

March 12, 2024

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 534 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 534 is respectfully submitted to your committee.

SB 534 would add death by hypoxia as a method of execution and would allow the Secretary of Corrections to determine the method of carrying out a death sentence by hypoxia in rules and regulations. The bill would remove the requirement that the Secretary of Health and Environment must certify to the Secretary of Corrections that the substances selected to carry out a death sentence by intravenous injection will result in a swift and humane death. The bill would require the Secretary of Corrections to select the substance for intravenous injection and the method for hypoxia by December 31, 2024. The bill would allow the Secretary of Corrections to change the substances administered for intravenous injection or the method for hypoxia at any time in rules and regulations.

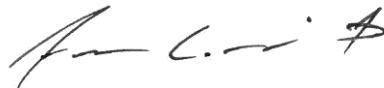
The bill specifies that a “swift and humane manner” as it relates to executions would mean a manner consistent with the requirements of the Eighth Amendment to the *Constitution of the United States*. The bill would allow the Secretary of Corrections to determine whether to use an intravenous injection or hypoxia as an execution method. During any pending appeals or post-conviction proceedings, the bill would require an execution of a death sentence to be stayed. Within 30 days of all appeals and post-conviction proceedings being resolved and a death sentence being affirmed, the bill would require the district court to issue a death warrant to the Secretary of Corrections. The bill would specify that the Secretary of Corrections must carry out the execution commanded by the warrant issued by the district court within a certain timeframe.

The Department of Corrections indicates enactment of the bill could have a fiscal effect on agency operations related to the acquisition and installation of the equipment necessary to carry out an execution by hypoxia. However, the fiscal effect cannot be determined until the selection and rulemaking process outlined in the bill is complete and the necessary equipment is identified. The Department notes that the infrastructure for carrying out an execution by intravenous injection is already in place, though there may be some incidental costs with updating equipment. However, such costs related to intravenous injections can be absorbed within existing resources.

The Office of Judicial Administration indicates enactment of the bill could have a fiscal effect on expenditures of the Judicial Branch because the bill includes additional requirements for district courts. In addition, the Office states that while the bill does not specifically address court actions, it is possible that the use of a new method of execution could generate legal challenges in courts. According to the Office, until the courts have had an opportunity to operate under the provisions the bill, a fiscal effect cannot be estimated.

The Office of the Attorney General indicates that, due to the contentious nature of the death penalty and any effort to amend the process, enactment of the bill would result in litigation. However, the Office cannot estimate the scope of such litigation and accompanying costs. Any fiscal effect associated with SB 534 is not reflected in *The FY 2025 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam C. Proffitt", with a stylized flourish at the end.

Adam C. Proffitt
Director of the Budget

cc: Trisha Morrow, Judiciary
Jennifer King, Department of Corrections
William Hendrix, Office of the Attorney General