

# **Committee Reports to the 2015 Kansas Legislature**



**Special Committees;  
Selected Joint Committees;  
Other Committees, Commissions,  
and Task Forces**

**Kansas Legislative Research Department  
January 2015**

## **2014 Legislative Coordinating Council**

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### **Vice-chairperson**

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Terry Bruce, Senate Majority Leader  
Anthony Hensley, Senate Minority Leader  
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**Special Committees;  
Selected Joint Committees;  
Other Committees,  
Commissions, and  
Task Forces**

Corrections and Juvenile Justice Oversight  
Information Technology  
Kansas Security

Robert G. (Bob) Bethell Joint Committee on Home and Community Based  
Services and KanCare Oversight

Capitol Preservation  
K-12 Student Performance and Efficiency Commission



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# Foreword

In the 2014 Interim, the Legislative Coordinating Council appointed two special committees to study five study topics. Legislation recommended by the committees will be available in the Documents Room early in the 2015 Session.

Joint committees created by statute met in the 2014 Interim as provided in the statutes specific to each joint committee. Several of the joint committees have reported on their activities, and those reports are contained in this publication. Legislation recommended by these committees will be available in the Documents Room early in the 2015 Session.

This publication also contains reports of other committees, commissions, and task forces that are not special committees created by the Legislative Coordinating Council or joint committees.

Reports of the following are not contained in this publication and will be published in a supplement:

- Special Committee on Ethics, Elections and Local Government
- Special Committee on Judiciary
- Legislative Budget Committee
- Pensions, Investments and Benefits Joint Committee
- State Building Construction Joint Committee
- Health Care Stabilization Fund Oversight Committee
- Telecommunications Study Committee

Minutes of the meetings of the special committees, joint committees, other committees, commissions, task forces, and panels are on file in the Division of Legislative Administrative Services. A summary of each reporting entity's conclusions and recommendations may be found beginning on page i.

# TABLE OF CONTENTS

<b>Joint Committee on Corrections and Juvenile Justice Oversight</b>	
Report.....	1-1
<b>Joint Committee on Information Technology</b>	
Report.....	2-1
<b>Joint Committee on Kansas Security</b>	
Annual Report.....	3-1
<b>Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight</b>	
Annual Report.....	4-1
<b>Capitol Preservation Committee</b>	
Report.....	5-1
<b>K-12 Student Performance and Efficiency Commission</b>	
Report.....	6-1

## ***Summary of Conclusions and Recommendations***

### ***Joint Committee on Corrections and Juvenile Justice Oversight***

The Joint Committee recommends continued funding of SB 123 programs and greater oversight to ensure reports required to be submitted to the Joint Committee on Information Technology are submitted. Additionally, the Joint Committee recommends a legislative study of the Victim Information and Notification Everyday (VINE) program and how and whether it could be adopted; the law concerning minors in possession, especially as it pertains to persons 18-20 years old; and the shortage of correctional officers. Finally, the Joint Committee recommends legislation that would prohibit any juvenile offender convicted of misdemeanors from being committed to a juvenile correctional facility.

### ***Joint Committee on Information Technology***

The Committee recommended the executive branch Chief Information Technology Officer (CITO) develop an enterprise-level information technology security plan and provide recommendations to the Committee regarding which security functions should be performed by state agencies, and which security functions should be outsourced to the private sector. The Committee further recommended consideration of incorporating a return-on-investment component for proposed large information technology projects. The Committee also recommended each branch CITO identify security vulnerabilities regarding sensitive information and propose remediation actions. Additionally, the Committee recommended the branch CITOs identify critical systems lacking continuity of operations plans which would be utilized for disaster recovery purposes. The Committee recognized and commended the Legislative CITO on the progress made on legislative information technology projects.

### ***Joint Committee on Kansas Security***

The Joint Committee recommended the Kansas Center for Safe and Prepared Schools be moved from the Adjutant General's Department to the Department of Education, funding for planning staff and recovery teams in the Division of Emergency Management, increased staffing for the Kansas Intelligence Fusion Center, training for lawmakers in emergency procedures to be used in the Capitol complex, amending state law so the state meets new federal law regarding in-state tuition for veterans, and exploration of ways to access revenues from Kansas Lottery sales for veterans' programs. It also requests the Kansas Legislative Research Department research the governance structure of public safety communications policy.

### ***Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight***

The Committee recommended its two statutorily-required non-session meetings in different quarters to be scheduled for two days each. The Committee also recommended separate hearings

during the 2015 Legislative Session before the House Committee on Social Services Budget and the Senate Committee on Ways and Means' Social Services Budget Subcommittee to address the March 2014 Legislative Post Audit Report *CDDOs: Reviewing Issues Related to Community Services Provided for Individuals with Developmental Disabilities (R-14-006)*. In addition, the Committee recommended separate hearings before the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare to consider the repeal of KSA 2014 Supp. 39-7,121b for the purpose of allowing Kansas Medicaid to manage anti-psychotic medications similar to other drug classes. Further, the Committee recommended the Joint Committee on Information Technology hold a meeting to review software issues regarding data accuracy and reporting on waiting lists. No legislation was recommended for introduction.

### ***Capitol Preservation Committee***

The Committee heard testimony about kiosks for the Visitor Center, received mural proposals, reviewed draft request forms, and listened to a proposal to install a new plaque in the Capitol. Following its review, the Committee made no conclusions or recommendations.

### ***K-12 Student Performance and Efficiency Commission***

The Commission made recommendations in support of the Coalition of Innovative Districts Act; technical education programs; professional development for school district leadership and board members in finance, accounting, and budget management; the two-year budget cycle; and timely state aid payments. The Commission also recommended the study of funding of bond and interest state aid; development of long-range strategic plans for capital outlay expenditures at the district level; repeal of the 65.0 percent instruction expenditure public policy goal; completion of a cost and benefit analysis before any new state school district laws or regulations take effect; and consideration of unencumbered ending balances, including what would constitute a reasonable amount of carry forward balances. Finally, the Commission recommended legislation be introduced to establish a task force to set guidelines for efficient operation of school districts and a commission to study standards for measuring educational outputs and whether the *Rose* standards are sufficient and measurable.

# Report of the Joint Committee on Corrections and Juvenile Justice Oversight to the 2015 Kansas Legislature

**CHAIRPERSON:** Senator Carolyn McGinn

**VICE-CHAIRPERSON:** Representative John Rubin

**OTHER MEMBERS:** Senators Molly Baumgardner, Oletha Faust-Goudeau, Steve Fitzgerald, David Haley, Jacob LaTurner, and Greg Smith; and Representatives Stephen Alford, Sydney Carlin, Peter DeGraaf, Jerry Henry, Brett Hildabrand, and Jim Ward

## **CHARGE**

- Monitor Inmate and Juvenile-Offender Populations;
- Review and Study Programs and Activities of the Department of Corrections;
- Review Policy Choices from Data on Recidivism and Effectiveness of Youth Residential Centers;
- Continue Efforts at Juvenile Justice Reform; and
- Study Victim Notification.

# Joint Committee on Corrections and Juvenile Justice Oversight

## REPORT

### Conclusions and Recommendations

The Joint Committee recommends:

- Greater oversight to ensure that reports required to be submitted to the Joint Committee on Information Technology are submitted and reviewed by the legislative Chief Information Technology Officer to make recommendations regarding each report's merit and related appropriations;
- Senate Judiciary, House Corrections and Juvenile Justice, and budget committee study of the Victim Information and Notification Everyday (VINE) program, which already is in use in 40 states, and how and whether it could be adopted, beginning at the county level, including how the State could assist in paying for the cost of implementation and operation;
- Legislative study of the law concerning minors in possession, especially as it pertains to persons 18-20 years old, and whether it should be decriminalized for this age group, noting that, at 18 years old, a person can vote and serve in the military but cannot legally consume alcohol;
- Senate Ways and Means and House Appropriations Committees' consideration of continued funding of SB 123 programs as the use of the General Fees Fund expenditures will not be possible in FY 2016; and
- Legislative review of the shortage of correctional officers, noting the starting salary is \$13.61 per hour, which makes recruitment more difficult, and the lack of increases in salaries impacts retention.
- **Proposed Legislation:** The Joint Committee recommends the introduction of legislation that would prohibit any juvenile offender convicted of misdemeanors from being committed to a juvenile correctional facility, regardless of previous history.

### BACKGROUND

The 1997 Legislature created the Joint Committee on Corrections and Juvenile Justice Oversight to provide legislative oversight of the Kansas Department of Corrections (KDOC) and the Juvenile Justice Authority (JJA). Pursuant to Executive Reorganization Order (ERO) 42, on

July 1, 2013, the jurisdiction, powers, functions, and duties of the JJA and the Commissioner of Juvenile Justice were transferred to KDOC and the Secretary of Corrections. KDOC operates eight correctional facilities: El Dorado Correctional Facility, Ellsworth Correctional Facility, Hutchinson Correctional Facility, Lansing Correctional Facility, Larned Correctional Mental

Health Facility, Norton Correctional Facility, Topeka Correctional Facility (TCF), and Winfield Correctional Facility. KDOC also operates parole offices throughout the state and is responsible for the administration of funding and oversight of local community corrections programs. There are two operational juvenile correctional facilities (JCFs): Larned Juvenile Correctional Facility (LJCF) and Kansas Juvenile Correctional Complex (KJCC). Individuals as young as 10 and as old as 17 years of age may be adjudicated as juvenile offenders (JOs) and remain in custody in a JCF to age 22.5 and in the community to age 23.

The Joint Committee is composed of 14 members, with 7 members each from the House and Senate. In odd years, the chairperson and ranking minority member are House members, and the vice-chairperson is a Senate member, while in even years, the chairperson and ranking minority member are Senate members, and the vice-chairperson is a House member.

The Committee's duties, as outlined in KSA 2014 Supp. 46-2801(k), are to monitor the inmate population and review and study KDOC's programs, activities, and plans regarding its statutorily prescribed duties, including the implementation of expansion projects; the operation of correctional, food service, and other programs for inmates; community corrections; parole; and the condition and operation of the correctional institutions and other facilities under the Department's control and supervision. The Committee also is charged to review and study the adult correctional programs and activities and facilities of counties, cities, and other local governmental entities, including the programs and activities of private entities operating community correctional programs and facilities, and the condition and operation of jails and other local governmental facilities for the incarceration of adult offenders.

Similarly, the Committee is charged to review and study programs, activities, and plans involving JOs, including the responsibility for their care, custody, control, and rehabilitation, and the condition and operation of the state JCFs. Further, the Committee is charged to review and study the JO programs and activities and facilities of counties, cities, school districts, and other local governmental entities, including programs for the

reduction and prevention of juvenile crime and delinquency, programs and activities of private entities operating community juvenile programs and facilities, and the condition and operation of local governmental residential or custodial facilities for the care, treatment, or training of JOs.

## COMMITTEE ACTIVITIES

The Joint Committee requested five meeting days and was granted three days by the Legislative Coordinating Council. In addition to its statutory duties, the Joint Committee was charged with studying juvenile justice reform, initial data collected to determine recidivism rates and overall effectiveness of Youth Residential Centers (YRCs), and victim notification. The Committee met October 14 and November 5 and 6, 2014.

### October 14

#### Overview of Adult Inmate Prison Population

The Executive Director of the Kansas Sentencing Commission (KSC) summarized the adult prison population projections. The number of offenders admitted to prison and the length of sentence are the primary bases for the projections. In FY 2014, the prison population was 9,612, an increase of 31 inmates from 2013, or 0.3 percent. By FY 2024, the male inmate population will increase to 9,548 inmates, or 6.0 percent, from the FY 2014 population and will account for 92 percent of the forecast population. The female inmate population will increase to 803, an increase of 64 inmates or 9 percent by FY 2024.

Information also was provided on prison admission trends by admission type for FY 2010 through FY 2014. Finally, the Executive Director updated the committee on the impact of *State v. Murdock*, the legislative agenda for 2015, and the Justice Reinvestment Initiative Update.

#### Overview of KDOC Operations

The Secretary of Corrections provided an overview of the agency. KDOC's focus is to provide safe operations in the facilities, parole services, and the community; reduce recidivism; enhance juvenile programs and services; ensure

compliance with the federal Prison Rape Elimination Act (PREA) in correctional facilities; and continue to develop strategies to manage a growing prison population.

Kansas incurs high costs when offenders commit new crimes and return to prison due to both criminal justice system expenses and the costs suffered by crime victims. The Secretary stated 97 percent of Kansas' incarcerated offenders will be released back into the community and, of that number, 65 percent will return to prison within 36 months. Bed space expansion for FY 2011 through FY 2013 includes 668 permanent beds and 204 temporary beds for a total of 872.

The Secretary stated KDOC is the largest mental health provider in the state, and substance abuse or mental illness is a significant contributing factor for 75 percent of parole violators returning to prison. KDOC increased the number of specialized beds for mentally ill inmates from 382 to 553 but still must utilize a waiting list for placements. Approximately 126 more specialized beds are needed. KDOC has reduced the number of mentally ill inmates in restrictive housing by 350. These offenders are now assigned either to the general population or a treatment unit. About 70 percent of the mentally ill people who are incarcerated possess cognitive defects and, as resources allow, are receiving "Thinking for a Change" (T4C) programming. Research has shown a 19 percent recidivism rate for successful completers, compared to 35 percent for the overall population.

The Secretary indicated the Mentoring4Success program continues to be successful. By the end of September 2014, a total of 4,893 mentors were matched. The calendar year 2012 data show that offenders who had mentors at release recidivated at 10 percent at 12 months post release, compared to 21 percent for the overall population.

Activities at the end of FY 2014 included the completion of PREA audits at TCF and LJCF. Both earned exceptionally high marks for complying with federal standards. Under PREA, three correctional facilities will be audited once every three years on a rotating cycle. The audit

findings are encouraging because KDOC's highest priority is to ensure the safety of staff and inmates.

The Office of Victim Services (OVS) sent 15,433 notification letters, and 9,601 victims and survivors of crime received a total of 27,429 services from OVS between July 1, 2013, and June 30, 2014. Of these, 2,552 were first-time registrants. In a 2014 satisfaction survey, 98 percent of victims reported staff treated them with respect; 93 percent of respondents indicated staff showed concern for their well-being and their safety was taken seriously; and 87 percent of respondents indicated that, as a result of their contact with OVS, they felt more informed and able to plan for their safety.

KDOC is collaborating with the Kansas Department of Administration to develop recommendations to improve KDOC recruitment and retention efforts for corrections employees. The Secretary responded to questions on uniformed staff not having a pay increase since 2007 and stated there was a 8 percent increase to bring staff up to market level and a one-time bonus of \$250.

### **Overview of Contract Reviews**

The Deputy Secretary for Facilities Management, KDOC, presented an overview of existing contracts. Aramark is the food services provider for the adult prison program and is responsible for labor, food, and supplies for all facilities except for Larned Correctional Mental Health Facility, where meals are prepared by Aviands. Aramark employs 123 staff and 19 inmate workers. Aramark provides a vocational program, Inmate to Work (IN2), which lasts six months and, upon completion, an Optional ServSafe certification is provided by the National Restaurant Association. There are 125 participants with 34 completions. The contract also provides the Fresh Favorites incentive food program, which pays 15 percent commission from net sales to the Inmate Benefit Fund for IN2.

Trinity Services Group is the food service provider for KJCC. It employs 7 staff, supervises 8 juvenile worker positions, and provides the Trinity Takeout incentive food program, paying 15

percent commission from net sales to the Juvenile Benefit Fund.

Corizon Health, Inc., provides medical services for the adult and juvenile populations, including medical, dental, and mental health care services and 24-hour emergency care. Services are provided at all adult and juvenile correctional facilities. Kansas University Physicians, Inc., provides medically trained management consultants to assist in managing the health care contract for both the adult and juvenile population. KDOC works with the Kansas Department for Aging and Disability Services and Medicaid for those inmates who are under 18 years of age, over 65 years of age, pregnant, or disabled.

### **Overview of Community and Field Services**

The Deputy Secretary for Community and Field Services, KDOC, provided an update and review of the Corrections Community and Field Services Division, which includes Parole Services, Interstate Compact for Adult Offender Supervision, and Community Corrections. Currently, 4,728 offenders are under parole supervision. The Parole services caseloads have dropped to 10 and 20 per officer, which allows the officers to focus more closely on the high-risk offenders, due in part to the enactment of 2013 HB 2170.

The Interstate Compact for Adult Offender Supervision is mandated by federal and state law, and KDOC staff track all supervised offenders coming into Kansas for supervision and transferring from Kansas. The Community Corrections Act, which is designed to divert offenders from state correctional facilities, requires each of the 105 counties to participate. There are 31 judicial districts and 30 programs. The challenges to the community resources for offenders are emergency housing, treating those with mental illness, resources for substance-abusing offenders, and increasing sanction utilization. The administrative challenges are high turnover of employees, staffing levels, and aging vehicles.

### **Overview of Juvenile Services**

Deputy Secretary of Juvenile Services, KDOC, provided an update. Between FY 2009 and FY 2014, there were decreases in all areas, including in intake and assessment events (23 percent); JO case files (24 percent); juvenile intensive supervision probation admissions (25 percent); juvenile intensive supervision probation average month-end population (25 percent); JCF admissions (29 percent); JCF average month-end population (13 percent); and juvenile custody population (14 percent, excludes JCF custody).

Admissions to JCFs for technical violations were down by 3.5 percent from FY 2013 to FY 2014, and the percentage of JCF admissions with only misdemeanor adjudications for FY 2014 was 15 percent. Both JCFs set goals to increase the number of youth who earned a high school diploma or GED. From FY 2011, the number of diploma and GED recipients increased by 11 percent. During the same time frame, the JCF population decreased by 8 percent. Both JCFs surpassed goals to increase the number of postsecondary credit hours.

Juvenile Services invests significant resources in the community for out-of-home placement costs. In FY 2012, nearly \$32 million was spent for various residential placements; expenditures for FY 2014 were nearly \$28 million. Roughly \$16.4 million was spent in FY 2014 on YRCs, the largest model type. Kansas is a high consumer of residential placements and has been working to be more in line with national averages and shift resources to Evidence Based Program models. KDOC's Juvenile Services Division implemented a multi-systemic therapy pilot program to provide intensive family and community-based treatment in Wyandotte County. This, with other KDOC efforts, resulted in a reduction of youth residential placements of more than 11 percent.

### **Review of Initial Data Concerning Youth Residential Centers**

The Secretary of Corrections provided a preliminary analysis on data collected for YRCs. New Section 3 of 2014 HB 2588 required the Secretary to do the following:

- Conduct a cost study analysis of all YRCs under contract with KDOC, including allowable expenses necessary to meet minimum requirements and costs associated with services provided beyond minimum requirements;
- Evaluate YRC program needs, comparing these needs with availability and proposing modifications to align availability with needs;
- Develop a fee schedule for youth residential services, including daily payment rates for base services and rates for additions to base services;
- Develop a plan for performance-based incentive payment opportunities and a plan for integration of these payment opportunities into the fee schedule;
- Develop a plan to measure performance and evaluate effectiveness of JO service providers; and
- Ensure PREA compliance for the 15 group homes.

The Secretary also must report on those actions to the Legislature by January 15, 2015.

The instructions and tool were sent to the 15 contracted YRC facilities on August 1, 2014, requesting a response by October 1, 2014. Two remain unresponsive and one requested an extension. The next step is the collection of actual expenditure and income data for two years.

At the time of the meeting, KDOC was identifying and addressing gaps in data. The level of detail poses a challenge for centers, as not all data was previously tracked. Further, different accounting and business practices for each center may limit comparative data analysis. The performance data is collected on a monthly basis from each provider and captures youth demographic information, program involvement, program completion, YRC placement completion, data supplemented by KDOC research, and

assessed risk level conducted by community supervision agencies.

Partial results reflect that youth are engaged in programming and completion rates are reasonable. Preliminary analysis of need and performance shows a correlation with risk level—greater success with low-risk youth, and less success with high-risk youth.

## **November 5**

### **Presentation of Additional Information Requested at the October 14 Meeting**

KDOC officials provided additional information in response to requests from the October meeting, including information on how expanding Medicaid coverage could result in a reduction of the cost of medical services. The Director of Healthcare Services Family Medicine/KDOC/JJA Division, explained federal law prohibits Medicaid reimbursement to incarcerated individuals unless they are admitted for treatment outside of a correctional facility for more than 24 hours. Currently, offenders who are under age 21, over age 64, pregnant, or seriously disabled meet Medicaid criteria while also still meeting the criteria of indigence. This allows for annual reimbursements of \$600,000, which is reduced from the KDOC budget. If Kansas law allowed for expansion of Medicaid, approximately 90 percent of inpatient inmate hospitalizations would be covered at a savings of \$1.6 million annually, after hiring the two required full-time staff needed to manage the accounting and monitoring of the program.

### **Presentation of State Agency Information Systems Audit – Executive Session**

The Committee entered executive session for a discussion of the security of KDOC information systems presented by Division of Legislative Post Audit staff.

### **Overview of Programs for Adults and Juveniles**

The Secretary of Corrections provided an overview of programs for adults and juveniles within the correctional system. He explained offender assessment drives effective programs and

that programs are designed around empirical research. He added service delivery, disruption of criminal networks, training and supervision of staff, and program evaluation also are essential to effective programs. Program providers deliver services that allow 89 percent of eligible offenders in adult correctional facilities to receive program credit, as authorized in 2008 SB 14. This reduces the need for approximately 250 additional prison beds.

T4C is a cognitive behavioral intervention developed by the National Institute of Corrections (NIC). In FY 2014, 734 moderate and high risk offenders completed T4C at a cost of \$317 per participant. Research shows the state saves \$16.33 for every dollar spent on T4C completers.

Offender Workforce Development Services (OWDS) was developed by the NIC and the National Career Development Association. Participants learn basic job search skills, build an employment portfolio, and practice interview skills in a 40-hour program. Findings show a 33 percent reduction of recidivism in the first year following release. Partnering with education and vocational programs is important in addressing long-term retention and career advancement. In FY 2014, 988 moderate- and high-risk offenders successfully completed OWDS at a cost of \$317 per participant.

Substance abuse programming uses a cognitive behavioral, skills-building curriculum from the University of Cincinnati. In FY 2014, a total of 413 inmates completed substance abuse programming at a cost of \$3,338 per offender.

The KDOC Sex Offender Treatment Program (SOTP) is a facility-based program of cognitive-based, skills-building treatment. In FY 2014, a total of 244 offenders completed sex offender treatment prior to release, an increase from the previous year of 192, at a cost per offender of \$3,381 for the prison portion of SOTP. Sex offenders in the community receive treatment at 16 parole offices.

Kansas Correctional Industries (KCI) has two components: traditional industries, which are operated directly by KCI and employ 324 inmates; and private industries, which are operated by

private firms located in or near KDOC facilities pursuant to an agreement with KDOC. Private industries employ 577 inmates in prison-based industries and 363 inmates in non-prison-based industries. Correctional industry program participants have a recidivism rate of 18 percent.

Offenders who participate in correctional education have a 43 percent less chance of returning to prison. GED programs reduce recidivism by 8 percent and vocational education reduces recidivism by 10 percent.

In FY 2015, \$1.8 million was allocated for juvenile prevention programs in all 31 judicial districts. KDOC estimates 9,324 youth were served. Prevention programming includes Big Brothers Big Sisters mentoring, truancy programs, intervention programs, cognitive life skills courses, and youth support programs.

### **Overview of Changes to Juvenile Services Since Implementation of ERO 42**

The Secretary provided an overview of changes to Juvenile Services since implementation of ERO 42. Key benefits of the consolidation are in the areas of administration, enhanced focus on programs, and security and safety.

#### **November 6**

### **Presentation on Juvenile Justice Reform**

A representative of Federico Consulting, Inc., who assists indirectly with the National Campaign to Reform State Juvenile Justice Systems on behalf of the John D. and Catherine T. MacArthur Foundation appeared before the Committee. The National Campaign does not come to the state with a specific agenda or “one size fits all” idea, nor does it have a product, system, or consulting service to sell. The goal is to meet with key policymakers to determine what changes are deemed important, necessary, and achievable, and offer research and other resources to help the state accomplish its objectives.

The Executive Director, Kansas Appleseed, provided testimony on supporting a stronger Kansas juvenile justice system, which includes improving public safety, getting Kansas’ youth

back on a path to thrive, and building a more sustainable system. He studied the current system by interviewing stakeholders across the state and reviewing Kansas data, along with policies and outcomes from other states. To be successful, he noted, interventions must match assessments of a youth's individual risks and needs, and sustainability requires effective prevention and early intervention. The conferee provided information about other states' programs and steps to implement similar programs in Kansas.

### **Presentation on Victim Information and Notification Everyday (VINE)**

The President of Public Safety Services, Appriss, presented information on the VINE system. VINE is automated, but sensitivity-trained service representatives are also available to assist victims. Automated calls allow staff to concentrate on direct victim service contact and messaging is consistent with every call. VINE repeats attempts to reach the registrant (national average for calls is eight). It is not a "one and done" system. VINE provides:

- A single point of access that follows offenders throughout the judicial system;
- Anonymity for victims and multiple types of notification methods to prevent victims falling through the cracks;
- Support for multiple languages on both inbound and outbound lines;
- Free web portal for local victim advocates to interact and assist victims;
- Dual data center with redundant architecture at two physical locations; and
- Multi-location implementation and support.

VINE is successfully implemented in more than 40 statewide programs, including 42 departments of corrections.

### **Presentation on Current OVS Practices**

The Director of Victim Services, KDOC, provided information on OVS, which serves as a liaison between victims and department staff, the Prisoner Review Board, and victim service providers. The Office of Victim Services is committed to providing crime victims the opportunity to express their ideas and opinions. Any victim is eligible to receive notification services if the crime was committed by an offender in KDOC custody; witnesses and family members also are eligible for victim services. Liaisons work specifically with crime victims to provide information, advocate for the right to participate in decision-making, and assist with safety concerns. All services are confidential, free, voluntary, and victim initiated. Brochures are provided in both English and Spanish. The conferee provided information on KDOC victim notification coordinators, feedback and results on a 2014 victim satisfaction survey, and future plans for the program.

### **Presentation on SB 123 Programming**

The KSC Executive Director updated the Committee on 2003 SB 123 programming, which is designed to divert non-violent drug possession offenders out of the prison population and provides state-funded drug treatment of up to 18 months to reduce recidivism among this group of offenders. KSC performs program administration, acts as the centralized payment center for treatment provider invoices, and certifies the treatment providers. Community Corrections supervises offenders who are on probation and collaborate with KSC and treatment providers. There are 30 community corrections agencies, which have contracts with more than 80 treatment providers in most geographical areas and, through this program, access to substance abuse treatment has increased throughout Kansas.

In FY 2015, KSC estimates the newly sentenced offenders will have higher treatment needs than in previous fiscal years due to changes to eligibility for the SB 123 program. Given the uncertainty of the effect of law changes, the agency is conservatively projecting expenditure levels based on FY 2014. Of the \$6.8 million in total expenditures, \$6.3 million will be from SGF,

and the remaining \$510,000 will be from the existing balance in the General Fees Fund. Use of the General Fees Fund expenditures for the SB 123 program will not be sustainable by FY 2016, however, due to an adjustment in the accounting of reimbursements from insurance providers and offenders. The KSC is requesting an enhancement of approximately \$460,000 from the SGF to cover expected payment needs for FY 2016, and \$180,000 in FY 2017.

Potential expansion options of the program include expanding to drug Level 4 small sales, non-drug grid crimes (*e.g.*, burglary and theft) that can be proven to be substance abuse-related, or repealing a special rule for third-time possession offenders that currently requires a presumptive prison sentence rather than SB 123 treatment.

### **CONCLUSIONS AND RECOMMENDATIONS**

The Joint Committee recommends introduction of legislation that would prohibit juvenile offenders convicted of misdemeanors from being committed to juvenile correctional facilities, regardless of previous history.

Further, the Joint Committee recommends greater oversight to ensure that reports required to be submitted to the Joint Committee on Information Technology are submitted and reviewed by the legislative Chief Information Technology Officer to make recommendations regarding each report's merit and related appropriations.

The Joint Committee also recommends the Senate Judiciary, House Corrections and Juvenile Justice, and budget committees study the VINE program, which already is in use in 40 states, and how and whether it could be adopted, beginning at the county level, including how the State could assist in paying for the cost of implementation and operation.

Noting that at 18 years old, a person can vote and serve in the military but cannot legally consume alcohol, the Joint Committee recommends a legislative study of the law concerning minors in possession, especially as it pertains to persons 18-20 years old, and whether it should be decriminalized for this age group. The study should include whether federal highway funds would be lost if it were decriminalized. Similarly, a member suggested an analysis of minor-in-possession statistics in states where hard liquor and beer can be sold in grocery stores, where persons under 21 often are employed, to see whether there is a correlation between higher instances of violations in these states compared to states where it is not allowed.

The Joint Committee recommends the Senate Ways and Means and House Appropriations' Committees consider continued funding of SB 123 programs as the use of the General Fees Fund expenditures will not be possible in FY 2016.

Finally, the Joint Committee recommends a legislative review of the shortage of correctional officers, noting the starting salary is \$13.61 per hour, which makes recruitment more difficult, and the lack of increases in salaries impacts retention.

# Report of the Joint Committee on Information Technology to the 2015 Kansas Legislature

**CHAIRPERSON:** Senator Mike Petersen

**VICE-CHAIRPERSON:** Representative Keith Esau

**OTHER MEMBERS:** Senators Marci Francisco, Tom Holland, Garrett Love, and Jeff Melcher; and Representatives Steven Johnson, Kevin Jones, Harold Lane, and Brandon Whipple

**CHARGE**

- Study computers, telecommunications, and other information technologies used by state agencies and institutions;
- Review proposed new acquisitions, including implementation plans, project budget estimates, and three-year strategic information technology plans of state agencies and institutions;
- Monitor newly implemented technologies of state agencies and institutions;
- Make recommendations to the Senate Committee on Ways and Means and the House Committee on Appropriations on implementation plans, budget estimates, and three-year plans of state agencies and institutions; and
- Report to the Legislative Coordinating Council and make special reports to other legislative committees, as deemed appropriate.

# Joint Committee on Information Technology

## REPORT

### Conclusions and Recommendations

The Committee recommends the executive branch Chief Information Technology Officer (CITO) develop an enterprise-level information technology security plan to determine which security functions should be centralized and which security functions should be performed by individual agencies. In addition, the CITO should bring back recommendations to the Committee regarding which security functions should be performed by state agencies, and which functions should be outsourced to the private sector.

The Committee further recommends consideration of incorporating a return-on-investment component for proposed large information technology projects. Each proposal for an information technology project should include a return-on-investment section, following a life-cycle methodology, and include all follow-up information documenting savings or efficiencies as part of project plans; that documentation should be maintained throughout changes and developments within each project's life-cycle.

The Committee recommends each respective branch CITO identify security vulnerabilities regarding sensitive information and propose remediation actions. In addition, the Committee recommends the branch CITOs identify critical systems lacking continuity of operations plans which would be utilized for disaster recovery purposes.

The Committee recognizes and commends the Legislative CITO on the progress made on legislative information technology projects, in particular, the Kansas Legislative Information Systems and Services (KLISS) project, and his diligence in keeping the Committee apprised of the progress in development, phases, and implementation.

**Proposed Legislation:** None.

### BACKGROUND

The Joint Committee has statutory duties assigned by its authorizing legislation in KSA 46-2102 as noted below, and the three statutory duties also defined its general areas of interim activity:

- Study computers, telecommunications, and other information technologies used by state agencies and institutions. The state governmental entities defined by KSA 75-7201 include executive, judicial, and legislative agencies and Regents institutions;
- Review proposed new acquisitions, including implementation plans, project budget estimates, and three-year strategic information technology plans of state agencies and institutions. All state governmental entities are required to comply with provisions of KSA 75-7209 *et seq.* in submitting such information for review by the Joint Committee; and
- Monitor newly implemented technologies of state agencies and institutions.

The Joint Committee on Information Technology (JCIT) met during the 2014 Interim, as authorized by the Legislative Coordinating Council.

The Committee heard reports from the Chief Information Technology Officers (CITOs) for the executive, judicial and legislative branches of government, a special audit on security issues was also presented by the Legislative Division of Post Audit staff, and specific project updates were heard on the executive branch enterprise email system, and the judicial branch electronic filing system.

The Committee had received a presentation regarding the executive branch enterprise email system at its April 2, 2014, meeting, in which it had also received reports that the system might present security and compatibility concerns for public safety agencies. The most recent report received at the November 13, 2014, meeting noted that this issue was being addressed, and that the system would be compatible with those public safety agencies and for those systems that had initially expressed concerns.

In continued review of information security the Committee held an executive session meeting on May 1, 2014. A Novacoast executive was available at that meeting in order to answer questions and lead discussion regarding IT security. These ideas were further explored at the November 13<sup>th</sup> meeting where Legislative Post Audit staff presented its report on: 'State Agency Information Systems: Sensitive Datasets and IT Security Resources' (July 2014, R-14-007).

## **Conclusions and Recommendations**

The Committee recommends the Executive branch CITO develop an enterprise-level information technology security plan to determine which security functions should be centralized and which security functions should be performed by individual agencies. In addition, the CITO should bring back recommendations to the Committee regarding which security functions should be performed by state agencies, and which functions should be outsourced to the private sector.

The Committee further recommends consideration of incorporating a return-on-investment component for proposed large information technology projects. Each proposal for an information technology project should include a return-on-investment section, following a life-cycle methodology, and include all follow-up information documenting savings or efficiencies as part of project plans; that documentation should be maintained throughout changes and developments within each project's life-cycle.

The Committee recommends each respective branch CITO identify security vulnerabilities regarding sensitive information and propose remediation actions. In addition, the Committee recommends the branch CITOs identify critical systems lacking continuity of operations plans which would be utilized for disaster recovery purposes.

The Committee recognizes and commends the Legislative CITO on the progress made on legislative information technology projects, in particular the Kansas Legislative Information Systems and Services (KLISS) project, and his diligence in keeping the Committee apprised of the progress in development, phases, and implementation.

# Report of the Joint Committee on Kansas Security to the 2015 Kansas Legislature

**CHAIRPERSON:** Senator Greg Smith

**VICE-CHAIRPERSON:** Representative Mario Goico

**OTHER MEMBERS:** Senators Anthony Hensley, Mitch Holmes, Mike Petersen, Pat Pettey; and Representatives Carolyn Bridges, Stan Frownfelter, Peggy Mast, and Connie O'Brien

**CHARGE**

- Study the security for the Capitol complex; the current state of general emergency preparedness in Kansas, including the status of communications among local law enforcement and emergency agencies at the state and local levels; emergency preparedness at K-12 and post-secondary educational institutions; and federal moneys received for homeland security; and
- Hear an update on the reorganization of the Kansas Commission on Veterans' Affairs.

# Joint Committee on Kansas Security

## ANNUAL REPORT

### Conclusions and Recommendations

The Joint Committee recommends the Kansas Center for Safe and Prepared Schools be incorporated into the Kansas Department of Education, with staff and other program expenses funded through the State General Fund.

The Joint Committee requests the Kansas Legislative Research Department conduct research on the governance structure of public safety communications policy and assets in similar states and report that information to this Committee and the Statewide Interoperable Executive Committee.

The Joint Committee recommends funding for planning staff and recovery teams in the Division of Emergency Management to assist local officials.

The Joint Committee recommends increased staffing for the Kansas Intelligence Fusion Center.

The Joint Committee recommends all legislators, and especially committee chairpersons, receive training on Statehouse emergency policies and procedures.

The Joint Committee recommends the state amend law as necessary so the state adheres to federal guidelines regarding in-state tuition for veterans.

The Joint Committee recommends the Legislature explore ways to access revenues from Kansas Lottery sales for veterans' programs.

**Proposed Legislation:** None. However, the Committee expresses support for any legislative changes that may be needed to bring the state into compliance with federal requirements regarding in-state tuition for veterans.

### BACKGROUND

The 2004 Legislature created the Joint Committee on Kansas Security (KSA 46-3301) to study, monitor, review, and make recommendations for the following:

- Matters relating to the security of state officers and employees;
- Security of buildings and property under the ownership or control of the state;

- Matters relating to the security of a public body or agency, public building, or facility;
- Matters relating to the security of the infrastructure of Kansas, including any information system; and
- Measures for the improvement of security for the state.

The Legislative Coordinating Council (LCC) also directed the Committee to study the security

for the Capitol complex; the current state of general emergency preparedness in Kansas, including the status of communications among local law enforcement and emergency agencies at the state and local levels; emergency preparedness at educational institutions; and federal moneys received for homeland security. It further directed the Committee to hear an update on the reorganization of the Kansas Commission on Veterans' Affairs.

## COMMITTEE ACTIVITIES

The Committee met November 7, 2014, to hear information on Capitol complex security and other topics as directed by the LCC.

### Emergency Preparedness in Kansas

Major General Lee Tafanelli, Kansas Adjutant General, and members of his staff provided information on various facets of emergency preparedness.

**School emergency preparedness.** Major General Tafanelli stated the Kansas Center for Safe and Prepared Schools, launched five years ago, has emphasized training and collaborative partnerships between K-12 schools and emergency responders and other community leaders within their localities. Approximately 112 Kansas school districts have completed formal emergency operation plan training. He noted efforts to enhance school safety and emergency preparedness have involved not only the Center and other portions of the Adjutant General's Department but also the Attorney General's Office, the Kansas Fire Marshal's Office, the Kansas Highway Patrol, the Kansas Department of Health and Environment (KDHE), the Kansas Department of Education, the Kansas Association of School Boards, the Governor's Office, and many other agencies and groups.

The Center's Jerry Tenbrink provided additional information, including that in the past year the Center assisted with planning and hosting a statewide school safety conference attended by more than 400 people. Brad Neuenswander, Kansas Interim Commissioner of Education, answered questions and stated there is no

requirement that school personnel be trained in emergency preparedness, but the State Board of Education can provide assistance in how to prepare and utilize the best plan in coordination with other agencies.

Major General Tafanelli recommended designating the Department of Education as the lead state agency for coordinating school safety and preparedness activities and incorporating the Center into that agency.

**Emergency and interoperable communications.** Colonel Chris Stratmann, Chief Information Technology Officer for the Adjutant General's Department, Kansas National Guard, said the past few years have seen a vast improvement in public safety communications capabilities and that the growth in those capabilities will require enhanced state coordination. He discussed the work of the Statewide Interoperable Executive Committee (SIEC), which was created by Executive Order 07-27, and the Office of Emergency Communications. He explained a Kansas Department of Transportation (KDOT) radio system "backbone" was leveraged by KDOT, the Kansas Highway Patrol, and the Adjutant General's Department to build a statewide interoperable public safety radio system. He said the statewide system is used by nearly 1,200 agencies and jurisdictions and more than 28,000 users. The Adjutant General's Department requested the Committee ask the Kansas Legislative Research Department to explore governance structures related to public safety communications policy and assets in similar states and report to the Committee and the SIEC.

Colonel Stratmann also briefed the Committee on the First Responder Network Authority, also known as FirstNet, created by Congress in February 2012 to provide emergency responders with a nationwide high-speed, wireless broadband network dedicated to public safety use. Kansas is in the second year of a three-year \$2.3 million grant to prepare for FirstNet, and representatives of the Office of Information Technology Services, the Kansas Native American Affairs Office, and the 911 Coordinating Council were added to the SIEC for this effort. It is estimated the actual request for proposals for buildout of the system will be issued in about two years.

**Emergency management.** Angee Morgan, Deputy Director, Kansas Division of Emergency Management (KDEM), provided an overview on emergency management in Kansas. Among the topics she discussed were the role of the Governor in an emergency; the phases of emergency management: mitigation, preparedness, response, and recovery; training provided at the Eisenhower Center for Studies and at the Crisis City complex near Salina; the formal Kansas Response Plan (which is available on the Division's website); the role of the State Emergency Operations Center and its related communications center in any emergency; and thresholds for receiving assistance from the state and federal government after a disaster. She said the venues at Crisis City, which include a locomotive and rail cars, a concrete rubble pile for practicing search and rescue, and a pipeline area, are frequently used for training. Kansas incident management teams are well-respected nationally and asked to assist in other states. She explained resources are coordinated through the Emergency Operations Center and sent to localities only upon the locality's request.

Ms. Morgan stated major emergency preparedness challenges include turnover at the local level and maintaining emergency managers on that job full time, local elected officials not understanding their emergency management responsibilities, and the likelihood of less federal disaster assistance in the future. She stated the threshold for a disaster to meet the federal definition is likely to double or triple, meaning the state, localities, and individuals will have additional responsibilities for disaster mitigation. She also discussed the importance of opportunities for youth to participate in emergency management activities and career opportunities. The Adjutant General requested consideration of funding for planning staff and recovery teams to assist local officials and the state leverage opportunities to encourage youth to participate in emergency management activities and career opportunities.

Major General Tafanelli reported the Department continues to work on formal conveyance of the Crisis City property from the Air Force to the state and hopes to complete that process within 12-18 months.

**Kansas Intelligence Fusion Center.** Major General Tafanelli described the Kansas

Intelligence Fusion Center as the core of Kansas homeland security efforts. He stated the Fusion Center provides information vital to early warnings, risk assessment, and decision-making by public officials by analyzing systems-level threats to critical infrastructure, working with private industry to improve cyber security, and partnering with subject matter experts to identify bio-threats to animals, plants, and humans. He said the multidisciplinary approach used in the Fusion Center is economical and sustainable and provides timely information. Major General Tafanelli stated an additional lead analyst position and individual analyst positions dedicated to the Center's focus teams, such as the Critical Infrastructure Focus Team, are needed to address analysis needs and to keep pace with rapidly changing threats.

### **Homeland Security Funding**

Captain Eric Pippin, Kansas Highway Patrol, explained the Patrol since 1999 has served as the state administrative agency (SAA) for the Homeland Security Grant Program, which is funded through the U.S. Department of Homeland Security (DHS). That preparedness funding awarded has ranged from a low of \$670,000 in 1999 (its first year) to a high of \$28.8 million in 2004 and now is approximately \$3.5 million to \$4.0 million a year. Beginning in federal fiscal year 2006, the SAA has administered funds for projects in the state's seven homeland security regions; he stated regionalization works well for the grants and for other emergency response initiatives but the regional boundaries have begun to fade and be replaced with a shared focus on statewide resources. State partners include the Kansas Bureau of Investigation, the Kansas Department of Agriculture, KDOT, KDHE, KDEM, and the Patrol. All projects are presented to and approved by the Commission on Emergency Planning and Response. He provided examples of the 70 current year grant projects, such as the purchase of radios for various agencies; funding for active shooter training for first responders; purchase of deployment supplies, equipment, and contractual training for incident management team members; funding of analyst positions related to the Fusion Center; and purchase of cattle panels to use during responses to overturned animal trailers.

## **Kansas Commission on Veterans' Affairs Office**

Gregg Burden, Director of the Kansas Commission on Veterans' Affairs Office (KCVAO), described the changes to and within that agency within the past year. The enactment of Sub. for HB 2681 in April 2014 abolished the Kansas Commission on Veterans' Affairs, which had been governed by a commission, and created the KCVAO under the supervision of a director appointed by the Governor and subject to confirmation by the Senate. The bill also abolished the Veterans Claims Assistance Advisory Board and replaced it with the Veterans Claims Assistance Program. The Veterans Claims Assistance Program Advisory Board will advise the Director.

Director Burden said the Kansas Veterans' Home in Winfield and the Kansas Soldiers' Home at Fort Dodge have seen significant upgrades in servers and wireless systems in the past year that have enhanced patient security and capability and are used for paperless patient records and financial purposes. Construction projects completed at the homes include new roofs, window replacements, a dining hall renovation, a water line replacement, and boiler replacements. Triplett Hall opened at the Kansas Veterans Home.

The KCVAO also added four veteran service representatives and opened new offices in Atchison and Manhattan, Director Burden said.

Challenges for the KCVAO include keeping positions filled, due to low unemployment rates, lower pay, and local competition for nurses and other skilled workers.

Wayne Bolig, Deputy Director, KCVAO, told the Committee the state will need to comply with a federal in-state tuition requirement for veterans and certain dependents enacted as part of the Veterans Access, Choice and Accountability Act of 2014. He also answered questions about judicial diversion available to some veterans.

## **Ebola Preparedness in Kansas**

Aaron Dunkel, Deputy Secretary of Health and Environment, discussed how KDHE has worked with partner organizations such as the U.S.

Department of Health and Human Services, the U.S. Environmental Protection Agency (contaminated suits worn by health workers and other supplies used are treated as medical waste), hospitals, and local health departments. He said KDHE staff answer many questions and have developed protocols for possibilities such as transfer of a confirmed Ebola patient to an isolation unit in Nebraska. He reported the agency has created educational materials on Ebola.

State Epidemiologist Charlie Hunt provided background and updates on the country's status in regard to Ebola infection. He reviewed what is known about the disease, how the virus is spread, treatment, and quarantine challenges. He said the preparedness plan for Kansas includes risk assessment, monitoring, special considerations for health care workers, evaluation and management, and laboratory testing.

A handout on Kansas law regarding quarantine for infectious disease was distributed to the Committee.

## **Kansas Active Shooter Mitigation Program**

Following introductory remarks by Colonel Ernest Garcia, Superintendent, Kansas Highway Patrol, Captain Robert Keener, commander of the Patrol's training academy, briefed the Committee on the Kansas Active Shooter Mitigation Program. This program trains school personnel and local law enforcement officers on how to think and react to active shooter situations, understanding officers likely will not be present in the first minutes of a situation and law enforcement's priority will be to stop the intruder, not attend to victims. Objectives for the training include how to develop a mindset to address such a situation. The Program expects to expand to training those who will train others. The Program also has worked with the Kansas Juvenile Officers Association and could be applicable to workplace violence situations, Captain Keener said.

## **Capitol Complex Security**

A briefing on Capitol complex security was presented in sessions closed to the public under KSA 2014 Supp. 75-4319(b)(13); that statute permits closing portions of an open meeting so

members may discuss certain matters relating to security measures, if that discussion would jeopardize such security measures. Only Committee members and Kansas Highway Patrol staff were present at those closed sessions.

## CONCLUSIONS AND RECOMMENDATIONS

A motion carried to approve as Committee recommendations those proposed by the Adjutant General's Department:

- Incorporate the Kansas Center for Safe and Prepared Schools into the Kansas Department of Education, with staff and other program expenses funded through the State General Fund;
- Request the Kansas Legislative Research Department explore governance structures related to public safety communications

policy and assets in similar states and report to the Committee and the SIEC;

- Provide funding for planning staff and recovery teams to assist local officials;
- Increase staffing levels at the Kansas Intelligence Fusion Center; and
- Leverage opportunities that encourage youth to participate in emergency management activities and careers.

The Committee recommends all legislators, and especially committee chairpersons, receive training on Statehouse emergency policies and procedures.

The Committee recommends the state amend law as necessary to adhere to federal law regarding in-state tuition for veterans. It also recommends the Legislature explore ways to access revenues from Kansas Lottery sales for veterans' programs.

# Report of the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight to the 2015 Kansas Legislature

**CHAIRPERSON:** Representative David Crum

**VICE-CHAIRPERSON:** Senator Mary Pilcher-Cook

**OTHER MEMBERS:** Senators Jim Denning, Marci Francisco, Laura Kelly, and Michael O'Donnell; and Representatives Barbara Ballard, Willie Dove, John Edmonds, Ron Ryckman, Jr., and Jim Ward

## **CHARGE**

- The Committee is to oversee long-term care services, including home and community based services (HCBS). In its oversight role, the Committee is to:
  - Oversee the savings resulting from the transfer of individuals from state or private institutions to HCBS and to ensure that any proceeds resulting from the transfer be applied to services for long-term care and HCBS;
  - Review and study other components of the state's long-term care system; and
  - Oversee the Children's Health Insurance Program (CHIP), the Program for All-Inclusive Care for the Elderly (PACE), and the State Medicaid programs (KanCare); and monitor, and study the implementation and operations of these programs including access to and quality of services provided and any financial information and budgetary issues.

# Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight

## ANNUAL REPORT

### Conclusions and Recommendations

Based on testimony heard and Committee deliberations, the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight makes the following conclusions and recommendations:

#### Committee Meeting Days

- The Committee recommends it meet twice during the legislative session and twice when the Legislature is out of session in different quarters, as required by statute, with the non-session meetings to be for two days each.

#### Hearings to Review the Legislative Post Audit Report on Community Developmental Disability Organizations (CDDOs)

- The Committee recommends separate hearings be scheduled during the 2015 Legislative Session before the House Social Services Budget Committee and the Senate Committee on Ways and Means' Social Services Subcommittee to address the March 2014 Legislative Post Audit Report *CDDOs: Reviewing Issues Related to Community Services Provided for Individuals with Developmental Disabilities (R-14-006)*.

#### Software Issues Regarding Data Accuracy and Reporting on Waiting Lists

- The Committee recommends a meeting of the Joint Committee on Information Technology be held to review software issues regarding data accuracy and reporting on waiting lists. The Committee noted concerns with the agency's ability to provide accurate data and reporting on waiting lists and expressed it was important to investigate the issue.

#### Anti-psychotic Medications

- The Committee recommends separate hearings be scheduled during the 2015 Legislative Session before the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare to consider the repeal of KSA 2014 Supp. 39-7,121b for the purpose of allowing Kansas Medicaid to manage anti-psychotic medications like other drug classes.

*Proposed Legislation:* None

## BACKGROUND

The Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services (HCBS) and KanCare Oversight operates pursuant to KSA 2014 Supp. 39-7,159, *et seq.* The previous Joint Committee on HCBS Oversight was created by the 2008 Legislature in House Sub. for SB 365. In HB 2025, the 2013 Legislature renamed and expanded the scope of the Joint Committee on HCBS Oversight to add the oversight of KanCare (the state's Medicaid managed care program). The Committee oversees long-term care services, including HCBS, which are to be provided through a comprehensive and coordinated system throughout the state. The system, in part, is designed to emphasize a delivery concept of self-direction, individual choice, services in home and community settings, and privacy. The Committee also oversees the Children's Health Insurance Program (CHIP), the Program for All-Inclusive Care for the Elderly (PACE), and the state Medicaid programs.

The Oversight Committee is composed of 11 members, 6 from the House of Representatives and 5 from the Senate. Members are appointed for terms that coincide with their elected or appointed legislative terms. The Committee is statutorily required to meet at least once in January and once in April when the Legislature is in regular session and at least once during both the third and fourth calendar quarters, at the call of the chairperson. However, the Committee is not to exceed six total meetings in a calendar year, except additional meetings may be held at the call of the chairperson when urgent circumstances exist to require such meetings. In its oversight role, the Committee is to oversee the savings resulting from the transfer of individuals from state or private institutions to HCBS and to ensure proceeds resulting from the successful transfer be applied to the system for the provision of services for long-term care and HCBS, as well as to review and study other components of the state's long-term care system. Additionally, the Committee is to monitor and study the implementation and operations of the HCBS programs, CHIP, PACE, and the state Medicaid programs including, but not limited to, access to and quality of services provided and financial information and budgetary issues.

As required by statute, at the beginning of each regular session, the Committee is to submit a written report to the President of the Senate, the Speaker of the House of Representatives, the House Committee on Health and Human Services, and the Senate Committee on Public Health and Welfare. The report is to include the number of individuals transferred from state or private institutions to HCBS, as certified by the Secretary for Aging and Disability Services, and the current balance in the HCBS Savings Fund. (See Addendum A for the 2014 Report.) The report also is to include information on the KanCare Program as follows:

- Quality of care and health outcomes of individuals receiving state Medicaid services under KanCare, as compared to outcomes from the provision of state Medicaid services prior to January 1, 2013;
- Integration and coordination of health care procedures for individuals receiving state Medicaid Services under KanCare;
- Availability of information to the public about the provision of state Medicaid services under KanCare including accessibility to health services, expenditures for health services, extent of consumer satisfaction with health services provided, and grievance procedures, including quantitative case data and summaries of case resolution by the KanCare Ombudsman;
- Provisions for community outreach and efforts to promote public understanding of KanCare;
- Comparison of caseload information for individuals receiving state Medicaid services prior to January 1, 2013, to the caseload information for individuals receiving state Medicaid services under KanCare after January 1, 2013;
- Comparison of the actual Medicaid costs expended in providing state Medicaid services under KanCare after January 1,

2013, to the actual costs expended under the provision of state Medicaid services prior to January 1, 2013, including the manner in which such cost expenditures are calculated;

- Comparison of the estimated costs expended in a managed care system of providing state Medicaid services under KanCare after January 1, 2013, to the actual costs expended under KanCare after January 1, 2013; and
- All written testimony provided to the Committee regarding the impact of the provision of state Medicaid services under KanCare upon residents of adult care homes.

All written testimony provided to the Committee is available at Legislative Administrative Services.

In developing the Committee report, the Committee also is required to consider the external quality review reports and quality assessment and performance improvement program plans of each managed care organization (MCO) providing state Medicaid services under KanCare.

The Committee report must be published on the official website of the Kansas Legislative Research Department (KLRD). Additionally, the Kansas Department for Aging and Disability Services (KDADS), in consultation with the Kansas Department of Health and Environment (KDHE), is required to submit an annual report on the long-term care system to the Governor and the Legislature during the first week of each regular session.

## COMMITTEE ACTIVITIES

The Committee met twice during the 2014 Legislative Session (January 17 and April 29) and held two days of meetings during the 2014 Interim (August 12 and November 18). In accordance with its statutory charges, the Committee's work focused on specific topics described in the following sections.

**KanCare overview and update.** At the January meeting, the Secretary of Health and Environment provided an overview of the KanCare goals of integrating public health with primary care efforts across the whole spectrum of health to improve the health of the community, with a focus on not just the medical model of KanCare but on an integrated approach using a system of integrated resources. He explained the State Quality Strategy, which includes the pay-for-performance approach and quality measures. The Secretary explained, in 2014, KDHE shifted pay-for-performance measures from operational to outcomes, and he explained the outcomes reporting timeline.

At the April meeting, the Secretary for Aging and Disability Services updated the Committee on statistics for the first year of KanCare and the benefits experienced by Kansans through care coordination, in-lieu-of services, and value-added services. He stated there had been a large decrease in emergency room usage for those on the Physical Disability (PD), Frail Elderly (FE), and Intellectual/Developmental Disability (I/DD) waivers. The KDHE Division of Health Care Finance (DHCF) Director confirmed the reduction in emergency room usage would fall into the four main categories of calendar year 2013 population expenditures.

*KanCare enrollment.* The DHCF Director provided information on the KanCare open enrollment process at the January meeting, noting KDHE had sent out approximately 330,000 enrollment packets and about 8,000 recipients had changed plans as of that date. The Director also reviewed the KanCare Executive Summary.

At the April meeting, the DHCF Director stated KDHE continued to see an increase in enrollment through March 2014 and addressed an Aon Hewitt report that projected an increase of 12,000 in Medicaid enrollment due to the woodwork effect. She noted, while most of the anticipated growth had already been realized in current enrollment, KDHE projected additional growth of 3,200 in the remainder of state fiscal year (SFY) 2014 and 10,200 in SFY 2015. She also provided the calendar year 2013 Top Ten Population Expenditures.

The DHCF Director noted at the August meeting the steady growth in enrollment in Medicaid had leveled off over the previous months. She stated a slightly higher KanCare enrollment might be seen due to the woodwork effect, but she believed most of those increases had been realized. The Director also indicated she expected to see an increase in applications with the activation of the account transfer from the federal Health Insurance Marketplace relating to the Kansas Eligibility Enforcement System (KEES) project that would be occurring later in August.

The KDHE Chief Information Technology Officer (CITO) provided an update on the KEES project at the August meeting, noting the system had been built and tested, and the basic functions of the system were working. He noted KDHE was working on enhancements to help with worker efficiencies, to reduce error rates relating to benefit enrollment, and to ensure the system provided consumers with information with better quality, readability, and understandability. The KDHE CITO stated KDHE also was working to ensure healthcare workers who would use the system had received adequate training.

The KDHE Director of Finance provided cost and enrollment comparisons of KanCare and Medicaid pre-KanCare at the November meeting. He also provided updated information on the improvement in the financial positions for the three MCOs.

*Eligibility determinations.* During the January meeting, the DHCF Director discussed the status of Kansans for whom KDHE had received general information from the federal Health Insurance Marketplace regarding potential eligibility for services. She noted the information received for these individuals was not complete enough to determine actual eligibility. The Director stated, as of January 14, 2014, KDHE had sent approximately 7,000 letters to these potentially eligible individuals for whom contact information was complete in order to proceed with eligibility determinations.

At the August meeting, the KDHE CITO explained KEES would implement an account transfer, which meant Kansans who had applied for health insurance in the federal Health

Insurance Marketplace and had been assessed by the Centers for Medicare and Medicaid Services (CMS) as possibly eligible for Kansas Medicaid would have their applications transferred directly to the Clearinghouse. He noted the process in the federal Marketplace allowed CMS to make an initial assessment of possible applicant eligibility and electronically transfer the applicant's account to Kansas for determination of actual eligibility. He noted the CMS assessment did not result in automatic eligibility for Medicaid because states are responsible for making the determination on eligibility, so it would not be proper for CMS to make that determination.

At the August meeting, the KDHE CITO was asked to address the letter from CMS placing Kansas on a "watch list" and whether that was due to a backlog problem. The KDHE CITO stated CMS had not placed Kansas on a "watch list" but had notified the state that its contingency plan, approved prior to October 2013, needed to be updated and include a faster timeline to accept account transfers. With regard to when the account transfer part of the KEES system would be fully functional, he noted the agency was ready to start transferring accounts but had to go through a formal protocol with CMS, so the agency was working with CMS to complete that process in August. The KDHE CITO said the agency would put in a revised contingency plan on August 15, 2014, that would allow the state to accept account transfers, which was not the full implementation of the KEES system. He noted full implementation was expected in November 2014, so the system would be in a pilot-program status during the interim, allowing the agency to conduct training and finish preparing for implementation.

The KDHE CITO provided an update on KEES at the November meeting, stating KDHE was then in Phase 3 Build 3 in system testing. He noted KDHE was in the final stages of identifying and prioritizing change requests received from the KDHE program staff.

*Pay-for-performance measures.* The KDHE Director of Finance addressed questions regarding actual dollars for pay-for-performance measures during the August meeting. He noted, for the first year of KanCare, these were operational performance measures. He stated KDHE withheld approximately \$62.4 million from the MCOs'

capitation payments, and the MCOs had earned back approximately two-thirds. However, the state had not released the funds back to the MCOs, as an independent validation of the metrics was then underway. The Director indicated the review should be completed and funds released later in 2014 in the amount of approximately \$42.0 million and approximately \$23.0 million would be held back and placed into general revenue.

*Affordable Care Act insurer's fee.* During the April meeting, the DHCF Director discussed the Affordable Care Act (ACA) insurer's fee, a new fee being imposed on states by the federal government. The DHCF Director stated the ACA created an \$8.0 billion annual fee on the health insurance industry nationwide starting in 2014, which will increase to \$14.3 billion by 2018. She explained the fee was allocated to qualifying health insurers based on their respective market shares of premium revenue in the previous year. She noted, while Medicaid managed care plans were not excluded, premiums associated with long term services and supports (LTSS) were excluded.

The DHCF Director stated the impact of the fee on the state Medicaid budget with regard to the State General Fund (SGF) would be \$14,045,392 in SFY 2015, \$19,545,760 in SFY 2016, and \$18,268,476 in SFY 2017. In order to put the cost into perspective, she provided a scale, noting \$14.0 million SGF per year would remove 725 persons from the PD wait list and 375 from the DD wait list.

*KanCare inspector general position.* At the August meeting, the Secretary of Health and Environment discussed the status of the vacant KanCare inspector general (IG) position. He noted interviews would be scheduled for later in August with plans to have a new IG in place by late October. The Secretary noted, based on existing statute, another vacant position in the Office of Inspector General (OIG) could not be filled until the new IG was hired. Concern was expressed by a Committee member Kansas had had a KanCare [Medicaid] IG for only approximately one of the past three years. The Secretary stated it had been difficult to recruit and maintain someone in the KanCare IG position. Discussion also was held on the placement of the KanCare IG within KDHE and the measures implemented to ensure IG independence allowing for actions against KDHE,

if necessary. The Secretary noted the OIG was placed directly under the Secretary of Health and Environment during the recent agency reorganization, instead of within one of the divisions of the agency, to ensure independence.

An update provided by the Acting Secretary of Health and Environment at the November meeting indicated the person selected for the IG position had not accepted the offer, so the search for a KanCare IG continued.

**Kansas Health Information Technology Act update.** The Deputy Secretary of KDHE provided an oral briefing on the Kansas Health Information Technology Act and the secondary use of medical information. He explained a review process was in place to ensure organizations met the established criteria for receiving medical data. He also noted the agency wanted to ensure the way the data was shared or sold was fair, and universal access was allowed for organizations that met the standards for utilization. The Deputy Secretary also confirmed federal funding for health care providers for electronic health records equipment was independent of the state's health information network, as long as providers purchased certified electronic health records and met the criteria.

**Health Homes implementation.** During the January meeting, the KDHE Director of Medicaid Services discussed the new Health Homes program to be implemented on July 1, 2014, as a Medicaid State Plan option. She noted the Health Homes program was designed to provide coordination of physical and behavioral health care with LTSS and available to those who met the eligibility criteria. The Director indicated 12 other states were operating Medicaid Medical Health Homes programs, and Kansas was one of three states operating the model using two state plan amendments. She noted the two primary target populations were individuals with serious mental illness and those with asthma or diabetes who also were at risk for another chronic condition. The Director discussed the enrollment process and payment and project structures.

Health Homes' funding was discussed at the January meeting, with confirmation of a 90/10 split between federal and state funding. The KDHE DHCF Director clarified each Health

Homes member could receive eight quarters of the enhanced match that would begin from the implementation of the state plan amendments. She noted if subsequent amendments of additional populations were added, the number of quarters for those populations could be extended. The Director stated, after the eight quarters of enhanced match, the match would revert back to the typical Medicaid match rate. She noted, with eight quarters of data, the state could determine whether the program reduced emergency department utilization and hospitalizations and could then decide if Health Homes was the model desired moving forward. The Director also clarified the 90/10 match applied to both current and newly added Medicaid recipients and only to Health Homes services.

During the Health Homes program update provided at the April meeting, the KDHE Medicaid Initiatives Coordinator, DHCF, noted KDHE intended to implement the Health Homes program on July 1, 2014, for Kansans with serious mental illness and those with asthma or diabetes who are at risk of another chronic condition. She noted enrollment in the Health Homes program was passive, with an option to opt out. She stated those who were eligible would receive letters notifying them of their eligibility, but individuals could opt out initially or at any time by calling or returning a form included with the letter. She responded to questions regarding the cost of Health Information Technology technical assistance and whether funding was available for consulting or for actual hardware and software, noting the grant funding was for consulting only.

The KDHE Medicaid Initiatives Coordinator testified at the August meeting that the Health Homes for individuals with serious mental illness was implemented July 1, 2014. She indicated there had been an issue as CMS would not pay for duplicative services. CMS viewed targeted case management (TCM) and some of the core services in Health Homes as being duplicative, so persons in Health Homes could not receive Medicaid TCM services. The Coordinator indicated the state had worked through the issue, so individuals would not have to choose between TCM and the Health Homes program. She indicated about 17.0 percent of the 2,200 persons who opted out of Health Homes were I/DD.

The Coordinator also explained at the August meeting that implementation of the Health Homes program for chronic conditions had been delayed due to an insufficient number of primary care providers interested in participating. She indicated KDHE was continuing to engage providers and looking at networks to determine the possibility of implementing in January 2015 or implementing the program regionally for those areas with sufficient primary care provider interest.

The Acting Secretary of Health and Environment provided a Health Homes update at the November meeting. She stated at that time, 25,630 persons were enrolled and more than 98 public outreach events had taken place.

At the November meeting, the Secretary for Aging and Disability Services discussed the state's efforts to provide transparent and frequent information regarding Health Homes. She noted the federal rules regarding Health Homes state a member cannot be enrolled in a Health Home and also have a targeted case manager who is not part of the member's Health Home. The Secretary indicated Kansas designed its Health Home model to provide I/DD consumers with the opportunity to enroll in a Health Home but also keep their targeted case manager. However, she noted the state cannot force or require third parties, such as Health Home partners (HHPs) or I/DD TCM providers, to contract with each other. As a result, if a targeted case manager is not contracted with a HHP, the member may choose another HHP or opt out of the Health Homes entirely.

At the November meeting, a targeted case manager with Jenian, Inc., expressed concern the letters regarding Health Homes were sent to persons who cannot read or write, limiting their ability to opt out. She also noted her organization wanted to become a HHP, but the cost of the required electronic health records software made it impractical.

The KDHE Medicaid Initiatives Director responded to concerns regarding the receipt of the Health Homes letters, or lack thereof, by stating CMS required letters be sent to the actual beneficiaries, unless someone was listed as a responsible person in the Medicaid case file. She noted KDHE would encourage families and

guardians to be on file as responsible persons with KDHE, so they would receive copies of letters as well.

With regard to the availability of funds to help those implementing electronic health records systems, the KDHE Medicaid Initiatives Director said the federal funds available were limited to traditional healthcare providers. However, she noted KDHE contracted with a company to provide technical assistance to those wanting to become HHPs.

**Transition of LTSS for individuals on HCBS I/DD waivers.** The Secretary for Aging and Disability Services provided an update at the January meeting regarding delays in transitioning LTSS for individuals on the HCBS I/DD waiver into KanCare. A detailed update was provided by the Secretary at the April meeting regarding the LTSS transition and outlining provider payments, percent of claims denied, average turn-around time from claim submission to payment, reasons for claim denials, education and outreach efforts, client obligation issues, and the process used to address the underserved I/DD waiting list.

**MCO financial losses during the first year of KanCare.** At the April meeting, a Committee member posed questions regarding the financial losses experienced by the three MCOs during the first year of KanCare and whether KDHE had a back-up plan if one of the MCOs pulled out of KanCare. The Secretary of Health and Environment stated the first year was expected to be more costly, but the second and third years were expected to improve. He also noted the state chose to contract with three MCOs to avoid some issues that occurred in other states when an MCO pulled out.

Representatives of the MCOs expressed knowing at the start of KanCare the first-year costs might be an issue and loss could be expected, so contingencies were put in place. The Chief Executive Officer of Amerigroup stated one factor contributing to the first-year losses by the MCOs was upfront costs due to “pent-up demand.” The Sunflower Chief Executive Officer and Plan President indicated he usually expected it to take about 18 months, assuming a good start, for a program like KanCare to make money. Because

Sunflower had issues early on, he anticipated it would take four or five months longer for Sunflower to see a change in its financial situation. A Committee member asked the MCO representatives how long their shareholders would be willing to accept losses. The Sunflower representative indicated the trend line on the losses was improving, that Kansas had done KanCare right by selecting three companies with significant financial assets in multiple states, and the MCOs knew it would take time for these programs to stabilize.

A Committee member requested confirmation at the April meeting that the MCOs were required to provide services for the duration of the three-year contract with the state and could not back out earlier due to the negative cash flow situation. The Secretary for Aging and Disability Services stated the MCOs had committed to three years. The DHCF Director confirmed the same and clarified it was a three-year contract with two possible one-year extensions, as determined by the state. With regard to whether the MCOs and the state were required to renegotiate after the initial three years, the Secretary stated rates were renegotiated every year, so at the end of the base contract the parties would have to renegotiate the entire contract and the rates.

The KDHE Director of Finance provided information shortly after the November meeting regarding the improved financial status of the MCOs during the first two quarters of calendar year 2014.

**KanCare Ombudsman.** The Secretary for Aging and Disability Services updated the Committee on the organizational structure of the Office of the KanCare Ombudsman at the January meeting. He noted the KanCare Ombudsman would continue to be housed in KDADS and would be independent from the MCOs and KDHE. He stated a Volunteer Director would be added in the Ombudsman Office to develop a volunteer network across the state.

The KanCare Ombudsman provided an update of statistics on case data and resolutions at the January meeting. He also informed the Committee of a KanCare customer survey to be completed by

Wichita State University, and some of the proposed questions were included in his testimony.

The new KanCare Ombudsman reviewed the KanCare Ombudsman Quarterly Report for the first quarter of calendar year 2014 at the April meeting. She reported the focus had been on accessibility and outreach, including revising the KanCare Ombudsman website. She noted the KanCare Ombudsman Office was in the process of hiring a volunteer coordinator, who would be responsible for creating a volunteer program across the state. The KanCare Ombudsman also provided information on the Ombudsman's role in the appeals process.

The KanCare Ombudsman provided Committee members with an update of office activities at the August meeting. She stated new tracker information was implemented in early June 2014 that would allow her to provide additional data in future reports. She also noted an Ombudsman Volunteer Coordinator had been hired and would start within a couple of weeks. She provided an update on the third-quarter statistics at the November meeting.

**Provider reimbursement.** With regard to claims denials and increased timeliness of payments, at the April meeting the Secretary for Aging and Disability Services indicated the agency was working closely through weekly telephone calls with various stakeholders and with outreach, training, and other matters. The Secretary stated denial rates and historical payment rates would continue to be monitored for discrepancies.

In response to whether the change in rate adjustments to semi-annual from quarterly being considered for nursing homes was being considered for other providers, the Secretary for Aging and Disability Services stated consideration was being given to making the rate adjustment consistent for all providers.

**Hospital claims.** At the August meeting, the Committee heard concerns regarding hospital claims processing timelines and delayed payments of accounts receivable. A representative of the Kansas Hospital Association (KHA) discussed the KanCare Implementation Technical Advisory

Group (TAG), which included representatives of the KHA, the three MCOs, and KDHE. He noted the TAG addressed systemic issues hospitals were seeing in the field, including a current issue regarding accounts receivable that were more than 90 days past due. His written testimony included statistics regarding this issue.

One Committee member expressed concern the data in the KanCare Executive Summary indicated Sunflower, which was the major provider in the member's district, seemed to have a negative upward trend in denied claims. The DHCF Director responded the agency had discussed this matter with Sunflower, and she expected improvement. She responded the agency continued to meet regularly with all of the MCOs to discuss these issues and to develop corrective action plans.

The Committee member asked why none of the MCOs had met the measure regarding claims processing timelines and said it seemed to be a problem. The DHCF Director replied each MCO had different claims processing projects in place and KDHE was working to remedy the problem.

A Committee member asked the Chief Executive Officer and Plan President of Sunflower State Plan about the status of hospital reimbursement. He responded accounts receivable issues mostly were resolved. He further indicated the other piece that was helping was the TAG group.

**Community Developmental Disability Organizations services.** At the April meeting, the Secretary for Aging and Disability Services was asked to address the Legislative Post Audit (LPA) Community Developmental Disability Organization (CDDO) audit and the reworking of the grant so as to draw down federal dollars to provide services to more of the DD community. The Secretary responded \$5.0 million SGF was available to be used for persons who were Tier 0 DD-qualified, and there was ongoing discussion about using \$2.0 million to \$3.0 million of these funds to draw down waivers that would result in receipt of federal funds. He indicated he would report back at the Committee meeting scheduled for August 2014.

A Committee member noted at the April meeting the LPA CDDO audit also discussed the possibility of reducing the number of CDDOs to align more closely with the number of Aging and Disability Resource Centers (ADRCs) and asked whether this had been discussed. The Secretary for Aging and Disability Services responded there were 11 ADRCs and 27 CDDOs, but he was not aware of any dialogue about adjusting the number of CDDOs. He further stated he would be hesitant to consider that at a time with many other ongoing changes.

The Acting Secretary for Aging and Disability Services was asked at the August meeting about any discussion regarding the shifting of CDDO grant funds to address the waiting lists, and she replied it was not part of the ongoing conversation with the CDDOs.

A Principal Auditor with LPA briefed members on the audit titled *CDDOs: Reviewing Issues Related to Community Services Provided for Individuals with Developmental Disabilities (R-14-006)*. The auditor noted the report looked at two questions: whether the CDDOs have a substantial conflict of interest and how those conflicts could be resolved, and how the community services system could be changed to maximize the amount of funding available to provide services for individuals with DD. He indicated there was an inherent conflict of interest built into the system, but the audit did not find any evidence CDDOs took advantage of the conflict. He indicated KanCare added oversight but did not eliminate the inherent conflict of interest. The auditor also stated the audit found steps could be taken to make the system more efficient.

**Presentations on KanCare from individuals, providers, and organizations.** The Committee heard from multiple KanCare beneficiaries regarding both favorable experiences and difficulties faced in navigating the system.

Positive experiences were described by multiple individuals receiving KanCare services. Among the favorable testimony heard were comments related to the ease of navigating the process, valuable assistance provided by the support teams and case manager, MCOs' efforts at keeping members informed, services provided by

the MCOs to facilitate the members' ability to remain in their homes, additional hours of care received, benefits provided to assist with weight loss, newly-added lung and heart transplant surgeries and bariatric surgery, support provided in addressing both physical and mental health problems, and appreciation for the MCOs' goal of finding employment for persons with disabilities.

Difficulties described by KanCare members and those on the waiting list for services included the inability to obtain information regarding the basis for reductions in plans of care hours; lack of knowledge regarding the status of individuals on the waiting lists; difficulty navigating the system and administrative burdens; medication, treatment, and extension of treatment denials; provider and supply company changes; difficulty in understanding and navigating the appeals process; the type and limitations of the assistance provided by the KanCare Ombudsman, including concerns about the placement of the Ombudsman Office; the lack of dental care for individuals with I/DD; and feeling intimidated by a care coordinator.

Representatives of the following organizations and providers testified or provided written testimony before the Committee at the four meetings: Kansas Home Care Association; Kansas Council on Developmental Disabilities; LeadingAge Kansas; Newman Regional Health; Children's Mercy Hospital; Hillside Village, LLC; Community Living Opportunities; Phoenix Home Care; Kansas Association of Centers for Independent Living; Disability Rights Center; Briar Payne Meade Insurance; Johnson County Commission on Aging; Vintage Park Assisted Living Facility; KHA; Kansas Action for Children; E.C. Tyree Health and Dental Clinic; Kansas Health Consumer Coalition; InterHab; Kansas Advocates for Better Care; Topeka Independent Living Resource Center; Kids TLC; Mercy Home Care; AARP Kansas; Mosaic; Jenian, Inc.; Kansas Neurological Institute Parent Guardian Group; Kansas Health Care Association; Oral Health Kansas; Association of Community Mental Health Centers of Kansas; Kansas Mental Health Coalition; National Alliance on Mental Illness Kansas; and Mental Health America of the Heartland.

Some organizations and providers praised KDHE and KDADS for the agencies' willingness

to work with them on issues that arose. The MCOs also received praise for their cooperative efforts from organizations and providers, though some expressed difficulty with particular MCOs. It was suggested greater latitude should be provided to the MCOs to be able to manage the care. Several providers indicated progress had been made with payment issues, but encouraged continued oversight. Other providers stated they had no issues with payments.

Various areas of concern or need expressed by organizations and providers included the potential loss of needed services to a number of individuals on the PD waiting list because KDADS had been unable to contact them; confusion in navigating the process and the members' lack of knowledge as to available assistance; the limited nature of the assistance provided by the KanCare Ombudsman; the proposed allocation of designated PD waiting list funds to address the I/DD underserved waiting list; difficulty with the I/DD pilot billing system and its impact on small providers with limited cash flow; notice and due process problems, including misinforming or the failure to inform recipients of reductions in services; increased costs and financial burdens for providers; problems with accounts receivable, slow payments, denials, and inaccurate payments; challenges facing Financial Management Services (FMS) providers, such as the cost prohibitive nature of increasing worker's compensation insurance and the inability to find coverage with the standard insurance market; the need for more KanCare reports; concerns the PD waiver money may be affected in light of possible budget cuts and the impact of the U.S. Department of Labor (DOL) rule; the need for management and control of waiting lists to be with the Centers for Independent Living; providing consumers who wanted to testify before the Committee with more time to speak; the need for support for older adults; concerns as to the use of anti-psychotic drugs as chemical restraints in the treatment of dementia in the elder population; ensuring the availability of anti-psychotics for use in the treatment of mental illness; the need for increased reimbursement rates for HCBS professional staff providing services and supports to those with disabilities; concern with the new DOL rules; the need for expanded dental care for adults; request for enrollment data to be published monthly to enable closer tracking of trends; and the requirement to move individuals from the PD

waiver to the FE waiver at age 65, resulting in the direct care worker receiving a reduction in pay because reimbursements under the FE waiver are lower than under the PD waiver.

**Use of anti-psychotic drugs as chemical restraints of elders with dementia.** The Executive Director of Kansas Advocates for Better Care testified at the August meeting regarding the need to address the use of anti-psychotic drugs as chemical restraints in the treatment of dementia in the elder population. She noted Kansas was 47th out of 50 states in the use of anti-psychotic drugs. The Executive Director stated the use of anti-psychotic drugs for elders with dementia was not authorized, and the rest of the nation as a whole had reduced the use of anti-psychotic drugs, while the use in Kansas had increased.

At the August Committee meeting, the DHCF Director stated there was a state statute that would not allow KDHE to manage behavioral health medicine, and she suggested the Legislature look at that issue during the 2015 Session. The Secretary of Health and Environment added anti-psychotic drugs were on a list used by the medical field that included drugs which may be more harmful to elderly people than others. He stated it was generally recommended anti-psychotics not be used for elders with dementia, but physicians may feel there were no other options and would use them although they would be going against the general guidelines of care. The Acting Secretary for Aging and Disability Services stated, while Kansas was doing very well on elder care overall, KDADS was working across organizations on this particular issue.

The Chief Executive Officer and Plan President for Sunflower State Health Plan also expressed concern about the use of anti-psychotic drugs and indicated he would like to see the state manage them. He indicated he had been talking to doctors about issues with the use of anti-psychotic drugs, and they had been very receptive.

At the August meeting, the Chief Executive Officer of Amerigroup Kansas Plan said the MCO was in the process of looking at the frequency of prescriptions by prescriber and geography with regard to the use of anti-psychotic drugs, particularly as it applied to children and the elderly.

**Agency responses to presentations by individuals, organizations, and providers.** The DHCF Director addressed concerns expressed regarding the appeals process during the January meeting. She indicated an inter-agency team was working on uniform language for the three MCOs to include in their notices and handbooks, with stakeholder input to ensure language was understandable, and the team also planned to clarify other issues raised about the appeals process. During the April meeting, she stated KDHE had worked with the MCOs and CMS to develop one uniform Notice of Action form to be used by all MCOs to help avoid issues with access to appeals and state fair hearings. A copy of the uniform notice was provided.

With regard to issues expressed by providers, at the April meeting the DHCF Director noted KDHE worked on a Provider Experience Improvement Project to resolve provider-specific issues.

During the August meeting, the DHCF Director addressed concerns regarding redaction of information in KanCare reports. She noted KDHE had to take into account the sample size of the data because, if the sample size was too small, individuals might be identified. The DHCF Associate Chief Counsel expressed KDHE's desire to have the reports as transparent as possible. However, with regard to the timeliness of the agency's response to requests for information, the Associate Chief Counsel noted KDHE had received requests for dozens and dozens of reports following the April Committee meeting, and the volume of the requests had made it difficult to respond quickly. He also noted the state and the MCOs had worked together to determine what should be redacted from the reports and believed the information needed by the requestors would be available, but KDHE was glad to meet with persons to discuss what had been redacted and work with the persons if they wanted to contest the redactions.

At the August meeting, the DHCF Director informed the Committee KDHE had a request for the procurement of the Medicaid management information system and the procurement of the data analytics interface, and part of that would include making available a public dashboard on the website with information about KanCare.

**MCO testimony and responses to presentations by individuals, organizations, and providers.** Representatives of the three MCOs testified at the four Committee meetings. At the January meeting, representatives of the Amerigroup Kansas Plan, Sunflower State Health Plan, and UnitedHealthcare provided an update of each MCO's experience during the first year of KanCare. The representatives discussed the preparation and readiness for inclusion of LTSS for the I/DD population, efforts taken to ensure no harm was caused to providers due to cash flow, and the commitment to making the appeals and grievance process less confusing.

The Chief Executive Officer of Amerigroup shared stories of individuals who had received beneficial services under KanCare and the implementation of hospital operational enhancements in response to concerns expressed by the KHA at a previous meeting. The Chief Executive Officer and Plan President of Sunflower State Health Plan discussed efforts to improve care for the individuals being served, especially in the area of diabetic care and treatment for alcohol and other drug disorders. The Plan President of UnitedHealthcare discussed member programs and engaging members in their own health, such as encouraging pregnant mothers to complete prenatal exams and adopt healthy habits and a community-based weight management program. He also shared information on a three-year \$1.5 million commitment focused on finding meaningful employment for the DD population.

The representatives of the MCOs were asked about each company's policy of pursuing refunds from consumers who appealed decisions and maintained services pending the appeal, but ultimately lost the appeal. Confirmation was subsequently provided that none of the MCOs sought refunds from members who lost on appeal.

At the August meeting, the Chief Executive Officer and Plan President of Sunflower State Plan responded to concerns expressed about Sunflower's higher claim denial rate. He stated the higher denial rate was due to prescription drugs consumers attempted to refill prior to refill eligibility, as each of these would show up as a denial. He indicated Sunflower's denial rate without the medications was about eight percent. In response to a Committee member's question

regarding what made Sunflower different from the other two MCOs who also had prescription medications, he responded Sunflower filled more prescriptions than the other MCOs.

The three MCOs provided updates at the November meeting regarding achievements for the year. The Chief Executive Officer of Amerigroup reported the MCO moved 119 persons from institutional care back into the community and another 68 persons transitioned to employment. She also noted seeing overall reductions in emergency care and a decrease in in-patient admissions for chronic care situations.

**Human Services Consensus Caseload Spring Estimates.** At the April meeting, a Kansas Legislative Research Department (KLRD) staff member presented an overview on the Human Consensus Caseload Estimates for FY 2014 and FY 2015. She stated the combined impact for all human services caseloads for both years is an all-funds increase of \$38.0 million and an SGF decrease of \$30.4 million. For FY 2014, the revised estimate was a decrease of \$17.1 million from all funding sources and \$24.5 million in SGF. For FY 2015, the estimate is an all-funds increase of \$55.2 million and a SGF decrease of \$6.0 million, as compared to the Governor's recommended budget.

In response to questions regarding the decrease in funding for Temporary Assistance to Families (TAF) in spite of an increase in the number of poor Kansans, a KLRD staff member explained policy changes had been implemented over the past couple of years regarding eligibility for the TAF program, and the estimates would reflect those changes and any changes in law. The Committee was reminded the Spring Consensus Caseload Estimates are displayed as changes to the Fall estimates and may not indicate a decrease or increase in actual numbers. Requirements for TAF eligibility and the inability to precisely determine the amount of the caseload estimate attributable to the woodwork effect also were discussed.

**Human Services Consensus Caseload Fall Estimates.** At the November meeting, a KLRD staff member presented an overview on the Human Consensus Caseload Estimates for FY 2015, FY 2016, and FY 2017. She reported the estimate on

human services caseload expenditures for FY 2015 was an increase of \$106.6 million from all funding sources and \$46.2 million from SGF. She noted the estimate for FY 2016 was an increase of \$126.4 million from all funding sources and \$76.6 from the SGF above the FY 2015 revised estimate. She stated the estimate for FY 2017 was an increase of \$31.9 million from all funding sources and \$44.5 million from the SGF above the FY 2016 estimate. The combined estimate for FY 2015, FY 2016, and FY 2017 was an all-funds increase of \$265.9 million and a SGF increase of \$167.3 million.

The KLRD staff member noted the estimate for TAF in the FY 2015 revised estimate was a decrease of \$200,000 from all funding sources and \$3,437,508 from the SGF expenditures from the amount approved by the 2014 Legislature. She indicated the all funds decrease was due to a series of policy changes which began in fall 2011 and resulted in a declining TAF population, and the SGF reductions were the result of meeting the federal maintenance of effort requirements through other allowable expenditures, mainly the refundable portion of the Earned Income Tax Credit.

The KLRD staff member explained the estimate for contracted foster care services was anticipated to decrease by \$300,000 from all funding sources, and increase by \$10.2 million from the SGF. She noted there was an ongoing conversation with the federal Administration for Children and Families regarding expenditures from the Title IV-E foster care funding source. The final decisions on the issue were not anticipated in calendar year 2014, and the estimate for FY 2014 included the addition of \$13.1 million, all from SGF, to provide adequate cash flow to the program.

In addition, the KLRD staff member reported the FY 2015 estimate for KanCare Medical is \$2.7 billion from all funding sources, including \$1.0 billion from the SGF, reflecting an increase of \$108.4 million from all funding sources and \$39.0 million from the SGF above the amount approved by the 2014 Legislature. She noted the increase in KanCare Medical was largely attributable to a slight growth in the population served and the costs associated with the ACA insurer's fee

included in the capitated rate payment (except for long-term care services and supports which are excluded from the federal requirements). The KDADS KanCare estimate included an addition for payments to the MCOs for mental health assessments for both the current year and prior years, which had not been previously included in the capitation payments. She stated the estimate included funding from the Problem Gambling and Addictions Grant Fund.

A Committee member asked for clarification on FY 2017 estimates, with a rise of \$21.0 million between FY 2016 and FY 2017, and the difference between the All Funds and SGF. The KLRD staff member responded the report showed a change from the FY 2016 estimate, which could be the result of Federal Medical Assistance Percentage (FMAP) changes in 2016.

In clarifying the formula for FMAP, the staff member stated the complicated formula was developed and used by the federal government, and it not only looked at Kansas numbers but how Kansas compared to other states. She noted the formula came from CMS, and additional information may be obtained from CMS.

The staff member responded to a request for clarification on the major areas driving changes in FY 2016, indicating the major areas were the FMAP, the ACA insurer's fee, and the extra week of payments in FY 2016. She also indicated the IV-E funding was decreasing in FY 2016 because, in FY 2015, the federal government withheld a portion of the funds normally provided to the state and, for purposes of the report, an assumption was made the issue would be resolved by FY 2016. In addition, she responded to a question about the DOL ruling, stating the ruling was not factored into the estimates.

**Quarterly HCBS report.** At each Committee meeting, the Secretary for Aging and Disability Services provided information on average monthly caseloads and average census for state institutions and long-term care facilities, savings on transfers to HCBS waivers, and the HCBS savings fund balance. With regard to the savings fund balance and money saved on transfers to the HCBS waiver, the Secretary noted HCBS savings are realized only when an individual is moved to a community

setting from an institutional setting and the bed is closed. As a result, she noted, despite individuals moving into community settings, which does have the effect of cost avoidance, the current balance in the KDADS HCBS Savings Fund was \$0 (as of November 13, 2014).

The quarterly report provided at the November meeting indicated during the fourth quarter of FY 2014, 8,734 Kansans received I/DD waiver services per month. Also during the fourth quarter of FY 2014, on average 5,443 Kansans received HCBS PD waiver services per month, 5,280 received HCBS FE waiver services per month, and 577 received HCBS Traumatic Brain Injury (TBI) waiver services.

At the November meeting, the Secretary for Aging and Disability Services discussed Osawatomie State Hospital, which had a review by CMS surveyors during which deficiencies were identified that required correction. She noted the hospital would be resurveyed by December 8, 2014. The Secretary explained Osawatomie also has had an issue with being over census as compared to the license level. She stated one of the challenges was, over the past few years, some community hospitals in Kansas and the surrounding region that had adult psychiatric beds either were closing whole units or reducing the number of beds. The Secretary noted this increased the pressure on the state hospitals. She addressed some of the steps being taken to deal with the census issue. A Committee member expressed concern Medicare payments could be terminated based on the deficiencies.

**Waiting list reduction.** The Secretary for Aging and Disability Services stated at the April meeting an additional \$52.6 million had been invested in the PD, DD unserved, and DD underserved waiting lists. He noted his staff was continuing efforts to verify current waiting list information. He confirmed the state had agreed with CMS that, when DD LTSS were rolled into KanCare on February 1, 2014, part of the transition plan would include elimination of the DD underserved list. The Secretary stated at the August meeting the HCBS DD underserved list had been eliminated.

An update on efforts to reduce the waiting lists was provided by the Secretary for Aging and Disability Services at the November meeting. As of the meeting date, in calendar year 2014, KDADS has offered services to more than 1,200 individuals on the PD waiting list (excluding individuals in crisis) and would continue to make offers to reach a target of 6,092 on the PD waiver by the end of the year. She outlined the process KDADS uses to contact individuals on the waiting list, and the assistance provided through the eligibility process for those who accepted PD services. The Secretary noted the MCOs had assessed every individual on the PD waiting list. She stated, in 2014 through October, 167 previously unserved PD waiting list consumers had been placed on HCBS services.

**HCBS waiver renewal applications.** At the August and November meetings, the Secretary for Aging and Disability Services provided updates on the renewal applications for I/DD, FE, and TBI waivers. She noted CMS granted a temporary extension on these waivers until December 31, 2014. Public comment sessions on the proposed changes to the waiver applications were held both in person and by conference call. The public comment period was open until December 20, 2014. A summary of transition plans and proposed changes to the HCBS programs could be found on the KDADS website.

The Secretary provided a summary of the proposed changes included in the waiver renewal applications at the November meeting, as follows:

- A standardized definition of personal care services and clarification of informal supports and the capable person policy;
- Standardized requirements for background checks and adopting standard prohibited offenses;
- A multi-functional eligibility instrument which was in the testing phase and review phase and a study of the Basic Assessment and Services Information System (BASIS) assessment which is to take place in 2015; and
- The creation of a military exception for

Kansas residents separating from military service and receiving Tricare Echo, with the ability to receive HCBS and bypass the waiting list, if applicable.

The Secretary for Aging and Disability Services responded to concerns expressed at the November meeting about the requirement to move individuals from the PD waiver to the FE waiver at age 65. She stated this was proposed in the waiver renewal, which was still out for public comment. She also added the proposal grandfathered those above 65 years of age currently on the PD waiver, so it would apply only to those who turn 65 years of age in the future.

**U.S. Department of Labor HCBS setting rule.** At the April meeting, the Secretary for Aging and Disability Services provided information on new HCBS rules from CMS effective March 17, 2014. He indicated his staff was working on a transition plan because the rules would impact several areas, including changes in the characteristics for HCBS settings that might preclude any nursing home from having an assisted living facility in the same building.

At the August meeting, the Secretary for Aging and Disability Services discussed the new DOL HCBS settings rule, which was intended to ensure HCBS services were delivered in community-based settings and were not community-based in name only. She also expressed concern about a DOL ruling that potentially would have significant impact on direct service workers serving HCBS self-directed clients in Kansas. The Secretary noted, in Kansas, the FMS model had provided administrative support to self-directed consumers (tax id number, workers compensation, and other administrative assistance), and the new rules changed the definition of “employer” in a manner that would impact consumer choice and flexibility for direct support workers.

The Secretary stated at the August meeting KDADS had asked the DOL to delay implementation of the rule and requested an exemption specifically for Kansas self-directed consumers. She indicated approximately 14,500 direct care workers would be impacted by the new rule. The Secretary also noted the changes could result in a future budget impact, but how much and when was unknown.

The Secretary responded to a question at the August meeting regarding the effect on sleep-cycle support services if direct care workers were limited to 40 hours or less per week by clarifying sleep-cycle support currently was not paid on an hourly rate and that would change with the new rule, so costs would be higher. The Secretary stated there would need to be more attendants, so additional workers would have to be recruited.

The Chief Executive Officer of Amerigroup Kansas Plan responded to questions regarding the DOL rulings, specifically sleep-cycle support at the August meeting. She noted sleep-cycle support was paid by the case rate at a set fee and the support could go from six to ten hours because the care provider was allowed to sleep during that time. She indicated if the care providers would be required to be paid an hourly rate instead of a case rate, the cost of such support would really increase.

At the November meeting, the Secretary for Aging and Disability Services stated a hybrid FMS model has been proposed to CMS that allows some features of Agency with Choice and Vendor Fiscal/Employer agent models. She noted one model would be chosen on the waiver application, but elements of both would be described. The Secretary stated the new model would require the beneficiary or client to make decisions on worker funds (range of pay, hourly rate, bonuses, and similar matters), while FMS agents would be asked to offer information and assistance. She also stated consumers would be required to obtain Federal Employer Identification Numbers. The FMS workgroup is to propose a transition plan to KDADS to comply with Internal Revenue Service procedural requirements, with proposed implementation by June 1, 2015.

According to testimony provided by the Secretary for Aging and Disability Services at the November meeting, the DOL announced on October 7, 2014, its plan to not enforce the rule changes between January 1, 2015, and June 30, 2015. She noted, except for egregious circumstances, “back wage” liability is likely to extend back to the effective date of enforcement, rather than to January 1, 2015.

**Conflict of interest.** A parent expressed concern at the November meeting regarding what he deemed as a potential conflict of interest, as the organization charged with saving money currently also determined the level of care provided. He noted the need to return to a disinterested third party who determined the level of care needed. The individual also noted if he did not declare himself a guardian, he could not make decisions for his son but, if he declared himself a guardian, he disqualified himself from the ability to determine the level of care his son received.

The Secretary for Aging and Disability Services stated at the November meeting the agency was looking at setting up a system with a third party with guardian-like responsibilities who could sign off on the plan of care. She noted this model already exists in other states and would allow guardians to provide services. The Secretary proposed using elements of the Oregon model.

In response to questions regarding MCO conflicts of interest expressed at the November meeting, the Amerigroup Chief Executive Officer indicated there were checks and balances in the system and internal processes that looked for large variances in support, and service coordinators did not benefit directly from services they approved or denied. She noted, while the MCO determined who was paid, there was no benefit to the MCOs to deny services or claims.

**Historical spending for HCBS waivers and historical waiting lists.** At the April meeting, a KLRD staff member reviewed HCBS waiver expenditures from all funding sources and from SGF for FY 2008 through the agency’s estimate for spending for FY 2015. She also reviewed the HCBS Historical Waiting List for each fiscal year and each Omnibus period from 2008 through 2014. With regard to Omnibus 2014 data, the staff

member noted the most recent numbers available for the waiting list from KDADS were for a varied time frame: the HCBS/DD numbers were as of December 2013; the PD numbers were estimated, as KDADS indicated the individuals on the waiting list were undergoing verification; and the autism waiver waiting list number was as of April 15, 2014.

**Federal Health Insurance Marketplace update.** Information was provided by representatives of the Kansas Insurance Department (KID) at each of the Committee meetings updating the members on the federal Health Insurance Marketplace. At the April meeting, the KID Special Counsel and Director of Health Care Policy and Analysis noted the quality of the federal exchange website and the enrollment data being sent to the insurers was improving, although there continued to be some cases in which the process was not working smoothly.

## **CONCLUSIONS AND RECOMMENDATIONS**

Based on testimony heard and Committee deliberations, the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight makes the following conclusions and recommendations:

### **Committee Meeting Days**

The Committee recommends meeting twice during the legislative session and twice when the Legislature is out of session in different quarters, as required by statute, with the non-session meetings to be for two days each.

### **Hearings to Review the Legislative Post Audit Report on CDDOs**

The Committee recommends separate hearings be scheduled during the 2015 Legislative Session before the House Social Services Budget Committee and the Senate Committee on Ways and Means' Social Services Subcommittee to address the March 2014 Legislative Post Audit Report, *CDDOs: Reviewing Issues Related to Community Services Provided for Individuals with Developmental Disabilities (R-14-006)*.

### **Software Issues Regarding Data Accuracy and Reporting on Waiting Lists**

The Committee recommends a meeting of the Joint Committee on Information Technology be held to review software issues regarding data accuracy and reporting on the waiting lists. The Committee noted concerns with the agency's ability to provide accurate data and reporting on waiting lists and expressed it was important to investigate the issue.

### **Anti-psychotic Medications**

The Committee recommends separate hearings be scheduled during the 2015 Legislative Session before the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare to consider the repeal of KSA 2014 Supp. 39-7,121b for the purpose of allowing Kansas Medicaid to manage anti-psychotic medications like other drug classes.

### **Proposed Legislation**

The Committee did not propose legislation for consideration during the 2015 Legislative Session.

## ADDENDUM A

### ROBERT G. (BOB) BETHELL JOINT COMMITTEE ON HOME AND COMMUNITY BASED SERVICES AND KANCARE OVERSIGHT

#### ANNUAL REPORT FOR THE 2015 LEGISLATIVE SESSION

The Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight is charged by statute to submit an annual written report on the statewide system for long-term care services to the President of the Senate and the Speaker of the House of Representatives at the start of each regular legislative session. The authorizing legislation (KSA 2014 Supp. 39-7,159) creating a comprehensive and coordinated statewide system for long-term care services became effective July 1, 2008.

The Committee's annual report is to be based on information submitted quarterly to the Committee by the Secretary for Aging and Disability Services. The annual report is to provide:

- The number of individuals transferred from state or private institutions to home and community based services (HCBS), including the average daily census in state institutions and long-term care facilities;
- The savings resulting from the transfer of individuals to HCBS as certified by the Secretary for Aging and Disability Services; and
- The current balance in the Home and Community Based Services Savings Fund.

The following table and accompanying explanations are provided in response to the Committee's statutory charge.

#### **Number of individuals transferred from state or private institutions to home and community based services including the average daily census in state institutions and long-term care facilities:**

*Number of Individuals Transferred* – The following table provides a summary of the number of individuals transferred from developmental disability (DD) institutional settings into home and community based services during state fiscal year 2014, together with the number of individuals added to home and community based services due to crisis or other eligible program movement during state fiscal year 2014. The following abbreviations are used in the table:

- ICF/MR — Intermediate Care Facility for the Mentally Retarded
- SMRH — State Mental Retardation Hospital
- MFP — Money Follows the Person program
- SFY — State Fiscal Year

<b>DD INSTITUTIONAL SETTINGS AND WAIVER SERVICES*</b>	
Private ICFs/MR: Avg. Mo. Caseload SFY 2014	143
State DD Hospitals – SMRH: Avg. Mo. Caseload SFY 2014	321
MFP: Number discharged into MFP program - DD	24
I/DD Waiver Community Services: Avg. Mo. Caseload SFY 2014	8,734
*Monthly averages are based upon program eligibility.	
Sources: SFY 2014 – Medicaid eligibility data as of November 10, 2014. The data includes people coded as eligible for services or temporarily eligible.	

The following table provides a summary of the number of individuals transferred from nursing facility institutional settings into home and community based services during state fiscal year 2014. These additional abbreviations are used in the chart:

- FE – Frail Elderly Waiver
- PD – Physical Disability Waiver
- TBI – Traumatic Brain Injury Waiver

<b>FE / PD / TBI INSTITUTIONAL SETTINGS AND WAIVER SERVICES*</b>	
Nursing Homes-Avg Mo Caseload SFY 2014	10,746
MFP FE: Number discharged into MFP program receiving FE Services	37
MFP PD: Number discharged into MFP program receiving PD Services	107
MFP TBI: Number discharged into MFP program receiving TBI Services	11
Head Injury Rehabilitation Facility	28
FE WAIVER: Avg. Mo. Caseload SFY 2014	5,280
PD WAIVER: Avg. Mo. Caseload SFY 2014	5,443
TBI WAIVER: Avg. Mo. Caseload SFY 2014	577
*Monthly averages are based upon program eligibility.	
Sources: SFY 2014 – Medicaid eligibility data as of November 10, 2014. The data includes people coded as eligible for services or temporarily eligible.	

<b>Average Daily Census in State Institutions and Long-Term Care Facilities</b>	
Kansas Neurological Institute: Avg. Daily Census	FY 2010 – 157
	FY 2011 – 153
	FY 2012 – 152
	FY 2013 – 145
	FY 2014 – 143
Parsons State Hospital: Avg. Daily Census	FY 2010 – 186
	FY 2011 – 186
	FY 2012 – 175
	FY 2013 – 176
	FY 2014 – 174
Private ICFs/MR: Monthly Avg.	FY 2010 – 194
	FY 2011 – 188
	FY 2012 – 166
	FY 2013 – 155
	FY 2014 – 143
Nursing Facilities: Monthly Avg.	FY 2010 – 10,844
	FY 2011 – 10,789
	FY 2012 – 10,761
	FY 2013 – 10,788
	FY 2014 – 10,787
*Monthly Averages are based upon Medicaid eligibility data.	

**Savings Resulting from the Transfer of Individuals to HCBS**

The “savings” through *Money Follows the Person* are realized only if and when an individual is moved into a community setting from an institutional setting and the bed is closed. This process would result in a decreased budget for private ICFs/MR and an increase in the MR/DD (HCBS/DD) Waiver budget as a result of the transfers.

For nursing facilities and state ICFs/MR, the process is consistent with regard to individuals moving to the community. The difference is seen in “savings.” As stated above, savings are seen only if the bed is closed. In nursing facilities and state ICFs/MR, the beds may be refilled when there is a request by an individual for admission that requires the level of care provided by that facility. Therefore the beds are not closed. Further, even when a bed is closed,

only incremental savings are realized in the facility until an entire unit or wing of a facility can be closed.

As certified by the Secretary for Aging and Disability Services, despite individuals moving into community settings which does have the effect of cost avoidance, the savings resulting from moving the individuals to home and community based services, as of November 13, 2014, was zero dollars.

#### **Current Balance in the KDADS Home and Community Based Services Savings Fund**

The balance in the Kansas Department for Aging and Disability Services Savings Fund as of November 13, 2014, was zero dollars.

# Report of the Capitol Preservation Committee to the 2015 Kansas Legislature

**CHAIRPERSON:** Jennie Chinn, State Historical Society

**SENATE PRESIDENT'S APPOINTEES:** Senator Elaine Bowers; Ryan Gilliland

**HOUSE SPEAKER'S APPOINTEES:** Wade Hapgood; Lana Gordon, Secretary of Labor

**SENATE MINORITY LEADER'S APPOINTEE:** Tim Graham

**GOVERNOR'S APPOINTEES:** Landon Fulmer; Dr. Richard Kyle; Peggy Palmer

**HOUSE MINORITY LEADER'S APPOINTEE:** Representative Valdenia Winn

**OTHER MEMBERS (EX OFFICIO):** Barry Greis, Statehouse Architect; Peter Jasso, Kansas Creative Arts Industries Commission

## CHARGE

- Finalize guidelines and request forms for temporary exhibits;
- Finalize guidelines and request forms for permanent displays, artwork, and architectural modifications;
- Select finalists for the *Brown v. Board* mural; and
- Consider submitted requests.

# Capitol Preservation Committee

## REPORT

### Conclusions and Recommendations

- The Committee makes no conclusions or recommendations.

*Proposed Legislation:* None.

### BACKGROUND

The Capitol Preservation Committee was created by the Legislature in 2010 to: approve renovation proposals in all areas of the Capitol, the Visitor Center, and the Capitol grounds to insure that the historical beauty of the areas are preserved; preserve the proper décor of those areas; ensure that any art or artistic displays are historically accurate and have historic significance; approve the location and types of temporary displays; and to oversee the reconfiguration or redecoration of committee rooms within the Capitol. As provided by KSA 75-2269, the Division of Legislative Administrative Services has the responsibility to implement the recommendations of the Committee.

The Committee has 12 members, with the Governor appointing three, the President of the Senate and the Speaker of the House each appointing two, and the Minority Leaders of the House and Senate each appointing one. The Committee's three *ex-officio* members are the Statehouse Architect, the Executive Director of the Kansas State Historical Society (Historical Society), and the Director of the Creative Arts Industries Commission. The Governor has the authority to appoint the chairperson from amongst the Committee's membership.

### COMMITTEE ACTIVITIES

The Capitol Preservation Committee met on November 13, 2014. The Committee heard

testimony about new information kiosks for the Visitor Center, received mural proposals, reviewed draft request forms, and listened to a proposal to install a new plaque in the Capitol.

### Information Kiosks for the Visitor Center

The State Archivist with the Historical Society reported on the status of two electronic kiosks for the Visitor Center. The kiosks, which were funded by a grant from the Information Network of Kansas, will assist visitors to navigate the building and learn about the functions of the Capitol. The kiosks will be a self-service information portal to be used by visitors and will serve as a supplement to the information desk staff. Four applications—consisting of building directory, calendar, find your legislator, and highlights tour—will be included in the kiosks. The target completion date is January 5, 2015.

### Draft Forms to Request Changes at the Capitol

The Committee reviewed the two draft forms, the Request for Approval of Commissioned or Donated Exhibit or Artwork for Permanent Display form and the Request for Approval of Architectural Modifications form, which would be used by the Committee when considering future proposals. The forms reconcile current law regarding the responsibilities of the Legislature through the Legislative Coordinating Council, Legislative Administrative Services, the Secretary of Administration, and the Capitol Preservation Committee. The Committee plans to define who would qualify as an appropriate sponsor (*i.e.*, a

legislator, a state agency head, or an elected state official) to endorse a request. The Committee also plans to specify when the architectural modification request form would be necessary.

### **KBI Plaque Proposal**

A representative from the Kansas Bureau of Investigation (KBI) requested the placement of a plaque in the Capitol to honor the 75th anniversary of the KBI. The KBI proposes a bronze plaque be installed in the southwest corner of the first floor of the Capitol, either outside Committee Room 152-S or on the exterior wall of the original offices of the KBI. The plaque would be similar in size and quality to other small plaques presently displayed on the Capitol walls.

The Committee will consider the proposal at its next meeting and may make suggestions for the plaque and its wording. If the Committee approves the plaque proposal, then pursuant to KSA 75-2269, a legislative bill would need to be enacted to authorize its installation.

### ***Brown v. Board of Education* Mural**

Over 30 artists initially submitted their credentials for the Committee to consider. From that group, 14 artists were selected as semi-finalists and invited to prepare a rendering. Artists had the choice of two locations for their mural proposals, one being on the third floor on the exterior wall of the Old Supreme Court Room and the other being in an alcove area on the fourth floor leading to the House gallery. All but two of the artists selected the third floor location. The deadline for the Committee to receive proposals was April 1, 2014. Nine artists submitted renderings to the Committee.

A representative from the Brown Foundation for Educational Equity, Excellence, and Research

provided testimony concerning aspects and elements to consider when reviewing the submitted entries. Those who view the mural need to understand that, above all other states in the nation, Kansas was at the forefront to end school segregation. It would be better, in the conferees's opinion, to not depict any of the living people unless all of the living people could be included. The U.S. Supreme Court combined cases from Delaware, Kansas, South Carolina, Virginia, and Washington, DC. The conferee concluded that what the Committee is attempting to do is difficult, because the story is so layered and there are so many elements which could be conveyed in one artistic rendering. The final mural depiction may come down to something simplistic, instead of failing to capture everything that *Brown* encompasses.

Before evaluating the mural proposals, the Committee plans to consider the uniqueness of Kansas in the struggle for school desegregation; the issue of living people, being either all included or not at all; the role of the legal team and the recruitment of parents; and the historic continuum.

A representative from the Brown Mural Project SB-54, Inc., a not-for-profit organization, expressed hope for the mural's mission to be accomplished, because it is long overdue. The community, state, and nation are ready for the mural to take place.

The Committee plans to request an additional meeting day, which would be used sometime before the end of April 2015. At the next meeting, the Committee plans to hear from an art expert on the public aspect of murals.

### **CONCLUSIONS AND RECOMMENDATIONS**

The Committee makes no conclusions or recommendations.

# Report of the K-12 Student Performance and Efficiency Commission to the 2015 Kansas Legislature

**CHAIRPERSON:** Sam Williams

**VICE-CHAIRPERSON:** Jim Hinson

**OTHER MEMBERS:** Dennis Depew, Janis Lee, Bev Mortimer, Mike O’Neal, Ken Thiessen, Dave Trabert, John Vratil

**NON-VOTING MEMBERS (EX OFFICIO):** Scott Frank, Legislative Post Auditor; Raney Gilliland, Director of Legislative Research; Gordon Self, Revisor of Statutes; Brad Neuenswander, Interim Commissioner of Education; Shawn Sullivan, Director of the Budget

**CHARGE**

- Determine how school districts may be more cost effective in their operations;
- Review the differences in per pupil expenditures and administrative expenses among districts with similar enrollments, student demographics, and student assessment performance;
- Review recommendations by other efficiency task forces, such as the Governor’s School Efficiency Task Force;
- Determine how district administrative functions may be shared among multiple school districts; and
- Review district expenditures not directly related to the goal of providing each student with the educational capabilities set forth in KSA 2013 Supp. 72-1127 (*Rose* standards).

# K-12 Student Performance and Efficiency Commission

## REPORT

### Conclusions and Recommendations

The Commission makes the following recommendations or comments relating to its statutory charge:

- The Commission expects the Legislature to continue to fund the completion of high demand technical education programs as well as consider expansion of the program into other areas (This program was implemented *via* 2012 SB 155.);
- The Commission expects the Legislature to provide for a study of the obligation of the state to continue to fund bond and interest state aid, excluding from the study those school districts that do not receive any bond and interest state aid;
- The Commission expects school districts to develop long-range strategic plans for capital outlay expenditures;
- The Commission strongly endorses the state's current two-year budgeting cycle and recommends its continuation, recognizing the Legislature can amend budgets during a legislative session;
- The Commission, to promote trust for those school districts relying on state aid to carry out operations, expects the state to continue making state aid payments in a timely manner, paying particular attention to early July payments and special education payments;
- The Commission expects the Legislature to repeal the 65.0 percent instruction expenditure public policy goal currently in statute (KSA 2014 Supp. 72-64c01 and 72-6460 (c));
- The Commission recommends the Legislature require a cost and benefit analysis, examining the actual additional costs and actual expected benefits, be completed before any new state school district laws or regulations take effect;
- The Commission encourages continued support of the Coalition of Innovative Districts Act;
- The Commission applauds the State Board of Education for including finance, accounting, and budget management coursework in school district leadership licensing requirements. Furthermore, the Commission supports other entities in providing such continuing professional development;
- The Commission encourages inclusion of training in financial management for school district board members as an expectation to the newly developed school district accreditation requirements by the State Board of Education; and

- The Commission recommends the Legislature address the issue of good business practices supporting unencumbered ending balances in school districts, including establishing a reasonable amount of carry forward balances.

**Proposed Legislation:** The Commission recommends legislation be introduced to accomplish the following:

- Establish a task force to set guidelines for efficient operation of school districts, which would be used as benchmarks in annual performance audits conducted as part of the statutorily-required audits conducted by public accountants, repeal the law establishing a school district audit team within the Division of Post Audit requiring them to conduct three school district efficiency audits each fiscal year, and establish a School District Compliance Audit Fund in the State Treasury into which a demand transfer from the State General Fund will be made to pay school districts for expenses related to the audit; and
- Establish a study commission to study the standards for measuring educational outputs and whether the *Rose* standards are sufficient and measurable.

## BACKGROUND

The K-12 Student Performance and Efficiency Commission (Commission) was created by 2014 Senate Sub. for House Bill 2506, Section 29. The Commission is composed of the following members as required by the authorizing legislation:

- Six at-large members are appointed as follows: Two by the President of the Senate; one by the Minority Leader of the Senate; two by the Speaker of the House of Representatives; one by the Minority Leader of the House of Representatives;
- Three at-large members are appointed by the Governor; and
- The Commissioner of Education, the Director of the Budget, the Revisor of Statutes, the Legislative Post Auditor, and the Director of Legislative Research are nonvoting, *ex officio* members.

The 2014 Legislature charged the K-12 Student Performance and Efficiency Commission with studying and reviewing the following areas:

- Opportunities for school districts to be operated in a cost-effective manner;
- Variances in per pupil and administrative expenditures among school districts with comparable enrollment, demographics, and outcomes on statewide assessments;
- Opportunities for implementation of any recommendations made by any efficiency task forces established by the Governor prior to July 1, 2014;
- Administrative functions that may be shared between school districts; and
- Expenditures that are not directly or sufficiently related to the goal of providing each and every child with the capacities set forth in KSA 2014 Supp. 72-1127:
  - Development of sufficient oral and written communication skills to enable students to function in a complex and rapidly changing society;
  - Acquisition of sufficient knowledge of economic, social and political systems

- to enable students to understand the issues that affect the community, state, and nation;
- Development of students' mental and physical wellness;
- Development of knowledge of the fine arts to enable students to appreciate the cultural and historical heritage of others;
- Training or preparation for advanced training in either academic or vocational fields to enable students to choose and pursue life work intelligently;
- Development of sufficient levels of academic or vocational skills to enable students to compete favorably in academics and the job market; and
- Needs of students requiring special education services.

### COMMITTEE ACTIVITIES

The Commission requested and was granted twelve meeting days by the Legislative Coordinating Council. The Commission met July 18; August 19 and 20; September 3, 4, 18, and 19; November 14; and December 15.

#### July 18

The Commission elected Sam Williams Chairperson and Jim Hinson Vice-chairperson. Additionally, the Commission heard the following presentations:

- Commission charge and statutory educational capacities, Jason Long, Office of Revisor of Statutes;
- School efficiency audit reports, Scott Frank, Legislative Post Auditor;

- Recommendations from the Governor's School Efficiency Task Force, Ken Willard, Task Force Chairperson; and
- Past years' school data, Brad Neuenswander, Interim Commissioner of Education.

#### August 19 and 20

The Commission received presentations regarding student performance and school efficiency from the Kansas Association of School Boards, the United School Administrators, the Kansas-National Education Association, and the American Federation of Teachers-Kansas. The Commission also received presentations from staff regarding the implementation of recommendations from Legislative Post Audit school district efficiency audits and the Governor's School Efficiency Task Force. The Commission received additional presentations on the Kansas Public Employees' Retirement System and information regarding school district expenditures.

#### September 3 and 4

The Commission received presentations regarding student performance and school efficiency from superintendents of the following school districts: USD 282-West Elk, USD 439-Sedgwick, USD 465-Winfield, USD 266-Maize, USD 458-Basehor-Linwood, USD 233-Olathe, USD 443-Dodge City, USD 273-Beloit, USD 490-El Dorado, USD 447-Cherryvale, and USD 259-Wichita.

The Commission also received a presentation from Dr. Randy Watson, Chairperson of the Coalition of Innovative School Districts' Board.

#### September 18 and 19

The Commission received a presentation regarding the Legislative Post Audits of at-risk funding from Scott Frank, Legislative Post Auditor. The Commission also received a presentation on the services provided and benefits offered by Jobs for America's Graduates by Matthew Fearing.

## **November 14**

The Commission received a presentation on school district financial audits from Mark Dick of Allen, Gibbs & Houlik. The Commission received presentations regarding school district accounting systems from the Southeast Kansas Education Service Center and Harris School Solutions/Data Team Systems. Staff presented information on surveys conducted by the Commission of school district superintendents and an online survey open to the public. Finally, the Commission received presentations regarding the services offered by education service centers by representatives of Southwest Plains Regional Service Center, Southeast Kansas Education Service Center, and Smoky Hill Education Service Center.

## **December 15**

The Commission reviewed all recommendations and bill drafts. The Commission adopted the recommendations presented in the draft report and determined not to include the following legislative proposals in its report:

- Establish a study commission to study the use of unencumbered cash balances by school districts and determine an appropriate amount of carry over for school districts across fiscal years (a recommendation for legislative action was adopted instead);
- Establish a study commission to study the reorganization of school district administration; and
- Require school districts to examine interlocal agreement opportunities every five years and report on whether those opportunities were pursued.

## **January 6**

The Commission reviewed revised bill drafts and determined not to introduce legislation that would amend the current Professional Negotiations Act.

# Minority Report of the K-12 Student Achievement and Efficiency Commission

Submitted by: Dennis Depew, Mike O'Neal, Dave Trabert and Sam Williams

*Date: January 9, 2015*

The purpose of this minority report is to offer findings and recommendations we believe to be vital for the improvement of the K-12 system but that did not have the support of a majority of Commission members.

## Inaccurate understanding of “efficient”

It was made clear by Chairman Williams (and echoed by other commission members) that “efficiency” is not simply about spending less money, but providing the same or better quality of service / function at a better price. Some efficiency actions have been implemented by school districts but many districts seem to believe that “efficient” simply means spending less money without regard to service impact.

Some districts also do not believe that efficiency can be mandated by the Legislature. We disagree. Indeed, we believe the Legislature has a general fiduciary responsibility to the citizens of Kansas to ensure that taxpayer money is efficiently spent and to specifically ensure that discretionary education dollars are maximized in the classroom. Decisions to spend more than necessary for a service or product, whether for the purpose of patronizing local merchants or acquiescing to district employees, undermine district claims of inadequate funding for instruction services and teacher salaries; such decisions also prioritize other interests above student needs.

## School districts admit that they operate inefficiently

The Commission heard multiple reports of positive steps districts have taken to reduce costs and those efforts are greatly appreciated. However, we heard testimony from Legislative Post Audit confirming that each of their school efficiency audits found multiple opportunities to operate more efficiently; LPA also stated that their recommendations are often not acted upon. We also heard considerable testimony acknowledging that districts are still choosing to operate inefficiently in many ways.

For example, the Kansas Association of School Boards (KASB) said it may be more efficient to buy products or services through the state or some type of purchasing cooperative, but doing so erodes

local control. Regardless of the rationale, these are conscious decisions to divert discretionary spending from classroom instruction and place a lower priority on student outcomes.

Districts acknowledged that it would save money to purchase fuel, vehicles, insurance, communications, curriculum, technology, internet service, software, supplies and other commonly utilized products from a statewide bid; some even requested many more opportunities to purchase from statewide bids.

Districts seem generally opposed, however, to being required to participate in such efficiency opportunities. That position would make sense if districts were 100% funded by local patrons, but that is not the case. District administrators and local school board members are effectively forcing all Kansans to underwrite choices to operate inefficiently, and that is not appropriate.

Cherryvale-Thayer Superintendent Randy Wagoner said his district has considered outsourcing payroll but the proposal is "...getting little traction."

El Dorado Superintendent Sue Givens said the district followed a Legislative Post Audit recommendation to outsource their food service and experienced cost savings and also saw "sizeable increases" in the number of meals served. Many districts, however, still have district-run food services.

Ms. Givens also testified that the construction of a new elementary school replacing two small buildings with less than 200 students each remedied inefficiencies in scheduling and time travel for staff. Other districts, however, said they choose to operate small facilities even though it is more expensive to do so. Winfield Superintendent J.K. Campbell testified that district administration and board members rejected a Legislative Post Audit recommendation to reduce space in its central office and consolidate enrollment by closing two schools with low enrollment, saying that the recommendation "...would not be supported locally or through our negotiated agreement." Negotiating inefficiency into a union agreement is particularly noteworthy.

There are many opportunities for districts to operate more efficiently, including these two promising options.

1. Outsource maintenance, custodial, food service, payroll and other non-instructional functions. Some districts claim it is more cost effective to have these functions performed by staff but no documentation was offered to substantiate such claims. To the contrary, there is evidence that districts pay far more than market wages for some positions and costs for KPERS, payroll taxes, and benefits further increase costs, as well as associated costs for supplies and materials.
2. Consolidate non-instruction functions into regional service centers or statewide as appropriate. Several regional service centers provided testimony indicating that significant savings are available, including some instructional functions (notably on virtual education) and even professional development.

## Districts do not understand how to measure and define the Rose standards

Individual school districts, United School Administrators (USA) and the Kansas Association of School Boards (KASB) presented testimony to the K-12 Student Achievement and Efficiency Commission that acknowledged their inability to measure and define the *Rose* standards and asked for assistance in doing so. The following quotes are taken from their written testimony.

On August 19, KASB asked the K-12 Commission to “Encourage the development of a system to define and measure the Rose student capacities....” KASB representative Mark Tallman emphasized that this is the position of their member districts and not just a position taken by the organization.

Dr. Cynthia Lane, superintendent of the Kansas City district testified on August 19 on behalf of USA, saying, “Once we define what it means to be a well-educated student in Kansas, we must determine how best to measure toward that goal.” She said being a well-educated student is the end target and that the Rose standards “provide some guidance” but acknowledged that there is uncertainty on how to measure success.

On September 3, Olathe Superintendent Marlin Berry said “...the Rose standards need to be well-defined so that school districts know what they mean.” He went on to say, “We need to better define the Rose standard capacities.”

Dodge City superintendent Alan Cunningham also testified on September 3, objecting to state intervention on “efficiencies” and said that the local school board and community should set public school priorities “...until such time as there is agreement on indicators for assessing a school’s, district’s or state’s performance relative to the Rose standards.”

Other districts expressed similar concerns and we learned that the Department of Education is conducting a series of discussions over the next six months to gather input on what the *Rose* standards mean and how they should be measured. We encourage the Legislature to take an active role in determining how the *Rose* standards should be interpreted and measured.

Further, we do not see how any court can measure whether or not the *Rose* standards are being met when all interested parties agree there is no established measurement criteria. We also note the districts’ inability to define and measure the Rose standards calls into question claims that schools are not adequately funded. The Supreme Court ruling on Gannon says the primary determination of adequate funding is whether students are meeting or exceeding the Rose standards. If districts cannot define or measure those standards, it seems that they have no basis for claiming to not have adequate funding to meet them.

## Collective bargaining reform

In 2012, the Governor’s School Efficiency Task Force recommended that that the Legislature “Revise/narrow the Professional Negotiations Act to prevent it from hindering operational flexibility/resource assignment.” The Kansas Association of School Boards (KASB) encouraged this

K-12 Commission to "...recommend policies that empower local school leaders to make the best decisions for their community - but with accountability for results." Recommendations under that heading included this statement: "...the number of items required for bargaining should be reduced."

KASB did indicate a preference for reaching mutual agreement with unions over revisions to the Professional Negotiation Act, but no such agreement has been reached.

We concur with the findings of the Governor's School Efficiency Task Force and agree with KASB that there should be fewer mandatory subjects of bargaining. Accordingly, we encourage the Legislature to enact the attached proposed legislation 15rs0074 which would amend the Professional Negotiations Act for local school districts by limiting the mandatory subjects of bargaining to "salaries and wages, including pay for duties under supplemental contracts, and hours and amounts of work."

All other mandatory subjects of bargaining currently in statute would become 'permissive' subjects of bargaining subject to mutual agreement of the negotiating parties. Those subjects are, vacation allowance, holiday, sick, extended, sabbatical, and other leave, number of holidays, retirement, insurance benefits, wearing apparel, pay for overtime, jury duty, grievance procedure, including binding arbitration of grievances, disciplinary procedure, resignations, termination and nonrenewal of contracts, reemployment of professional employees, terms and form of the individual professional employee contract, probationary period, professional employee appraisal procedures, employment incentive or retention bonuses authorized under K.S.A. 72-8246 and amendments thereto; and (b) matters which relate to privileges to be granted the recognized professional employees' organization including, but not limited to, voluntary payroll deductions, dissemination of information regarding the professional negotiation process and related matters to members of the bargaining unit on school or college premises through direct contact with members of the bargaining unit and reasonable leaves of absence for members of the bargaining unit for organizational purposes such as engaging in professional negotiation and partaking of instructional programs properly related to the representation of the bargaining unit.

### Retain legislative policy on 65% of total spending going to Instruction

We disagree with the Commission's recommendation to repeal the 65 percent instruction expenditure public policy goal currently in statute. (KSA 2014 Supp. 72-64c01 and 72-6460 (c)). The purpose of the 2006 statute was to signal legislative intent that Instruction spending post-*Montoy* should be much more heavily emphasized but districts have barely changed spending patterns. As noted earlier, there is even evidence that they are consciously diverting money away from Instruction by choosing to operate inefficiently in non-Instruction areas.

This table shows that districts allocated 54.2% of total spending to Instruction in 2005; nine years and nearly \$1.7 billion later, Instruction accounts for just 55.1% of total spending. To put that in perspective, more than \$5 billion dollars could have gone to Instruction if districts had followed the Legislature's intent.

School Year	Total Instruction	Total Spending	Instruction % of Total	Instruction @ 65%	Instruction Shortfall from 65% Goal
2005	\$2,323,989,206	\$4,289,414,543	54.2%		
2006	\$2,538,402,259	\$4,689,294,566	54.1%	\$3,048,041,468	\$509,639,209
2007	\$2,838,086,664	\$5,142,076,915	55.2%	\$3,342,349,995	\$504,263,331
2008	\$3,012,202,049	\$5,446,364,682	55.3%	\$3,540,137,043	\$527,934,994
2009	\$3,125,874,385	\$5,666,731,992	55.2%	\$3,683,375,795	\$557,501,410
2010	\$3,072,418,005	\$5,589,549,135	55.0%	\$3,633,206,938	\$560,788,933
2011	\$3,058,346,377	\$5,587,044,330	54.7%	\$3,631,578,815	\$573,232,438
2012	\$3,154,232,674	\$5,771,010,808	54.7%	\$3,751,157,025	\$596,924,351
2013	\$3,212,377,130	\$5,852,470,791	54.9%	\$3,804,106,014	\$591,728,884
2014	\$3,293,217,088	\$5,975,517,681	55.1%	\$3,884,086,493	\$590,869,405
					\$5,012,882,954
<i>Source: Kansas Department of Education</i>					

The point of retaining the policy goal in statute is not that 65% is a ‘magic’ number, but to remind school districts and citizens that the Legislature believes students are better served by moving more discretionary spending to Instruction.

Note: Commissioner Depew voted to remove the 65% policy goal but would support retaining it if the definition of instructional expenses was reexamined.

Spending not directly or sufficiently related to improving academic outcomes

The Commission did not have time to investigate whether districts are spending money that is not directly or sufficiently related to improving outcomes, but we encourage the Legislature to take up that investigation.

AN ACT concerning schools; relating to negotiable terms and conditions in the professional negotiations act; amending K.S.A. 2014 Supp. 72-5413 and repealing the existing section.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 2014 Supp. 72-5413 is hereby amended to read as follows: 72-5413.

As used in this act and ~~in acts amendatory thereof or supplemental~~ amendments thereto:

(a) The term "persons" includes one or more individuals, organizations, associations, corporations, boards, committees, commissions, agencies, or their representatives.

(b) "Board of education" means the state board of education pursuant to its authority under K.S.A. 76-1001a and 76-1101a, and amendments thereto, the board of education of any school district, the board of control of any area vocational-technical school and the board of trustees of any community college.

(c) "Professional employee" means any person employed by a board of education in a position which requires a certificate issued by the state board of education or employed by a board of education in a professional, educational or instructional capacity, but shall not mean any such person who is an administrative employee and, commencing in the 2006-2007 school year, shall not mean any person who is a retirant from school employment of the Kansas public employees retirement system, regardless of whether an agreement between a board of education and an exclusive representative of professional employees that covers terms and conditions of professional service provides to the contrary.

(d) "Administrative employee" means, in the case of a school district, any person who is employed by a board of education in an administrative capacity and who is fulfilling duties for

which an administrator's certificate is required under K.S.A. 72-7513, and amendments thereto; and, in the case of an area vocational-technical school or community college, any person who is employed by the board of control or the board of trustees in an administrative capacity and who is acting in that capacity and who has authority, in the interest of the board of control or the board of trustees, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them or to adjust their grievances, or effectively to recommend a preponderance of such actions, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(e) "Professional employees' organizations" means any one or more organizations, agencies, committees, councils or groups of any kind in which professional employees participate, and which exist for the purpose, in whole or part, of engaging in professional negotiation with boards of education with respect to the terms and conditions of professional service or for the purpose of professional development or liability protection.

(f) "Representative" means any professional employees' organization or any person it authorizes or designates to act in its behalf or any person a board of education authorizes or designates to act in its behalf.

(g) "Professional negotiation" means meeting, conferring, consulting and discussing in a good faith effort by both parties to reach agreement with respect to the terms and conditions of professional service.

(h) "Mediation" means the effort through interpretation and advice by an impartial third party to assist in reconciling a dispute concerning terms and conditions of professional service

which arose in the course of professional negotiation between a board of education or its representatives and representatives of the recognized professional employees' organization.

(i) "Fact-finding" means the investigation by an individual or board of a dispute concerning terms and conditions of professional service which arose in the course of professional negotiation, and the submission of a report by such individual or board to the parties to such dispute which includes a determination of the issues involved, findings of fact regarding such issues, and the recommendation of the fact-finding individual or board for resolution of the dispute.

(j) "Strike" means an action taken for the purpose of coercing a change in the terms and conditions of professional service or the rights, privileges or obligations thereof, through any failure by concerted action with others to report for duty including, but not limited to, any work stoppage, slowdown, or refusal to work.

(k) "Lockout" means action taken by a board of education to provoke interruptions of or prevent the continuity of work normally and usually performed by the professional employees for the purpose of coercing professional employees into relinquishing rights guaranteed by this act and the act of which this section is amendatory.

(l) (1) "Terms and conditions of professional service" means: (A) With respect to the board of control of any area vocational-technical school and the board of trustees of any community college: ~~(A)~~(i) Salaries and wages, including pay for duties under supplemental contracts; hours and amounts of work; vacation allowance, holiday, sick, extended, sabbatical, and other leave, and number of holidays; retirement; insurance benefits; wearing apparel; pay for overtime; jury duty; grievance procedure; including binding arbitration of grievances;

disciplinary procedure; resignations; termination and nonrenewal of contracts; reemployment of professional employees; terms and form of the individual professional employee contract; probationary period; professional employee appraisal procedures; each of the foregoing being a term and condition of professional service, regardless of its impact on the employee or on the operation of the educational system; ~~(B)~~(ii) matters which relate to privileges to be granted the recognized professional employees' organization including, but not limited to, voluntary payroll deductions; dissemination of information regarding the professional negotiation process and related matters to members of the bargaining unit on school or college premises through direct contact with members of the bargaining unit; reasonable leaves of absence for members of the bargaining unit for organizational purposes such as engaging in professional negotiation and partaking of instructional programs properly related to the representation of the bargaining unit; any of the foregoing privileges which are granted the recognized professional employees' organization through the professional negotiation process shall not be granted to any other professional employees' organization; and ~~(E)~~(iii) such other matters as the parties mutually agree upon as properly related to professional service including, but not limited to, employment incentive or retention bonuses authorized under K.S.A. 72-8246, and amendments thereto.

~~(2)~~(B) With respect to the state board of education pursuant to its authority under K.S.A. 76-1001a and 76-1101a, and amendments thereto, and the board of education of any school district: (i) Salaries and wages, including pay for duties under supplemental contracts, and hours and amounts of work; and (ii) such other matters as the parties mutually agree upon as properly related to professional service including, but not limited to: (a) Vacation allowance, holiday, sick, extended, sabbatical and other leave, number of holidays, retirement, insurance

benefits, wearing apparel, pay for overtime, jury duty, grievance procedure, including binding arbitration of grievances, disciplinary procedure, resignations, termination and nonrenewal of contracts, reemployment of professional employees, terms and form of the individual professional employee contract, probationary period, professional employee appraisal procedures, employment incentive or retention bonuses authorized under K.S.A. 72-8246, and amendments thereto; and (b) matters which relate to privileges to be granted the recognized professional employees' organization including, but not limited to, voluntary payroll deductions, dissemination of information regarding the professional negotiation process and related matters to members of the bargaining unit on school or college premises through direct contact with members of the bargaining unit and reasonable leaves of absence for members of the bargaining unit for organizational purposes such as engaging in professional negotiation and partaking of instructional programs properly related to the representation of the bargaining unit. Any of the foregoing privileges which are granted the recognized professional employees' organization through the professional negotiation process shall not be granted to any other professional employees' organization.

(2) Nothing in this act, and amendments thereto, shall authorize any professional employees' organization to be granted the exclusive privilege of access to the use of school or college facilities for meetings, the use of bulletin boards on or about the facility or the use of school or college mail systems.

(3) Nothing in this act, and amendments thereto, shall authorize the diminution of any right, duty or obligation of either the professional employee or the board of education which have been fixed by statute or by the constitution of this state. Except as otherwise expressly

provided in this subsection (l), the fact that any matter may be the subject of a statute or the constitution of this state does not preclude negotiation thereon so long as the negotiation proposal would not prevent the fulfillment of the statutory or constitutional objective.

(4) Matters which relate to the duration of the school term, and specifically to consideration and determination by a board of education of the question of the development and adoption of a policy to provide for a school term consisting of school hours, are not included within the meaning of terms and conditions of professional service and are not subject to professional negotiation.

(m) "Secretary" means the secretary of labor or a designee thereof.

(n) "Statutory declaration of impasse date" means June 1 in the current school year.

(o) "Supplemental contracts" means contracts for employment duties other than those services covered in the principal or primary contract of employment of the professional employee and shall include, but not be limited to, such services as coaching, supervising, directing and assisting extracurricular activities, chaperoning, ticket-taking, lunchroom supervision, and other similar and related activities.

New Sec. 2. Except as otherwise expressly provided, this act shall not operate so as to annul or modify any existing agreement between a board of education and a professional employees' organization or professional employee.

Sec. 3. K.S.A. 2014 Supp. 72-5413 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.