates enactment of the bill could increase revenues from the collection of fines. However, the fiscal effect cannot be estimated because the additional amount of time to process, research, and hear cases as well as supervise offenders and the number of fines that would be issued is unknown.

The Kansas Association of Counties and the League of Kansas Municipalities indicate that enactment of SB 431 could increase expenditures to local law enforcement agencies due to the increased workload to serve ERPOs and seize firearms and ammunition. Additionally, the bill could increase revenues to local law enforcement agencies because they would be able to charge storage fees to defendants for seized firearms and ammunition. However, the fiscal effect cannot be estimated because the number of ERPOs that would be served and the number of firearms and ammunition that would be seized is unknown.

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The Kansas Sentencing Commission, Kansas Department of Corrections, and Kansas Highway Patrol indicate that enactment of SB 431 would have no fiscal effect. Any fiscal effect associated with SB 431 is not reflected in *The FY 2019 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Campbell", written in a cursive style.

Larry L. Campbell
Chief Budget Officer

cc: Ashley Michaelis, Judiciary
Scott Schultz, Sentencing Commission
Melissa Wangemann, Association of Counties
Chardae Caine, League of Municipalities
Linda Kelly, Corrections
Shelia Sawyer-Tyler, KBI
Willie Prescott, Office of the Attorney General
Sherry Macke, Highway Patrol