Committee Reports to the 2017 Kansas Legislature

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

Kansas Legislative Research Department
January 2017

2016 Legislative Coordinating Council

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

Special Committee on Foster Care Adequacy
Special Committee on Patient Protections for Step Therapy

Joint Committee on Corrections and Juvenile Justice Oversight
Joint Committee on Information Technology
Joint Committee on Kansas Security
Joint Committee on Pensions, Investments and Benefits
Joint Committee on State Building Construction
Legislative Budget Committee

Capitol Preservation Committee
Health Care Stabilization Fund Oversight Committee

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Foreword

In the 2016 Interim, the Legislative Coordinating Council (LCC) appointed four special committees to study four study topics. The LCC further specified four issues to be studied by the Special Committee on Foster Care Adequacy and seven such items for study by the Special Committee on Larned and Osawatomie State Hospitals. Legislation recommended by the committees will be available in the Documents Room early in the 2017 Session.

Joint committees created by statute met in the 2016 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 2017 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 Larned and Osawatomie State Hospitals
Special Committee on Organization of Public Health Boards
Robert G. 'Bob' Bethell Joint Committee on Home and Community Based Services
and KanCare Oversight

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.

This publication is available in electronic format at http://www.kslegresearch.org/KLRD-web/Publications.html.

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Summary of Conclusions and Recommendations

Special Committee on Foster Care Adequacy

The Committee recommends a House bill be introduced containing the language of 2016 HB 2585 as amended by the House Committee on Children and Seniors, establishing a foster care oversight task force. It encourages the use of citizen review boards in child-in-need-of-care cases and that legislative standing committees examine expanding the statutory scope of such boards. It affirms the right of biological parents and grandparents to visitation with children and grandchildren. It requests the Legislature address the Legislative Division of Post Audit (LPA) findings on foster care and adoption in Kansas, as well as the concerns raised through the audit and the actions being taken by the Department for Children and Families (DCF) to address those concerns; DCF investigate the value of additional vendors for foster care programs; DCF report annually to a standing committee of the Senate and a standing committee of the House; and the Legislative Post Audit Committee consider addressing the Special Committee's concern regarding the low response rate to the LPA survey of public employees and employees of contractors reported in the foster care and adoption audit.

Special Committee on Patient Protections for Step Therapy

The Committee was not convened during the 2016 Interim.

Joint Committee on Corrections and Juvenile Justice Oversight

The Committee recommended continued legislative oversight of staffing issues at state correctional facilities, the prevalence of mental health issues among inmates, and the Sexual Predator Treatment Program at Larned State Hospital. The Committee also recommended careful consideration of the Judicial Council's report on 2016 HB 2639 concerning the use of licensed crisis recovery centers for emergency observation and treatment of persons with mental illness, substance use disorders, and co-occurring conditions.

Joint Committee on Information Technology

The Committee recommended the Legislative Chief Information Technology Officer CITO consider requiring multi-factor authentication for legislators in order to access the legislative network and to review the security policies for interns and temporary staff accessing the legislative network. The Committee recommended the Executive CITO make IT security a primary priority as the Executive Branch Information Technology (IT) 2016-2017 Strategic Plan is implemented. The Committee recommended the House Committee on Appropriations and Senate Committee on Ways and Means consider adding proviso language to the FY 2018 budget bill that would defer a portion of an agency's budget under certain circumstances. The Committee also recommended the Chief Information Security Officer separately review security plans and certify approval of the security plan for proposed new projects over $250,000 prior to approval by the Executive CITO. The Committee further recommended mandatory technology security training be provided to all members within the first three weeks of the 2017 Legislative Session.

Joint Committee on Kansas Security

The Committee recommends review of preparedness for possible terrorism events at the Capitol and adding security protocols; training on Statehouse emergency policies and procedures for all legislators; consideration of specified changes to statutes related to security in K-12 educational settings; legislative action on low pay of state employees in security-related jobs and the effect on recruitment and retention; legislative review of recruitment and retention incentives applicable to the Kansas Army National Guard and the Kansas Air National Guard, including tuition assistance; removal of expenditure limits from federal funds received by the Kansas Commission on Veterans Affairs Office; and review of preparedness at major venues in Kansas.

Joint Committee on Pensions, Investments and Benefits

The Committee recommends a bill be introduced that would exempt Regents' schools and employed retirees from certain working-after-retirement rules. When lawmakers consider future modifications to working-after-retirement policy, the Committee suggests legislation be considered that would allow retirees to return to public employment if certain hardship conditions are met. The Committee recommends the State honor its obligation to contribute the approximate $97 million that was delayed in FY 2016, plus 8 percent interest.

Joint Committee on State Building Construction

The Committee recommended all the agencies' five-year capital improvement plans, except for the following: Department of Administration—7Heat plant, 7C—Demolition to three floors, 7D—Total renovation, 7E—Deconstruction all for the Docking State Office Building, and 8—New Energy Center; and Department of Corrections—S2—Construct two cell houses at El Dorado Correctional Facility.

The Committee recommended the Department for Children and Families move forward with the sale of property in Chanute for the price of $121,000.

The Committee does not object to the advancement of the construction of the Capitol Snack Bar project.

Legislative Budget Committee

The Committee is statutorily directed to compile fiscal information, study and make recommendations on the state budget, revenues, and expenditures and on the organization and functions of the state, its departments, subdivisions, and agencies with a view of reducing the cost of state government and increasing efficiency and economy. Additionally, the Committee was directed by 2016 law to study and review policies concerning transfers to and expenditures from the Budget Stabilization Fund.

Following its review, the Committee made no recommendations.

Capitol Preservation Committee

The Committee selected Michael Young from Kansas City, Kansas, as the artist for the *Brown v. Board of Education* mural in the Capitol and recommended the Chairperson meet with the Department of

Administration and the Division of Legislative Administrative Services to move that mural project forward. The Committee did not approve a Request for Approval of Artwork for Permanent Display submitted by an artist. The Committee recommended the Chairperson meet with the Department of Administration to discuss the preservation of the John Steuart Curry murals in the Capitol.

Health Care Stabilization Fund Oversight Committee

The Committee considered two items central to its statutory charge: whether the Committee should continue its work and whether a second, independent analysis of the Health Care Stabilization Fund (HCSF) is necessary. The Committee continues in its belief that the Committee serves a vital role as a link among the HCSF Board of Governors, health care providers, and the Legislature and should be continued. Additionally, the Committee recognizes the important role and function of the HCSF in providing stability in the professional liability marketplace, which allows for more affordable coverage to health care providers in Kansas. The Committee is satisfied with the actuarial analysis presented and did not request the independent review.

The Committee made other conclusions and recommendations relating to the recognition of the 40^{th} anniversary of the Health Care Provider Insurance Availability Act (enacted, July 1, 1976) and the impact of this law and the success of the public-private partnership it created, the statutory reimbursement schedule created in 2010 for the administrative services provided by the Board of Governors, possible amendments to be considered during the 2017 Session (to create an exception in HCSF coverage requirements for certain providers whose services are covered by Kansas and federal tort law and to amend the Nurse Practice Act regarding the creation of an inactive license for certain providers), monitoring of positive and negative indications that could impact the health of the HCSF, and inclusion of a statement regarding the importance of the HCSF and the purpose of and use for this fund.

Report of the Special Committee on Foster Care Adequacy to the 2017 Kansas Legislature

CHAIRPERSON: Senator Forrest Knox

VICE-CHAIRPERSON: Representative Connie O'Brien

OTHER MEMBERS: Senators Molly Baumgardner, Oletha Faust-Goudeau, Robert Olson, and Dennis Pyle (substitute); and Representatives Erin Davis, Willie Dove, Randy Garber, and Jarrod Ousley

STUDY TOPIC

The Committee is to review the following issues pertaining to foster care adequacy:

- Review the level of oversight and supervision by the Department for Children and Families (DCF) over foster care contractors;
- Evaluate whether a working group consisting of attorneys in the area of family law, judges, foster parents, and parents with reintegrated children would aid in addressing foster care concerns;
- Study the proper selection of foster parents and the qualifications of foster parents; and
- Review the duties of those individuals responsible for foster children, the connection between DCF and foster care contractors, and the grandparents rights law regarding custody, KSA 2015 Supp. 38-2286.

December 2016

Special Committee on Foster Care Adequacy

Report

Conclusions and Recommendations

The Committee identified the following as its highest concerns in discussing and adopting its recommendations:

- The response to concerns regarding repeated hotline calls and the follow-up (or lack thereof) to these calls;
- The need for the Department for Children and Families (DCF) to explore performance measures tied to penalties and incentives for contractors;
- The need to gather data on social worker turnover (leaving social work altogether) and churn (leaving DCF and contractors to work for another social work organization);
- The need to find methods to truly verify monthly in-person visits, such as Florida's photo verification that utilizes date, time, and Global Positioning System (GPS) stamps;
- The need to create more state oversight of the foster care system;
- The need to improve family preservation programs even if federal money is not available for such programs;
- The need to ensure children are not being removed from the home and placed in state custody in cases where the only issue is poverty rather than abuse or neglect; and
- The system operate as efficiently as possible.

The Committee adopted the following recommendations:

- A House bill be introduced containing the language of 2016 HB 2585, as amended by the House Committee on Children and Seniors, establishing a foster care oversight task force, with date changes as required;
- The use of citizen review boards (CRBs) be encouraged in child in need of care (CINC) cases and legislative standing committees examine expanding the statutory scope of such boards;
- The right of biological parents and grandparents to visitation with children and grandchildren be affirmed, including visitation in their hometown with children and grandchildren who are in out-of-town placements, with the children's travel expense being the responsibility of the contractor;
- The Legislature address, through standing committees or special committees, the

Legislative Division of Post Audit (LPA) findings on foster care and adoption in Kansas as well as the concerns raised through the audit and the actions being taken by DCF to address those concerns;

- DCF investigate the value of additional vendors for foster care programs;
- DCF report annually to a standing committee of the Senate and a standing committee of the House; and
- The Legislative Post Audit Committee consider addressing the Special Committee's concern regarding the low response rate to the LPA survey of public employees and employees of contractors in the foster care and adoption audit.

Proposed Legislation: The Committee recommends introduction of a House bill containing the language of 2016 HB 2585, as amended by the House Committee on Children and Seniors, establishing a foster care oversight task force, with date changes as required.

Background

The Legislative Coordinating Council (LCC) in 2016 again appointed a Special Committee on Foster Care Adequacy, composed of seven members. The Committee was tasked by the LCC to review issues pertaining to foster care adequacy as follows:

- Review the level of oversight and supervision by the Department for Children and Families (DCF) over foster care contractors;
- Evaluate whether a working group consisting of attorneys in the area of family law, judges, foster parents, and parents with reintegrated children would aid in addressing foster care concerns;
- Study the proper selections of foster parents and the qualifications of foster parents; and
- Review the duties of those individuals responsible for foster children, the connection between DCF and foster care contractors, and the grandparents rights law regarding custody, KSA 2015 Supp. 38-2286.

The Committee was granted two meeting days by the LCC and met on November 16 and 17, 2016.

Committee Activities

The Committee held all-day meetings on November 16 and 17, 2016.

On November 16, the Chairperson began by making introductions and reviewing the Committee's charge. In response to a question, the Chairperson explained the goals of the Committee would be to assemble information that would be useful in addressing foster care issues moving forward and to make recommendations for how to move forward, including any legislation the Committee desired. The Committee then received an overview of the work, recommendations, and report of the 2015 Special Committee on Foster Care Adequacy from Kansas Legislative Research Department (KLRD) staff.

Review of the Legislative Division of Post Audit Report on Foster Care and Adoption

A Legislative Division of Post Audit (LPA) staff member provided the Committee with a review of the latest LPA performance audit report on foster care and adoption in Kansas. The report will be issued in three parts. Part One was issued in July 2016. Part Two was issued in September 2016. Part Three will be issued in early 2017.

Part One of the report dealt with three questions. Question One was whether DCF was following adequate policies and procedures to ensure the safety of children during the removal and placement process. With regard to this question, LPA found:

- DCF had not yet implemented several recommendations for its child protective services (CPS) function and had not responded to all report center calls in a timely manner. As of May 2016, DCF had implemented 1 of 9 safety-related recommendations from a 2013 Casey Family Programs assessment of CPS function, and a child's safety was not assessed timely in 5 of 40 investigations reviewed by LPA;

- DCF had not ensured that background checks of individuals in foster homes happen as often or as thoroughly as they should. Three types of background checks should occur, and they should occur for both relative and foster placements;

- DCF had not always taken steps to ensure monthly in-person visits happened for children in foster care or adoptive homes or for children reintegrated with their families. LPA noted that in most of the cases reviewed, poor documentation prevented LPA from being able to tell whether case management contractors and child placing agencies (CPAs) conducted some monthly visits. Monthly in-person aftercare visits of children in adoptive placements did not occur, likely because DCF's contracts and policies are not consistent; and

- Survey respondents expressed concerns with staff turnover, morale, and training.

In response to questions regarding the response rate for the survey, LPA staff indicated there was a 37 percent response rate from case workers and a lower response from guardians *ad litem*. LPA staff indicated this was consistent with, if not higher than, the response rate for surveys of this type, but the results could not be extrapolated to apply to non-responders. LPA staff indicated there was no requirement for employees to respond.

LPA recommendations for issues identified through Question One included completing the recommendations from the 2013 assessment for the report center; reviewing policies regarding assessment of child safety and welfare; implementing procedures to ensure assessment within the time assigned following a report center call; ensuring background and registry checks are completed annually; reconciling statutory and regulatory requirements for fingerprint-based checks of all persons residing, working, or volunteering in a foster home; ensuring persons in a foster care home who are ten years of age or older have annual background and registry checks; providing staff training on revised policies; considering annual background checks for relative placement; and regularly monitoring a sample of cases to ensure monthly in-person visits are conducted and considering penalties for non-compliance.

Question Two was whether DCF's child placement process helps ensure children are placed in foster care or adoptive homes with sufficient living space and sufficient financial resources. With regard to this question, LPA found:

- DCF allowed nearly all requests for exceptions (98 percent of approximately 1,100 such requests during one 15-month period), resulting in inadequate sleeping space for some children in foster care;

- DCF did not have an adequate process to ensure licensed foster homes have sufficient financial resources. Current laws and policies are vague with regard to this requirement, and DCF did not verify income information. LPA recommends the requirement be clarified;

- There are few requirements related to capacity, living space, or financial resources for adoptive placements, but few stakeholders had concerns; and

- CPAs both sponsor foster homes and regulate them, which may create a conflict of interest.

LPA recommendations for issues identified through Question Two included ensuring exceptions are thoroughly reviewed and only granted when in the best interest of the child, clarifying the regulatory requirement for "sufficient financial resources," and developing policies and a process to better obtain and verify detailed financial information.

Question Three was whether DCF's criteria for recommendations regarding the removal and placement of children are designed with a family preference. With regard to this question, LPA found that several aspects of the foster care and adoption system are designed to keep family members together, mainly due to federal requirements. Most stakeholders indicated there was an appropriate emphasis placed on this, but some indicated there was too much emphasis.

Part Two of the report dealt with Question Four, which was whether DCF ensures all applicable state and federal laws governing the foster care system in Kansas are followed. With regard to this question, LPA found:

- DCF had not followed some of the safety and living condition requirements reviewed in Part One of the audit, including some background checks, monthly case-management visits, and financial resource requirements;

- According to 2014 and 2015 statewide single audits, DCF materially complied with most, but not all, federal requirements. The areas with issues involved DCF controls related to monitoring and paying the contractors;

- DCF self-reported data shows Kansas met or exceeded about half of federal outcome requirements for FY 2016. DCF consistently met requirements related to relative and sibling placements, but did not consistently meet requirements related to timeliness or stability; and

- DCF must implement a program improvement plan (PIP) to address issues identified by a 2015 Child and Family Services Review (CFSR).

Part Three of the report, to be issued in 2017, will address three questions related to privatization:

- Do foster care contractors have sufficient capacity to provide necessary foster care services;

- Has the privatization of foster care and adoption significantly affected outcomes for children and families; and

- Has the privatization of state foster care and adoption significantly affected the cost of those services to the State?

In response to a question regarding federal funding, KLRD staff provided a breakdown of foster care funding for FY 2011 through FY 2016. For FY 2016, federal funding for Kansas foster care services totaled $59,385,408 and state funding consisted of $86,497,056 from the State General Fund and $7,736,581 from the Social Welfare Fund (fee fund).

Overview of Kansas Foster Care System: Authorizing Statutes, Revised Code for Care of Children, Time Line, Recent Activity

The Committee next received an overview from KLRD staff of the authorizing statutes for DCF related to the foster care system and the child in need of care (CINC) process, which may lead to the initiation of foster care services, and those individuals who are required to report to DCF any suspicion a child may be a CINC ("mandatory reporters"). Next, the CINC investigation and placement process was reviewed, followed by general information on Kansas foster care contractors and payments and funding. Staff referenced the KLRD *Kansas Legislator Briefing Book* article on "Foster Care Services and Child in Need of Care Proceedings" for a detailed overview of the CINC process.

Staff also presented a historical time line of the foster care system, including the establishment of the State Board of Social Welfare in 1937, enactment of the Kansas Code for Care of Children in 1982, privatization of the foster care system in 1996 and 1997, and transfer of foster care licensing responsibilities from the Kansas Department of Health and Environment (KDHE) to DCF in 2015.

Staff next presented a chart summarizing legislation involving foster care and related issues introduced from the 2011 Session through the 2016 Session, as well as related studies by the Kansas Judicial Council and some agency and other stakeholder actions during that period.

Grandparents Rights Overview

KLRD staff next provided the Committee with an overview of grandparents' rights provisions in Kansas statutes.

First, staff reviewed the requirement in KSA 2015 Supp. 38-2286, in the Kansas Revised Code for Care of Children (CINC Code), that a grandparent requesting custody of a child receive substantial consideration by the court when evaluating what custody, visitation, or residency arrangements are in the best interest of a child removed from the custody of a parent and not placed with the other parent. The statute requires the court to consider several factors in making this evaluation and to state the evaluation on the record. If the court places the child in the custody of the Secretary for Children and Families (Secretary) for placement, a grandparent requesting placement must receive substantial consideration for placement by the Secretary, with similar requirements as those listed above for the court. These provisions were added to the statute by 2012 SB 262.

Next, staff reviewed the requirement in KSA 2015 Supp. 38-2241, also in the CINC Code, that automatically makes grandparents an interested party in a CINC proceeding, with the participatory rights of parties and access to the proceedings and the child's official file. House Sub. for SB 23 (2011) amended this statute to make a grandparent an automatic interested party by removing a requirement that a grandparent notify the court to become an interested party.

Finally, staff noted the Grandparents as Caregivers Act, KSA 2015 Supp. 38-142, *et seq.*, established in 2006 to provide monetary assistance to certain grandparents who have custody of their grandchildren, and KSA 2015 Supp. 23-3301, which provides that grandparents and stepparents may be granted visitation rights in divorce proceedings. A 2015 Kansas Court of Appeals decision held that visitation rights also may be granted in a paternity action.

Judicial Perspective

The Honorable Jean Schmidt, retired Shawnee County District Court Judge, provided her perspective on CINC cases and the foster care system. She noted the power of a judge in CINC cases is not complete, but rather the judge has the obligation to make a decision where there is a disputed issue. Her practice was generally to place a child in DCF custody and let them make the placement decision, unless an issue required placement by the court. While she would try to place children with grandparents, sometimes DCF would inform her a grandparent was on the DCF central registry. This could arise from a variety of circumstances, including if the grandparent had used a belt for corporal punishment with an older child. When children were placed with grandparents directly at a temporary custody hearing, there were not always services available for the grandparent. Judge Schmidt stated another challenge for a grandparent can be that decisions are often made at case planning meetings, where the grandparent might not be present. Due to the size of the CINC docket in Shawnee County, a grandparent's best opportunity to provide input may be at the case management conference. If a grandparent was not aware of the case management conference, Judge Schmidt would try to delay the case and hold another case management conference the grandparent could attend.

In response to questions, Judge Schmidt noted CPS is somewhat detached from the foster care placement process due to the privatization of foster care services; there may be valid reasons for subsequent social workers on a case to disagree on the ultimate outcome of the case, particularly where there might have been allegations of abuse and one side of the family has lined up with the accused while the other has lined up with the accuser; "best interests of a child" can be difficult to define, so practically her focus was on what would be least damaging to the child; and citizens' review boards (CRBs) could be more useful in rural areas.

Next, the Committee heard from the Honorable Dan Cahill, Wyandotte County District Judge and chair of the Supreme Court Task Force on Permanency Planning. Judge Cahill noted the CINC Code may be applied differently in different areas of the state due to issues unique to rural areas versus urban areas. He stated court processes have to be able to address each individual case, so it is positive to have flexibility in the Code to be able to address the specifics of each case. His practice is to review each case every three to four months, even though the federal and state requirements are for an annual review. The high number of children in care in Kansas places stress on each part of the child welfare system, so a greater emphasis on prevention could help relieve some of this stress. He stated it also would help to devote greater resources to improving the work environment for social workers and other factors that could increase retention of social workers, and increasing the availability of services to families and the number of foster homes would improve the functioning of the system.

In response to questions, Judge Cahill noted performance standards in contracts should take into consideration variables that may not be easy to put down on paper, and that the emphasis on keeping families together in the child welfare system is positive unless a family placement is going to be very detrimental to the child.

Next, a Court Appointed Special Advocates—Colorado volunteer and community organizer for Wyandotte and Sedgwick counties addressed the Committee regarding concerns raised in her communities. She urged the resignation of the Secretary and the ending of privatization of foster care services. She expressed concern regarding over-medication of children in foster care. She recommended notification of parents or legal guardians before foster care placement occurs and timely background checks of and parenting classes for foster care parents before receiving placements. The conferee recommended placement in a child's home county and improved visitation opportunities for biological parents. She asked that family member placements receive priority and expressed concerns regarding the KVC facility in Wyandotte County and cases in which children are in foster care for a long period of time or are transferred between many foster homes. Finally, she urged better support for children who age out of the system and assurance that courts will properly apply the laws regarding grandparents and foster care.

Agency Overview

The agency overview began with a presentation by the Secretary. The Secretary reported there were 6,735 children in foster care/out-of-home placement in Kansas as of September 30, 2016. In about 60 percent of these cases, the children will be returned to their home. DCF strives to have an ample supply of foster homes available so children can remain in their home communities and schools. DCF attempts to maintain children's connections to their relatives, culture, and community when in out-of-home placements. She stated relatives receive first consideration as a placement option, followed by family foster homes. Approximately 35 percent of placements are with a relative.

The Secretary stated DCF currently works with two foster care contractors, KVC Kansas and Saint Francis Community Services (St. Francis). Safety is a top priority, and DCF strives to prevent further trauma and abuse of children.

The Secretary reported DCF is attempting to provide opportunities for foster parents to have more of a voice in the process, including through the appointment of a Foster Parent and Youth Ombudsman in June 2014 to address concerns of foster parents and youth in (or previously in) foster care.

The Secretary explained if reintegration cannot be achieved, DCF works to ensure permanency through adoption or permanent custodianship. DCF collaborated with the Kansas Children's Service League (KCSL) to launch the Kansas Post Adoptive Resource Center to provide post-adoptive support to adoptive families, including those who adopted out of the child welfare system.

The Secretary stated DCF's focus moving forward includes continuing to address sensible regulation and policy changes, strengthening recruitment of foster and adoptive parents, reforming licensing to encourage quality homes and families, further promoting permanency, focusing on providing the best possible homes for children in custody, looking at the front end of the system to improve prevention and reporting of abuse and neglect, and implementing strategies and incentives to better recruit and train child welfare staff. With regard to the latter, the Secretary noted DCF appreciates the Legislature's willingness to fund pay increases for child welfare workers in Kansas.

The Secretary then provided additional details regarding various aspects of the child welfare system. She outlined DCF's role in combating human trafficking of minors, including providing assessments, placement, and services for victims. She then reviewed the role of the Kansas Protection Report Center (KPRC), which receives reports of abuse/neglect of children and abuse/neglect/exploitation of adults. KPRC has locations in Topeka and Wichita and accepts reports 24 hours a day, 7 days a week. In FY 2016, there were 67,642 completed child reports by KPRC intake specialists and 16,687 completed adult reports. The position of *intake specialist* is being phased out through staff attrition and is being replaced by the position of *intake protection specialist*, which will have a higher minimum requirement of a bachelor's degree in social work or a related human services field, with a preference of bilingual (English/Spanish). Next, KPRC *specialists* must be licensed professionals through the Behavioral Sciences Regulatory Board (BSRB), and their responsibility is to complete initial assessment decisions on reports of abuse and neglect to determine the agency response. Finally, KPRC *protection specialists* review the report to determine if it will be assigned for further assessment. The report may be "screened out" if it does not meet statutory requirements, the incident occurred in another state, or DCF does not have statutory authority to investigate. If the report meets the criteria for investigation, it is sent to the appropriate DCF region's queue for assignment to an adult protection specialist or child protection specialist. Upcoming KPRC improvements include updating the continuity of operations plan, replacing intake specialists with intake protection specialists, adding KPRC to the Office of Customer Service Manager tracking system, and following up on recommendations from a recent internal KPRC audit.

The Secretary then reviewed recent changes to the Prevention and Protection Services (PPS) case finding structure. For cases assigned on and after July 1, 2016, PPS will use an unsubstantiated/affirmed/substantiated structure with a "preponderance of the evidence" standard of proof. This lowers the standard of proof from "clear and convincing" and adds an "affirmed" category to the case finding structure where PPS determined abuse or neglect occurred but it does not meet the criteria for substantiation.

Next, the Secretary reviewed the foster care and adoption program, administered by the two contractual providers across four DCF regions. She listed 12 major federal acts that contain mandates for DCF. DCF passed its last Title IV-E foster care audit, and the next will occur in Spring 2017. DCF passed a round two PIP in a CFSR, completed a round three review, and is currently in the PIP approval process. For children in out-of-home placement, DCF has reduced the congregate care rate from 67 percent in 2000 to less than 6 percent in 2016. The Secretary reviewed federal grants and technical assistance DCF is receiving or has previously received and listed 12 child welfare-related workgroups with which DCF is currently collaborating.

The Secretary reported on adoption resources provided by DCF, partnerships with faith-based and community initiatives, and the Kansas Child Welfare Professional Training Program, which will provide joint training for DCF and provider staff beginning in January 2017. She noted Kansas' increase in foster care numbers is similar to the national trend and Kansas' foster care goals include increasing the number of foster families who can best meet specific needs of children and youth, increasing the number of adoptions of children on the Kansas Adoption Exchange, reducing the time to permanency, and implementing the Kansas Child Welfare Practice Model.

The Secretary reported that physical neglect is the most frequent reason for removal. Relative placements are found for 33.00 percent of children removed, while 5.70 percent are placed in a group/residential placement. There is a permanency plan to reintegrate for 56.28 percent, and 1,183 children have a permanency goal of adoption (and thus are awaiting adoption). A majority of these have an identified adoption resource, while about 350 are on the Adoption

Exchange (with no resource identified). The Secretary then provided statistics and trends related to reports, removals, adoptions, and safety.

Finally, the Secretary reviewed the independent living program for youth transitioning from foster care, which provides these youth with support and guidance while navigating the path to successful adulthood. She outlined the transition planning process and reviewed the core components of the program (including a medical program, independent living subsidy, vehicle repair and maintenance, and education assistance), as well as the services that may be provided through the program (including housing and skill development). After providing participation and outcome statistics and program successes, she noted the goals for the program in the future include changing the conversation regarding aging out of foster care and completing post-secondary education, encouraging youth to pursue their goals by breaking them down into measurable tasks, increasing community collaboration to support self-reliance, integrating trauma-informed and strengths-based principles into practice and staff training, and exploring the extension of foster care for older youth.

In response to questions regarding what steps DCF had taken since the audit to complete the recommendations from Casey Family Programs and what changes had been made to training, the Secretary noted that subsequent DCF speakers would address DCF's response, but some of the steps had included raising salaries and asking contractors to raise salaries, attempting to fully staff the caseload and reach the national standard, and improving efforts for recruitment and retention. She also noted a chart provided by DCF listing the various recommendations and DCF's date of completion or projected date of completion for each recommendation. With regard to the Casey Family Programs recommendations, the Secretary stated it was unclear whether some of the items were related to information gathering or actual recommendations for completion.

In response to questions regarding training for subcontractors and barriers to foster parent recruiting, the Secretary stated the Licensing Division has been working to address these issues since its transfer to DCF from KDHE. She invited legislators to come visit with her regarding these or any other concerns.

Next, the Director of PPS at DCF provided the Committee with information regarding relative/kinship placement. DCF and its contractors recognize the value of relative and kinship placements, when such placements may be safely made, and are committed to the continued exploration of relative placements. The federal standard for children placed with relatives is 29 percent, and Kansas' rate in FY 2016 was 32 percent. Relatives are defined as persons related by blood: a parent, grandparent, sibling, great-grandparent, uncle or aunt, nephew or niece, great-great grandparent, great uncle or aunt, first cousin, great-great-great grandparent, great-great uncle or aunt, or a first cousin once removed (child of a first cousin). Additionally, persons related to the child through marriage or previous marriage, legally adoptive parents and relatives of those parents, and birth parents, adoptive parents, or court-appointed guardians or permanent custodians of a sibling or half-sibling would also be counted as relatives. Non-related kinship is defined as an adult with whom the child or child's parent has a close emotional attachment or ties, and could include a teacher, coach, family friend, or member of the family's church.

The Director stated relative placements are identified by case workers asking questions about the family's makeup and the DCF worker attempting to identify relative options. At the time of removal, DCF provides all relative information to the contractor. Persons identified as potential relative placements go through fingerprints, background checks, a DCF history search, and a home walk-through. The child may be placed with this relative if there are no concerns raised by these checks. If the person is a kinship placement, the person also would be required to become licensed as a foster parent. If relatives learn of a child's removal after some time has passed and contact DCF, DCF facilitates contact between the relative and the contractor.

The Director explained several factors may limit the informal, voluntary placement of a child in a relative's care prior to the child entering state custody, including a lack of authority for DCF to require such placement, a parent's failure to recognize possible harm to a child, parental unwillingness to allow a voluntary placement, and parental refusal to provide a relative with the necessary authority for that relative to provide adequate care for the child.

Judges may place a child who is in police protective custody (PPC) into DCF custody at a temporary custody hearing without considering a relative option. In these emergency situations, there is often not enough time to determine whether a relative is available.

A member of the Committee noted she continues to hear concerns from grandparents and fathers who have not been contacted for placements or have been denied placements.

Next, the Director presented part of the DCF response to issues raised by the LPA report on foster care. DCF has developed an implementation plan to address the LPA recommendations. Regarding monthly in-person visits, DCF has revised policies that will be effective January 2017 and has established a Child Welfare Compliance Unit for ongoing audit-level monitoring of contractors and staff. DCF also started Documentation Training 101, which all DCF, contractor, and CPA staff will have to take by December 30, 2016.

The Director reported DCF continues to implement recommendations made by Casey Family Programs. The Practice Model document is being approved by the DCF Executive Team and will be rolled out in January 2017. Many new changes have been made to the KPRC, including requiring four-year degrees for new hires in the human services arena.

DCF has identified categories to move from non-abuse and neglect in response to recommendations from federal partners and Casey Family Programs, but these changes will take time due to IT system changes. DCF is currently identifying the best safety/risk assessment with Casey Family Programs' assistance and plans to implement this tool by July 2017.

Finally, the Director stated DCF has been substantially updating and revising agency policy. In January 2017, there will be more than 120 new policies in PPS that incorporate best practices for adoption, intake, investigation/assessment, foster care, family services, and family preservation. The Director reviewed some of the specific policy changes related to monthly in-person visits.

In response to a question regarding why some 2013 recommendations had not yet been implemented, the Director stated a number of the Casey Family Programs recommendations had been implemented, but the scope of the LPA audit focused on several that had not. Casey Family Programs has been interacting with DCF on an ongoing basis. A Committee member commented that new policies will not fix problems if there were old policies not being implemented.

Next, the Deputy General Counsel for DCF presented the DCF response to licensing issues raised by the LPA audit on foster care. He reminded the Committee the Licensing Division was brought to DCF from KDHE *via* Executive Reorganization Order (ERO) 43 in July 2015 for the purpose of implementing improvements in process and enhancing child safety. The DCF Licensing Division worked closely with LPA to closely examine the program.

The Deputy General Counsel noted while the LPA report recommended background checks be run on an annual basis, there is no legal requirement for annual background checks. However, because more frequent background checks are good policy, DCF implemented requirements in August 2016 for annual background checks to be run on every person ten years of age and older who is affiliated with a foster home at the time of application or renewal. Fingerprint background checks will be required for the same individuals, and DCF is working with the Kansas Bureau of Investigation (KBI) to enroll every person ten years of age and older (other than children placed in the home) in a monitoring service that will immediately alert DCF anytime someone in the home is arrested or convicted of a crime. DCF anticipates full enrollment in this new system by January 2017.

Regarding LPA's finding that the Licensing Division was not adequately verifying foster family financial resources, the Deputy General Counsel stated DCF implemented a policy advisory on September 1, 2016, requiring foster parent applicants to undergo a financial assessment at the initial licensing survey and an annual reassessment of financial status. In light of this new policy, the Licensing Division has been attempting to address concerns raised by foster parents regarding extensive documentation of family expenses.

Regarding LPA's finding that a conflict of interest may exist with CPAs inspecting their own homes, the Deputy General Counsel stated the Licensing Division is considering the necessary steps to assume the function of the annual inspection of the nearly 3,000 foster homes in the state. DCF also is working to transition from payment based on a case-rate system to a system where payment is based upon the actual costs of taking care of children, which should give DCF greater control over payments to contractors and CPAs and improved oversight. DCF also is addressing the apparent conflict of interest in the number of exceptions granted to regulations limiting the number of children in foster care in a single home. While regulations limit the number of children in foster care to four in any one home, CPAs routinely ask to exceed that, often for the stated purpose of keeping sibling groups together. DCF is now trying to ensure CPAs do not exceed capacity regulations if there might be a different home available that has room, including a home affiliated with a different CPA.

Finally, the Deputy General Counsel stated the Licensing Division is working to improve access to data systems, previously limited due to the separation of functions between KDHE and DCF, to be able to see where there is availability in the system so that requests to exceed capacity may be denied and children can be referred to a home with capacity. DCF gathered information from Wisconsin, which uses a computer system with robust capabilities for this purpose, and has implemented this system, which can plot on a map the location of foster homes and the school districts in which the homes are located. Soon, DCF will be able to synchronize the data regarding home capacity from KDHE into this system.

In response to a question regarding the age of foster home residents who will be fingerprinted and the possible effect on foster family recruiting, the Deputy General Counsel acknowledged the concerns and stated there has been an overwhelmingly positive response so far.

For the final part of the agency overview, the DCF Assistant Director for Legal Services presented information regarding foster care and the judiciary. The Assistant Director stated there are six protective factors incorporated in all aspects of the child welfare system, which contractors are required to integrate and implement in their services. These factors are nurturing and attachment; knowledge of parenting and child development; parental resilience; social connections; concrete support for parents; and social and emotional competence of children.

The Assistant Director noted the CINC Code sets forth Kansas' policies for children in the State's care, and she then provided an overview of the roles of various entities in the removal of a child and the CINC process. Due to law enforcement testimony before the 2015 Committee, PPS staff met multiple times with the Kansas Department of Corrections (KDOC) Juvenile Intake and Assessment Services (JIAS) staff and law enforcement representatives to improve timely information sharing between law enforcement, the KPRC, and JIAS, especially relating to time-sensitive decisions that need to be made when children are in PPC.

The Assistant Director stated foster care services are provided when a court determines a child is a CINC and the parents are not able to meet the safety needs of the child. When the court places the child in the custody of DCF, DCF is given authority for placement, which becomes the responsibility of the two private agencies that currently contract with DCF. Federal and state law and PPS policies require preference for placement with relatives, then non-related kin, if the parents are not a safe placement. Most children in Kansas are placed with relatives or in licensed family foster homes, although some children may require more structured settings, such as a group home or residential facility.

The Assistant Director stated the courts play a vital role in the CINC process, and the Kansas Supreme Court Task Force on Permanency Planning and the Kansas Judicial Council Juvenile Offender/CINC Advisory Committee both meet regularly to discuss important issues related to CINC cases. DCF is represented on both of these groups. Due to the uniqueness of each individual CINC case, there may at times be decisions in one court that appear disparate with a decision in a different case. In addition to the federal and state laws already outlined, other laws, such as the Indian Child Welfare Act or Interstate Compact for Placement of Children, also may be applicable in certain cases, increasing the complexity of the case.

In response to a question regarding when custody of a child is transferred from DCF to a contractor, the Assistant Director noted legal custody is never transferred from the Secretary to a contractor. In response to a question regarding rapid or multiple changes of placement, the Assistant Director stated outcome measures and best practices dictate that a child be moved from one home to another as rarely as possible, but they do occur in certain cases. She stated DCF has a legislative liaison and when legislators contact DCF with questions or concerns regarding specific cases, DCF staff try to provide what information they can under the relevant privacy and disclosure laws. DCF also welcomes meetings with legislators to discuss concerns and questions.

Legislator Views

Representative Jim Ward, District 86, appeared before the Committee to express strong concerns regarding the death of four children while in DCF custody or after intakes of concern to DCF. He reviewed the history of his request for a post audit investigation of DCF protective services, the subsequent investigation, and the deficiencies found by the investigation. He noted that custody is not a legal technicality, and DCF stands *in loco parentis* for children placed in DCF custody, with the same responsibility for protection as the parent. He requested the Committee consider making the following recommendations to the Legislature:

- A special committee be created for the oversight of DCF Child Protective Services;
- The new special committee be charged with ensuring DCF takes sufficient corrective action on the deficiencies discovered in the LPA investigations; and
- The new special committee investigate and make recommendations on the adequacy of the DCF budget for purposes of carrying out its legal responsibility to provide for the safety and protection of abused and neglected children.

In response to a question regarding his thoughts about fingerprinting children as young as ten years old in a foster home, Representative Ward stated it would not be necessary in a perfect world, but through his experience in juvenile court, there are children as young as ten years old whose behavior should raise caution flags.

Foster Care Contractors: Effectiveness and Oversight

The Committee began this topic by hearing from the Chief Clinical Officer for KVC Health Systems (KVC), the parent company of KVC Kansas. The Chief Clinical Officer noted KVC had served as a lead contractor for foster care since 1996. He outlined the oversight system, which includes federal oversight through U.S. Department of Health and Human Services CFSRs; state oversight through DCF administrative reviews, case file reads, and audit services; regional and community accountability through regional DCF and contractor meetings, community advisory boards, and foster parent advisory boards; and quality and fiscal accountability through systemwide financial audits and The Joint Commission (TJC) accreditation. He provided a list of various data KVC submits to DCF on hourly, daily, weekly, monthly, quarterly, and as-needed bases. KVC maintains an extensive, networked database that generates 691 automated monitoring reports at various intervals. Additionally, reports can be individually queried from KVC's database for research and training purposes. He then reviewed various internal monitoring tools and human resource monitoring tools utilized by KVC, including multiple background and registry checks.

A representative of St. Francis stated St. Francis' service design centers on practices that are family-centered, community-based, evidence-based, and trauma-informed. She highlighted four aspects demonstrating St. Francis' commitment to family-centered care:

- Family engagement standards;
- Tools and trainings for effective family and child assessment;
- Case planning techniques targeted to the assessed needs of the children and families; and
- Service delivery that meets the needs of the child and family in a skills-based and targeted manner.

The St. Francis representative continued by providing details, examples, and resources for each of these four components. She noted St. Francis' focus is on permanency.

Another representative of St. Francis then presented information to the Committee regarding service and legal oversight. She noted oversight, accountability, and monitoring occurs at the individual child level, the local level, the state level, and the federal level.

Judicial oversight occurs through Kansas courts' supervision of every child in foster care and application of federal laws, such as the Adoption and Safe Families Act (ASFA) and the Health Insurance Portability and Accountability Act (HIPAA), and state laws, such as the CINC Code. Courts hold adjudication, review, and permanency hearings in each case. Contract standards establish processes and protocols to ensure courts are receiving necessary information from the contractors, and local and community practice standards may exist that require certain communications. Guardians *ad litem* conduct independent investigations and advocate in the best interests of their child clients. Volunteer or court-appointed entities, such as Court Appointed Special Advocates (CASAs), CRBs, or multi-disciplinary teams, may provide additional monitoring. The Office of Judicial Administration ensures local court systems are trained and implementing the requirements of state and federal laws.

Oversight from the executive branch of state government also occurs through BSRB licensure and oversight of social workers, as well as similar licensure and oversight of other professionals by their respective licensing bodies.

St. Francis maintains accreditation through TJC and has several internal monitoring processes, including an internal department that reviews quality of services to individuals and families and attempts to improve identified needs. A number of relevant reports are generated at different intervals to help assess performance of the system. St. Francis also has risk management and customer care processes.

The Kansas Legislature provides oversight through legislator inquiries, legislative post audits (36 of which have occurred since privatization), and standing, special, and interim committees, as well as the budget process.

Next, the Director of PPS at DCF reviewed DCF's oversight of foster care contractors. DCF is responsible for monitoring the safety and well-being of children in foster homes and the progress the children are making toward permanency. Contractors must exhibit clear communication and relationships with relative providers, foster families, other CPAs, and DCF. Providers must establish local advisory boards to receive local input. Under the new contracts, placements, case plans, and case plan goals are subject to DCF approval, and contractors are to notify DCF in advance of placement changes (except in emergencies).

The Director of PPS stated contractors are required to provide aftercare to families following permanency through reintegration, attempt to have monthly in-person visits, and submit progress reports to DCF.

DCF reviews and monitors accountability of contractors through direct oversight, case read processes, and administrative site visits. If a problem is identified, the contractor must develop a corrective action plan (CAP) approved by DCF.

Foster care and adoption case management contract performance outcomes and success indicators conforming to federal measurements are used to measure contractors' effectiveness.

In response to LPA's identification of concerns related to DCF oversight of reintegration/foster care/adoption and family preservation services, foster care licensing, and contractors and services, plans are underway to strengthen monitoring of child welfare contractors by DCF staff.

The Director of PPS reported DCF is resuming child welfare contract and system monitoring within DCF Audit Services, including both fiscal and program reviews. Planned audits will review the actual costs of providing services of the child welfare contractors and the CPAs, and rates will be set based on these audits to ensure most federal and state funding is being spent on direct services for children and families. Audit Services also will monitor contract outcomes and contract performance outcomes and will perform case reads to ensure contractors are meeting DCF expectations. Finally, Audit Services audits the performance of DCF staff involved in foster care, reintegration, and adoption and family preservation.

A representative of FosterAdopt Connect testified about her concerns regarding lack of transparency and clarity, conflict of interest, and child placement issues. She noted her organization's difficulty in locating the actual current contracts between the State and St. Francis and KVC, as well as any specific information regarding the expectations of the two contractors and a clear description of how services are to be provided or outcomes reported. Placement decisions seem to involve a conflict of interest as there is a financial incentive for contractors to make placement in the contractors' own homes a priority. This can lead to children being placed outside of their home community, away from their family and school, and possibly increase difficulty in areas such as practicing the child's religion or splitting up siblings.

The representative noted the complexity of the Kansas child welfare system and the existence of a placement tool developed by the University of Kansas Social Work Department called E-CAP (Every Child a Priority), which is designed to make placements in the best interests of the child and avoid any apparent financial incentives for involved organizations. She requested there be itemized outcomes that are measurable, clear, and concise, and stated a workgroup may be able to help with guidelines, depending on the structure of the workgroup.

Finally, a private citizen presented her personal story regarding difficulties in working with St. Francis to maintain her relationship with her granddaughters while they were in foster care, including efforts to obtain visitation with her granddaughters. She expressed concerns regarding the number of foster homes one granddaughter has been placed in and her granddaughter's safety while in foster care, as well as her inability to obtain information from St. Francis regarding her granddaughter's status.

Next, the Committee addressed questions to the conferees who testified during the contractors topic.

In response to a question regarding testimony by the CASA—Colorado volunteer/community organizer that the KVC director received a $750,000 salary, KVC representatives stated no one at KVC receives that salary and the KVC Kansas president has a salary of about $120,000.

In response to a question regarding monthly visits and whether there was any clawback provision for refund of money for services not performed, a DCF representative stated she was not aware of a clawback provision. Representatives of KVC and St. Francis stated the monthly visits had been occurring but there was a documentation issue that has been addressed. Pre-populated fields had given the appearance that separate visits were not occurring, even when they were. A KVC representative reported that over 90 percent of their visits occur each month. A DCF representative stated DCF oversight of contractors was very involved at the beginning of privatization but was very hands-off immediately prior to the current administration. This administration has increased oversight, but LPA concluded more oversight is still needed.

In response to a question regarding why the DCF staff response rate to the LPA survey was 37 percent and why responses were not mandatory, DCF representatives stated the survey was conducted by LPA according to LPA procedures, and DCF had no involvement other than being aware the survey was occurring. DCF tried to respond as quickly and fully as possible to any requests for data or other information from LPA. The Chairperson noted LPA operates as an independent auditor with a large amount of authority, and it is unknown whether they would even want a survey response to be mandatory. The Committee member who asked the question stated the individuals surveyed in this audit had a large influence in people's lives, and if they could not be mandated to respond, someone should be held responsible.

In response to a question regarding placement after initial referral to St. Francis, a St. Francis representative stated the child may go initially to Wichita Children's Home in the city or to a relative or emergency foster care in a more rural setting.

In response to a question regarding the increased rate of removals, a KVC representative stated several issues are converging at the same time. Neglect and substance abuse are increasing. Service delivery in some communities is more difficult.

A Committee member requested DCF provide the Committee with the latest CSFR PIP once it is available. He also provided the Committee with charts showing 50-state information for change in numbers of children in foster care from 2014-2015, FY 2015 entry rates, and infants entering care with parental drug abuse as the reason for removal.

Status of Privatization in Kansas and Other States

For the first topic of the November 17 meeting, the Committee first heard from a National Conference of State Legislatures (NCSL) staff member, who presented a child welfare privatization overview and trends. After reviewing the initial goals and challenges of privatization, she noted different states have implemented different levels of privatization, including by geographic region, target population, and service type (recruiting and reunification, residential treatment and family support, and special needs adoption services). No state privatizes intake or investigation services. States also have varying decision-making systems, including systems where the public agency retains legal case management and private providers make all day-to-day decisions, systems where day-to-day decisions are shared with the public agency, and systems where there are overlapping responsibilities.

Contract types also vary between states. Some have a lead agency, and some have service-specific contracts. States are moving toward performance-based contracting, including financial incentives and penalties and benchmarks.

The NCSL staff member presented a chart of the different levels of child welfare case management privatization throughout the states. Two states, Kansas and Florida, have statewide privatization of all case management services. Three other states have large-scale privatization of case management services. Eight states have small-scale privatization providing case management services for a subset of children in a limited geographic region. Thirty-two states are not currently privatizing case management.

The NCSL staff member then reviewed specific privatization efforts in Florida, Nebraska, Illinois, Missouri, Michigan, Texas, and Georgia. She noted recent developments include Nebraska moving away from privatization; Florida keeping the model and implementing many child welfare reforms in recent years due to safety concerns, using predictive analysis and data mining; Illinois changing the caseload ratio for payment purposes; and Tennessee beginning to compare provider outcomes against one another to spur new competition.

The NCSL staff member noted there is no rigorous evaluation of statewide performance-based contracting systems. Outcomes may improve, but it can be difficult to determine the role of privatization. She stated key considerations include the following:

- Accountability and oversight:
  - Clearly defined metrics;

    - Appropriate incentives and penalties to match goals; and
    - Administrative capacity;

- Rigorous evaluation to identify what works;
- Data sharing and data-informed decisions;
- Continuous communication;
- Agency capacity, training, and fiscal stability;
- Clearly defined roles and levels of decision making, including court involvement; and
- Stakeholder engagement, including providers, judicial branch, community service providers, parents, and policymakers.

In response to a question, the NCSL staff member stated that in states with lead agencies, the lead agency is responsible to the state for meeting the contractual obligations, including those of the subcontractors.

A Committee member asked if any other states had followed Florida's lead in requiring case workers to take a photo with Global Positioning System (GPS) information to verify a monthly visit has taken place. The NCSL staff member stated she was unaware of any other state with that requirement.

In response to further questions, the NCSL staff member stated that in states with lead agencies, each lead agency is responsible for a separate geographic region. She noted lawsuits and consent decrees can drive efforts toward privatization, as it did in Kansas, but some states move toward privatization for other reasons.

In response to requests by Committee members, the NCSL staff member subsequently provided the final report and recommendations of the Federal Commission to Eliminate Child Abuse and Neglect Fatalities, and KLRD staff provided a report from Casey Family Programs titled *An Analysis of the Kansas and Florida Privatization Initiatives*, which was referenced in the NCSL presentation.

A representative of St. Francis provided comments on the history and status of privatization, stating that continuing the public/private partnership is the best way to share the collective responsibility of the child welfare system. She reviewed the state of the system prior to privatization and the factors that led to the decision by the Department of Social and Rehabilitation Services (SRS), DCF's predecessor, to privatize the system (while there was discussion in the Legislature at the time, there was never a vote on privatization, leaving the transition agency-driven). She stated the advantages of the public/private partnership include that it fosters a mutual obligation and addresses a public expectation about state responsibility; more people know about the children in care; there is significant oversight of how the care is delivered, how children and families are served, and the impact of interventions; and service providers working toward outcome goals have to become more innovative and open to new ways to reach safety, permanency, and well-being goals.

The representative noted one of SRS' goals during the privatization transition was to find mission-based, non-profit organizations to provide the services, and the contractors have not made money off the system. She urged stakeholders to consider why so many children are coming into the system. She concluded by noting the work is never done, but St. Francis remains focused on outcome goals.

The Chief Financial Officer (CFO) and general counsel of KVC reviewed KVC's history of providing contract services for the State of Kansas beginning in 1970. In 1997, KVC became one of the original foster care contractors in Kansas. The shift to privatization raised the performance bar by identifying measurable outcomes and contractual requirements with high levels of accountability and monitoring. The KVC CFO reviewed problems that existed before privatization, including overworked social workers, limited family preservation availability, and children rejected by foster care providers or ejected from care. Immediate system improvements from privatization, required by specific contractual provisions, included no rejection or ejection, a four-hour window to take physical custody, round-the-clock admissions and crisis support, reduction in caseload sizes, expanded family preservation into all counties, identification of measurable outcomes and standards, and development of systems for gathering and maintaining data. Additionally, increased family engagement and high safety rates in family preservation and in foster care were realized within the first four years. Adoptions also increased 78 percent within the first four years.

The KVC CFO next reviewed additional improvements in the areas of adoption, foster family licensing, information systems, evidence-based practice tools and methodologies, and medication monitoring. Since 2000, over 99 percent of children in foster care have not been maltreated.

After providing a lengthy list of additional advantages and benefits of privatization, as well as several disadvantages and drawbacks, the CFO concluded by stating the privatized system showed significant overall improvements for Kansas child welfare and has served Kansas children better than the previous system. While the current system is not perfect, the foundation that has been established will drive continual performance improvement. The CFO noted one of the recent issues has been staff turnover, and KVC has initiated numerous strategies to support staff and improve recruitment, as well as launching initiatives to increase foster family and relative resources for children.

Next, the Deputy Secretary of Family Services for DCF provided further information regarding the background and current state of foster care privatization in Kansas. He explained a class action lawsuit filed in the 1990s and the resulting settlement may have led to a desire to address concerns and make positive changes in the system through privatizing child welfare services. Following the announcement of the decision to privatize in 1995, family preservation was privatized in July 1996, adoption services in October 1996, and foster care services in February 1997. The Deputy Secretary noted federal welfare legislation and oversight have increased over the past 20 years, with Kansas successfully completing two PIPs during that time and currently developing a third PIP.

The Deputy Secretary listed positive developments resulting from privatization, including family preservation services becoming available statewide; the establishment of an adoption specialist network and enhancement of the ability to address permanency needs; greater foster care outreach and community engagement and ownership of services; greater consistency, accountability, and streamlining of services; and successful exit from the settlement agreement ending the class action lawsuit.

The Deputy Secretary noted privatization also presents challenges, including contract design; lack of clearly defined roles for state staff and contractor staff; period of adjustment between contracts and providers; difficulty in changing providers in the middle of a contract if the contractor is not performing satisfactorily; and overlap and duplication of services. He noted the question of whether privatization is currently more effective and efficient than a hypothetical non-privatized system is difficult to answer, but the upcoming third part of the LPA report may help provide some information in this regard.

Finally, a representative of the Kansas Chapter, National Association of Social Workers (KNASW), provided the Committee with a social worker's perspective and information regarding the history of foster care privatization in Kansas. When the system was privatized in 1996, one goal was to eliminate multiple workers involved with a family. However, stress and crisis in the current system means that children in state custody are outlasting their social workers, creating loss and disappointment for the child and their caretakers. Long-term tenure of staff is the most crucial element of a strong child welfare system, as well as an extensive selection of services to strengthen the family.

The KNASW representative stated that in 1989, a lawsuit was filed regarding the child welfare system that was resolved in 1993 through a settlement agreement prior to the child welfare privatization. The agreement expired June 30, 2002, about six years into privatization, with about 80 percent of the more than 130 actions required of the State under the agreement met. Two of the areas of action that did not reach compliance were services to meet the child's needs and reinforce family strengths and implement and maintain information on worker caseloads.

The KNASW representative stated staffing continues to be problematic due to high staff turnover. Child welfare cases are complex and caseloads must be realistic to be effective. Child welfare work involves three things: the case plan; services; and regular visits. Constant turnover of social workers makes the system dysfunctional. Stabilizing the staff will stabilize the system.

To address staffing stability, the KNASW representative suggested the following actions:

- Investigate the scope of social worker turnover in both DCF and contractors, including caseloads;
- Determine the reasons social workers are leaving;
- Implement a multi-year focus on recruitment and retention of social workers; and
- Develop long-term incentives, supports, career path (advancement), professional development, ongoing training, supervision, student loan forgiveness, and competitive compensation.

Next, the Committee addressed questions to the conferees who had testified during the privatization topic.

In response to a request for detail on the number of monthly visits that had not occurred, a St. Francis representative stated St. Francis' audit showed about 93 percent of visits occurred. A KVC representative stated over 90 percent of visits occurred, but the documentation was not as good as they would have liked, and they are no longer pre-populating information in the reports. She also noted there are times that monthly visits cannot occur due to the child not being available.

In response to a question regarding whether any financial penalties are in place for failure to make monthly visits, a DCF representative stated there are no financial penalties. Once the issue came to light, DCF conducted a documentation training for everyone with contact with clients or documentation responsibilities and met with both contractors to place them on corrective action plans.

In response to a question regarding reconciling disagreements in case plans when social workers transition, St. Francis and KVC representatives stated they use a team model to try to reduce the trauma of a transition.

In response to a question regarding whether investigations by younger social workers are contributing to the high numbers of children entering the system, a DCF representative stated both experienced and newer workers are valuable, and DCF has been working with the contractors to improve retention.

In response to a question regarding how families can be helped, the KNASW representative stated the University of Kansas has a multi-year grant regarding recruitment of social work students for child welfare. Families need services to address their needs. New social workers need supervision by and interaction with senior staff.

In response to a question regarding missing children, a KVC representative stated there were 36 out of 3,613 children missing as of the previous day. A St. Francis representative stated missing children are one reason a monthly visit may not occur, as well as illness or vacation.

Committee members requested information regarding the previous contracts awarded for child welfare, which KLRD staff provided, and information regarding the licensure numbers for social workers each year, which KLRD staff stated would be requested from the BSRB.

The Chairperson asked for suggestions for improvement from the conferees. A DCF representative suggested focusing on providing services needed by children before they enter the system, although this can be difficult due to the lack of federal funding for this area. St. Francis representatives agreed with this suggestion, noting family preservation services are state funded, rather than federally funded, and challenges will continue as long as people are coming in the "front door" of the child welfare system. They also suggested looking into federal Family First legislation, which could provide more flexibility with regard to Title IV-E funding.

A Committee member asked whether DCF or St. Francis representatives had made contact with the grandparent who had expressed concerns before the Committee the previous day. A St. Francis representative stated he had asked for and received a full report on the case and intended to follow up with the grandparent. Another St. Francis representative noted they had a consent form that could be used for legislators to obtain further details regarding particular cases. The Committee member noted the grandparent had driven to the meeting to provide her story to the Committee. The member then expressed concern that no one had spoken with the grandparent yet, and suggested an issue that needed to be addressed was that a grandparent had been excluded from the system that is supposed to be a safety net.

Duties, Qualifications, and Selection of Foster Families

On this topic, the Committee first heard from a private citizen expressing concern regarding the loss of funding for CRBs across Kansas, especially in Sedgwick County. She stated CRBs can help process juvenile and CINC cases more quickly while strengthening judicial oversight. In response to a question, the citizen stated the CRB in Shawnee County is currently fully funded and effective. A Committee member suggested a CRB in Sedgwick County could be useful to look into some of the issues being presented by constituents.

A representative of FosterAdopt Connect noted concerns from foster parents regarding reprimands, misunderstandings, and being left out of meetings and decisions while trying to advocate for the best interests of the children in their care. Some foster parents fear retaliation in the form of removing a child placed in their home or losing their license. She urged that foster parents be subject to a rigorous assessment process, but that they not be selected solely based on ethnicity or religious preferences. The conferee stated foster parents stop fostering not because of a child, but rather because of issues with the system. She suggested foster parent retention would be improved through increased support to foster parents, including training, support groups, increase in daily reimbursement rates, placement stability, and the passing of a Foster Parent Bill of Rights. She also suggested a workgroup could improve the system by allowing greater clarity and transparency.

In response to questions, the representative of FosterAdopt Connect recommended a program in Johnson County called "CINC 101" that helps parents who may be facing the CINC process. She also noted FosterAdopt Connect raises its own funding and receives no funding from the State of Kansas.

Next, a representative of St. Francis presented information regarding that agency's placement of children and recruiting and training of foster parents. St. Francis has responsibility for 3,320 children. Of these, 34 percent are placed with relatives, 58 percent are placed in foster homes, and the remaining 8 percent are placed elsewhere. Placement close to children's families, friends, relatives, school, and home community is a high priority. Becoming a foster parent is a significant commitment, and the licensure process averages six to eight months. The family must complete training and be recommended by the trainer, as well as complete a thorough assessment of the home by St. Francis and a licensing visit by DCF. Generally, only 15-20 percent of the families making an initial inquiry are ultimately licensed. St. Francis also works to identify families who are considered kin to children or who have significant relationships with the child for placement. Non-related kin families must be assessed and are expected to meet all regulations to be issued a foster home license for the specific child.

St. Francis foster families receive a monthly training opportunity regarding care of children who have been abused or neglected, as well as ancillary training on other complicating factors. Support groups have begun in some areas. St. Francis also provides a website as an additional training vehicle and to facilitate communication between St. Francis, the foster family, and specific workers. Additionally, St. Francis provides a training library with DVDs, videos, books, and magazines. Each foster parent must complete a universal precautions and a medication administration course, and training will now include an expanded section on psychotropic medications. Foster parents must retrain in medication administration every two years. St. Francis also expects foster parents to serve as mentors for birth parents in working for the best interest of the child and family and to assist in achieving permanency through reunification, legal guardianship, or adoption with another family.

In response to questions, the St. Francis representative stated St. Francis conducts the initial home inspections during training *via* a licensing specialist and instructs the family if there are issues to address. Regarding annual loss of foster homes, the representative stated the most homes lost are homes that were licensed for a specific child's placement, but homes are lost for various reasons. Some homes are lost due to adoption, which St. Francis considers a win-win scenario. Regarding the affect of Kansas legislation on St. Francis' funding, the representative stated legislation may affect the approach the agency takes. The representative offered to follow up on concerns from constituents regarding relatives who did not receive placements, including grandparents.

Next, the Committee heard from the Vice President of Operations for KVC Kansas. The Vice President reviewed the expectations KVC Kansas has for foster parents and outlined a list of more than 25 qualifications a foster parent must meet. She noted foster parents are mandatory reporters and thus must report suspected child abuse or neglect for any child or youth, whether or not the child is in care. Each foster family must provide a minimum of three references, including two non-family-members, and each reference must complete a reference questionnaire. Each KVC Kansas foster family must have a minimum of three positive references and complete all licensing requirements before taking placement of a child. The Vice President then reviewed a list of the various support and training services KVC Kansas provides its foster families. KVC has four hours in which to take physical custody of a child after receiving a referral from DCF, and its admissions department operates 24/7/365. The Vice President reviewed KVC Kansas' placement and priority goals, including placement with relative or kin, minimal moves before achieving permanency, placement nearest home, and keeping siblings together. To achieve these goals, KVC Kansas gathers as much detailed information about the child as possible, maintains and searches an internal Matching Families Database, and sends referrals to all child placing agencies within its network, trying to find the most optimal placement. KVC Kansas also utilizes the evidence-based Structured Decision Making System for Placement Support from The Children's Research Center. KVC Kansas has seen a continued increase in the number of foster families it sponsors: from 503 in October 2014 to 571 in October 2015 and 616 in October 2016.

Next, the Deputy General Counsel for DCF presented observations on qualifications, selection, and duties of Kansas foster families from the perspective of the DCF Foster Care and Residential Facility Licensing Division, which he supervises. The core mission of the Licensing Division is to ensure foster parents and foster homes are safe for children in foster care.

Basic requirements to be a foster parent include being 21 years of age, being able to provide safe transportation for foster children, and having sufficient income or resources to provide for the basic needs and financial obligations of the foster family and to maintain compliance with applicable regulations.

Ensuring compliance with health and safety requirements for foster homes is a core function of the Licensing Division. Requirements are found in statutes and regulations, and include home infrastructure standards; cleanliness requirements; compliance with applicable codes; pet and animal requirements; and safety provisions regarding medications, household chemicals, and potentially dangerous instruments or tools and firearms. There also are space and privacy standards for bedrooms and safety requirements for swimming pools and hot tubs. The maximum number of foster children in any one home is four, although exceptions may be made in certain cases, particularly to keep large groups of siblings in the same home. The granting of an excessive number of exceptions to this requirement was identified by the Licensing Division upon transfer from KDHE in July 2015 and again by the LPA audit. DCF began to try to identify solutions to this issue even when the audit was just beginning, and has determined that sufficient information regarding capacity is needed so alternative foster home placements with sufficient capacity may be quickly identified by the Licensing Division. [*Note*: further information regarding these efforts may be found under the "Agency Overview" portion of this report.]

Prospective foster families must be sponsored by a CPA, complete the application, and prepare the home for inspection by the Licensing Division. A foster parent must complete a training program called "Partnering for Safety and Permanence/Model Approach to Partnership in Parenting Program" (PS-MAPP), which consists of 30 hours of training over a 10-week period.

Prospective foster parents (as well as any other person ten years of age or older who resides, works, or regularly volunteers in the foster home) must be fingerprinted and pass a background check. There are about 100 criminal offenses that disqualify a person from being a foster parent or residing, working, or volunteering in a foster home. Persons also are disqualified by being listed on the DCF abuse and neglect registry by having a child removed from their home as a CINC or by having had parental rights terminated. A prospective foster parent also must undergo a health assessment.

The Deputy General Counsel noted the development of a geographic information system as part of the native licensing system software, which is a promising tool to assist with placement decisions. The Licensing Division is collaborating with PPS to ensure greater usefulness of this tool across divisions.

The Deputy General Counsel stated regarding the duties of foster families, foster parents must conduct themselves in a way to advance the best interests of the health, safety, and welfare of the foster children. Foster children must be integrated into the day-to-day family life in an honest, loving manner, and as much normalcy must be preserved as possible. Foster parents must provide supervision appropriate to the individual child's age, maturity, risk factors, and developmental level. Physical and material needs must be met, and there must be an adequate supply of play equipment, materials, and books. Foster parents must provide nutritious food, clean clothing and bedding, and birthday and holiday gifts.

Foster parents must be active participants in the child's case plan and implement assigned provisions. They also must agree to a written policy indicating methods of guidance appropriate to the age of the child. Certain punishments are prohibited. Foster parents must ensure school attendance and serve a mentoring role to help each child learn basic life skills.

In response to the FosterAdopt Connect representative's comment under the Foster Care Contractors: effectiveness and oversight topic regarding the E-CAP system designed at the University of Kansas, the Deputy General Counsel stated DCF is using a system designed by a vendor with whom DCF has a master purchase/service agreement, which allows DCF to implement the software at a lower cost. Also, KDHE had already made significant progress in implementing the system before the transition.

In response to a Committee member's request to provide additional information regarding the high percentage of capacity exceptions granted, the Deputy General Counsel stated it can be difficult to understand in the abstract. The exceptions are granted for six-month periods, so some of the requests were repeats. The exceptions are not rubber-stamped; they are individually reviewed by senior staff in a consultative manner. Conditions such as more frequent visits may be required at the foster home when the exception is granted. He stated the fundamental issue driving the exceptions is the knowledge of capacity in the system, which the new software system is intended to address.

In response to a question regarding the new financial assessments, the Deputy General Counsel stated the policy advisory was effective September 1, and the assessment was chosen instead of a credit check as a better way to gain knowledge of what the situation is in the foster home. He noted sometimes foster parents need a chance to explain why financial circumstances are not what they appear.

In response to a Committee member's statement that constituents are concerned the financial assessment process requests bank statements and the assessment will be constantly changing, the Deputy General Counsel stated the Division is in an ongoing learning process and has already revised the policy and form in response to concerns.

In response to a question regarding who must take the MAPP training, the Deputy General Counsel stated all foster parents must have the training. He noted only relative placements do not require licensure.

A representative of Children's Alliance of Kansas provided information to the Committee regarding the process for becoming a foster parent in Kansas, including the MAPP training programs that Children's Alliance provides under contract with DCF. Prospective foster or adoptive parents complete a 30-hour, 10-week program called "Trauma-Informed Partnering for Safety and Permanency – Model Approach for Partnerships in Parenting" (TIPS-MAPP) and must also complete first aid and cardiopulmonary resuscitation (CPR), medication administration, and universal precautions trainings. Families must pass background checks and must not have a conviction on the prohibitive offenses list. Homes must meet licensing guidelines and families must demonstrate sufficient income. The representative noted the national MAPP program is based in Kansas and receives high ratings in federal reviews. She expressed concern that the juvenile justice system reforms in 2016 SB 367 may increase demand on the child welfare system at the same time as Medicaid reimbursement rates have been reduced, child placing agency rates have not increased, and prevention and early intervention services for mental health, addiction, and financial security have been scaled back. She noted providers also must adjust to new unfunded federal mandates such as the proposed overtime rules. She urged investment in an integrated, comprehensive, flexible system of support that includes appropriate services for prevention, stabilization, intervention, and treatment.

Working Group Evaluation

The Committee next received an overview of foster care workgroups, task forces, and committees, in Kansas and in other jurisdictions, from KLRD staff. Staff noted the Judicial Council's Juvenile Offender/Child in Need of Care Advisory Committee and a list of Kansas foster care workgroups, task forces, and committees provided by DCF to the 2015 Committee. Staff then described the formation and efforts of the 2015 Kansas Juvenile Justice Workgroup (Workgroup). This Workgroup was formed by leaders of the three branches of Kansas government and charged with developing policy recommendations for improving the juvenile justice system. It consisted of 17 representatives from all parts of the juvenile justice system, as well as legislators, and received technical, data, and staff assistance from the Public Safety Performance Project of The Pew Charitable Trusts (Pew) as well as the Crime and Justice Institute at Community Resources for Justice. The Workgroup met monthly from June through November 2015 and also conducted roundtable discussions with key system stakeholders. The Workgroup developed 40 consensus-based recommendations, many of which were incorporated in 2016 SB 367, which passed the Legislature and was signed by the Governor. The provisions of SB 367 will become effective in stages, with some provisions taking effect July 1, 2016, and some provisions taking effect as late as July 1, 2019. Staff provided some additional detail regarding the support the Workgroup received from Pew.

Staff then reviewed 2016 HB 2585, which would have established a foster care oversight task force. The task force would have had responsibilities similar to the charge to the Special Committee and would have consisted of 17 members, including 12 legislators and 5 gubernatorial appointees. The Governor's appointments would have included a family law attorney, a district judge with a family law docket, a CASA representative, a guardian *ad litem*, and a member of the Kansas Children's Service League. The bill would have provided for meeting days, compensation, and support staff. It would have required the task force to submit an annual written report and required DCF to provide certain data and information to the task force on request. The task force would have sunset on January 1, 2019. The 2016 House Committee on Children and Seniors recommended HB 2585 be passed as amended, but the bill died at the end of the 2016 Session without further action.

Finally, staff reviewed a 2011 Missouri task force on recruitment, licensure, and retention of foster and adoptive homes and a 2015 Minnesota foster care workgroup formed to address concerns about the foster care system and provide recommendations for improvement.

In response to a question, staff stated members of the Kansas Juvenile Justice Workgroup did not receive compensation for their work on the Workgroup, although state employees on the Workgroup presumably received their usual salaries for any Workgroup efforts occurring during business hours.

Conclusions and Recommendations

The Chairperson opened up Committee discussion by asking for recommendations to be considered by the Committee. Members suggested reintroducing 2016 HB 2585 and considering Representative Ward's proposal regarding the creation of an oversight committee; considering a CRB in Sedgwick County; considering Mary Martin's proposal regarding biological parent visitation, travel vouchers, and placement of children in the county where the case originated; considering concerns raised by follow-up to hotline calls, performance measures, social worker turnover, and verification of monthly in-person visits; checking whether concerns expressed before the 2015 Committee by law enforcement were addressed; and recommending LPA consider examining possible duplication or overlap of services and the cost of such duplication or overlap.

The Chairperson noted the Committee's report would summarize the Committee's work and therefore include a lot of the issues that had been raised before the Committee, whether or not the Committee developed a recommendation for every issue. He noted the privatization of foster care in Kansas appears to have been more of a shift over time rather than an instant system change, and it appears some of the responsibilities for oversight are now shifting back toward the agency, and further shifts of oversight to the agency should be explored. He noted lack of federal funding for family preservation also seemed to be an issue, as well as children being taken into state custody because their parents are in poverty rather than for abuse and neglect.

The discussion continued with members suggesting consideration of a recommendation that DCF explore the potential for increasing the number of contractors and the potential benefit of increased contractors and a recommendation that DCF provide a yearly report to the Legislature on foster care issues.

A member expressed concern over the response rate to the LPA survey and suggested exploring methods to increase the response rate.

A member requested an update from Communities in Schools of Mid-America regarding their work in elementary schools. A representative provided a written report to Committee members following the meeting.

The Committee identified the following as its highest concerns in discussing and adopting its recommendations:

- The response to concerns regarding repeated hotline calls and the follow-up (or lack thereof) to these calls;
- The need for DCF to explore performance measures tied to penalties and incentives for contractors;
- The need to gather data on social worker turnover (leaving social work altogether) and churn (leaving DCF and contractors to work for another social work organization);
- The need to find methods to truly verify monthly in-person visits, such as Florida's photo verification that utilizes date, time, and GPS stamps;
- The need to create more state oversight of the foster care system;
- The need to improve family preservation programs even if federal money is not available for such programs;

- The need to ensure children are not being removed from the home and placed in state custody in cases where the only issue is poverty rather than abuse or neglect; and

- The system operate as efficiently as possible.

The Committee adopted the following recommendations:

- A House bill be introduced containing the language of 2016 HB 2585, as amended by the House Committee on Children and Seniors, establishing a foster care oversight task force, with date changes as required;

- The use of CRBs be encouraged in CINC cases and legislative standing committees examine expanding the statutory scope of such boards;

- The right of biological parents and grandparents to visitation with children and grandchildren be affirmed, including visitation in their hometown with children and grandchildren who are in out-of-town placements, with the children's travel expense being the responsibility of the contractor;

- The Legislature address, through standing committees or special committees, the legislative post audit findings on foster care and adoption in Kansas as well as the concerns raised through the audit and the actions being taken by DCF to address those concerns;

- DCF investigate the value of additional vendors for foster care programs;

- DCF report annually to a standing committee of the Senate and a standing committee of the House; and

- The Legislative Post Audit Committee consider addressing the Special Committee's concern regarding the low response rate to the LPA survey of public employees and employees of contractors in the foster care and adoption audit.

Proposed Legislation

The Committee recommended a House bill be introduced containing the language of 2016 HB 2585, as amended by the House Committee on Children and Seniors, establishing a foster care oversight task force, with date changes as required.

Report of the Special Committee on Patient Protections for Step Therapy to the 2017 Kansas Legislature

CHAIRPERSON: Representative Daniel Hawkins

VICE-CHAIRPERSON: Senator Michael O'Donnell

OTHER MEMBERS: Senators Tom Hawk, Jacob LaTurner, and Garrett Love; and Representatives Dennis Highberger, Jim Kelly, Scott Schwab, and James Todd

STUDY TOPIC

The Committee is directed to consider patient protections for step therapy to be used in commercial health insurance in the State of Kansas.

December 2016

Special Committee on Patient Protections for Step Therapy

REPORT

The Special Committee on Patient Protections for Step Therapy was not convened during the 2016 Interim.

Report of the Joint Committee on Corrections and Juvenile Justice Oversight to the 2017 Kansas Legislature

Chairperson: Senator Greg Smith

Vice-chairperson: Representative Ramon Gonzalez

Ranking Minority Leader: Senator Pat Pettey

Other Members: Senators Molly Baumgardner, Steve Fitzgerald, Forrest Knox, Jacob LaTurner, and Carolyn McGinn; and Representatives Sydney Carlin, Pete DeGraaf, Amanda Grosserode, Jerry Henry, John Rubin, and Jim Ward

Charge

KSA 2016 Supp. 46-2801 directs the Joint Committee to monitor inmate and juvenile offender populations and to review and study the programs, activities, plans, and operations of the Kansas Department of Corrections. In addition, the Joint Committee is to study:

- The Sexual Predator Treatment Program (SPTP) at Larned State Hospital, as significant issues and concerns were identified in a 2015 audit of SPTP;
- Implementation of 2016 SB 367, concerning juvenile justice reform, including any necessary amendments and integrating the efforts of the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention;
- Retention of corrections officers, including compensation, the various levels of corrections employees, and best practices used elsewhere to retain staff; and
- Consideration of 2016 HB 2639, concerning the use of licensed crisis recovery centers for emergency observation and treatment of persons with mental illness, substance abuse disorders, and co-occurring conditions, including the Judicial Council's report on the bill, if available.

December 2016

Joint Committee on Corrections and Juvenile Justice Oversight

Annual Report

Conclusions and Recommendations

The Committee recommended:

- The Legislature continue to monitor issues concerning adequate staffing at state correctional facilities and the prevalence of mental health issues among inmates;
- The appropriate standing committees carefully consider the Judicial Council's report on 2016 HB 2639, concerning the use of licensed crisis recovery centers for emergency observation and treatment of persons with mental illness, substance use disorders, and co-occurring conditions; at the same time, these committees should continue to consider the testimony provided by a representative of Rainbow Services, Inc., which indicated their efforts resulted in cost savings of $6.1 million in 2015, including $3.9 million in state hospital bed days, $2.1 million in emergency room diversions, and $75,200 in jail diversions;
- The appropriate standing committees continue to receive information from the Kansas Department for Aging and Disability Services about its progress in implementing changes recommended by the Legislative Division of Post Audit in its audit of the Sexual Predator Treatment Program (SPTP) at Larned State Hospital; and
- The Legislative Post Audit Committee approve an additional audit of the SPTP in the next year.

Proposed Legislation: None.

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 No. 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. Statewide, there are 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, 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 currently are two operational juvenile correctional facilities (JCFs): Larned Juvenile Correctional Facility and Kansas Juvenile Correctional Complex (KJCC). The Larned facility is slated to close March 3, 2017, however.

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; 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 2016 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, 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 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 four meeting days and was granted two. In addition to its statutory duties, the Joint Committee was charged to study the following topics:

- The Sexual Predator Treatment Program (SPTP) at Larned State Hospital, as significant issues and concerns were identified in a recent audit of SPTP;
- Implementation of 2016 SB 367, concerning juvenile justice reform, including any necessary amendments and integrating the efforts of the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention;
- Retention of corrections officers, including compensation, the various levels of corrections employees, and best practices used elsewhere to retain staff; and
- Consideration of 2016 HB 2639, concerning the use of licensed crisis recovery centers for emergency observation and treatment of persons with mental illness, substance use disorders, and co-occurring conditions, including the Judicial Council's report on the bill, if available.

The Committee met November 14 and 15, 2016.

November 14

KDOC operations. The Committee began with an update regarding KDOC operations provided by the new Secretary of Corrections. The Secretary described the change in actual and projected inmate populations since enactment of 2016 HB 2447, which increased the maximum number of days an inmate's sentence can be shortened for earning program credits from 90 to 120 days. In summary, by fiscal year (FY) 2021, the change is projected to decrease the population by approximately 350 male inmates and 265 female inmates. Recidivism rates for inmates released early after earning program credits are not yet available as recidivism typically is measured over a three-year time period. The Secretary explained the change in the law also has mitigated the need for immediate expansion.

Related to capacity, the Secretary provided an update on implementation of 2013 HB 2170, which allows for alternative sanctions for supervision violations. Use of each of these sanctions has increased since the bill's passage and has resulted in fewer prison admissions for technical violations and a 73.0 percent "success rate" in FY 2016. "Success" in these circumstances means supervision or probation was not revoked, which would require a person to return to prison. The Secretary also updated members on several programs that have been successful in reducing recidivism, including Mentoring 4 Success, Thinking for a Change, and substance use and sex offender treatment programs.

The Secretary addressed issues associated with the number of inmates suffering from mental illness and summarized steps taken to respond to their needs. Approximately 35.0 percent of inmates suffer from mental illness. Overall, 20.3 percent have a serious mental illness, 9.9 percent are severely persistently mentally ill (SPMI), and 4.9 percent have short-lived mental health issues. In FY 2015 and FY 2016, KDOC made numerous changes to address the needs of this population, including adding an additional 150 specialized mental health beds and 48 beds for stable offenders with SPMI at Lansing Correctional Facility; adding a 30-bed behavioral unit at El Dorado; opening a 6-bed crisis unit for patients who require continuous monitoring at Larned Correctional Mental Health Facility; expanding restrictive units to provide additional space for safe treatment; and hiring 40 full-time behavioral health and medical staff.

Finally, the Secretary noted KDOC continues to experience high levels of uniformed officer turnover. Overall, the turnover rate for FY 2016 is 33.2 percent, with some facilities seeing rates as high as 38.3 percent, which is an increase of 12.4 percent above the FY 2010 turnover rate. As of November 2016, roughly half of correctional officers had been with KDOC less than 2 years. Only 26.9 percent had been with the Department more than 5 years. He explained some states have dealt with turnover by increasing salaries and included data showing neighboring states with higher starting salaries have lower turnover rates. For example, Colorado, which has a starting salary of $40,688, has a turnover rate of 16.0 percent, and Iowa, which has a starting salary of $39,291, has a turnover rate of 11.8 percent. In comparison, Kansas has a starting salary of $29,016 and a turnover rate of 33.2 percent, and Oklahoma, which has a starting salary of $27,081, has a 36.1 percent turnover rate.

Following the presentation, a member asked what areas of the budget the Secretary might look to if the budget was reduced in the next fiscal year. The Secretary responded that most costs, such as inmate medical care and food services, are fixed. The agency likely would have to make reductions in programs offered to inmates, which could increase recidivism.

KDOC medical, nutrition, and educational services. The Executive Director, Contract Programs and Finance, KDOC, provided a briefing on contracted services for medical, dental, and mental health services, as well as food and education services for inmates. In FY 2017, the agency has a $63.5 million contract with Corizon Health, Inc., for comprehensive medical, dental, and mental health services. He emphasized the large population of inmates with mental health issues. Additionally, inmates older than 50 make up 19.1 percent of the population and have a variety of other medical issues, such as hepatitis, resulting in high medical expenses.

The Department contracts with Aramark for food service at the adult facilities at a cost of $1.52 per meal. Trinity Services Inc. provides food services at KJCC at a cost of $2.30 per meal; however, $1.56 is covered by the national school lunch and school breakfast programs.

The Department also contracts for educational services, which are provided by the Greenbush Southeast Kansas Education Service Center and Barton Community College and include GED, special education, vocational education, and other programs. As of June 30, 2016, 3,421 inmates, or 35 percent of the population, lacked a high school diploma or GED. Of that group, 45 percent will be released within the next five years, and 66 percent are under age 35. Vocational education is available to inmates who have a diploma or GED. He noted participation in education programs has been shown to reduce recidivism by 13.0 percent, and those who participate in vocational education have a 28.0 percent greater chance of finding employment upon release.

Juvenile services. The Deputy Secretary for Juvenile Services, KDOC, updated members on Juvenile Services and 2016 SB 367 implementation. She described trends within the juvenile justice system, including data on intake and assessment, the number of cases filed, and population figures, which are all decreasing. With fewer juveniles in JCFs, KDOC will close the Larned JCF in March.

The Deputy Secretary also described efforts to address the recommendations of the Council of State Governments to improve youth outcomes. The Leadership Team is conducting a systematic review and plan of action for each recommendation, which include allocation of services and resources based on the results of a validated risk and need assessment; adoption of programs and services demonstrated to reduce recidivism and improve other outcomes and use of data to evaluate the results and direct system improvements; coordination of service systems; and tailoring system policies, programs, and supervision to reflect adolescents' distinct developmental needs. Funding in 2015 and 2016 allowed for expansion of evidence-based programs, including Functional Family Therapy, which began as a pilot in seven southeast Kansas judicial districts, expanded into four additional judicial districts in Fall 2016, and was anticipated to be available statewide by February 2017.

The Deputy Secretary concluded by discussing the background of the Juvenile Justice Workgroup and the status of implementing 2016 SB 367. The final report of the Workgroup included 40 recommendations, which served as the basis for SB 367. Broadly, those recommendations are aimed at preventing deeper juvenile justice system involvement, protecting public safety by focusing system resources, and sustaining effective practices through oversight and reinvestment. The State is receiving technical assistance from the federal Office of Juvenile Justice and Delinquency Prevention in partnership with the Crime and Justice Institute (CJI). Further, the bill established an oversight committee to assist with interagency implementation efforts. First steps toward implementation include statewide training, developing interagency committees, and increasing community-based programming with an emphasis on providing high-quality programs and tracking outcomes.

Implementation of 2016 SB 367. The Director of Trial Court Programs for the Office of Judicial Administration (OJA) and Chairperson of the SB 367 Judicial Branch Implementation Team (JBIT) discussed progress toward implementation. JBIT is composed of various judicial branch employees who meet monthly to discuss the various pieces of the law that pertain to the judicial branch. OJA also is collaborating with KDOC to draft proposals concerning earned discharge and graduated responses, immediate intervention, and cutoff scores. Additionally, OJA and KDOC are working with CJI for technical assistance and to discuss steps necessary for data collection and validation. Finally, JBIT created a subgroup to develop training protocols.

The Director of Community-Based Services for KDOC appeared on behalf of the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention (KAG) and provided an overview of KAG's membership, background, and responsibilities. KAG has between 15 and 33 members, who are appointed by the Governor, and it is charged with reviewing juvenile justice policy, advising policy makers on issues affecting the juvenile justice system, and helping to ensure compliance with the federal Juvenile Justice and Delinquency Prevention Act.

During Committee discussion about this issue, a member expressed concern that schools may be overusing expulsions and suspensions, which, in some cases, needlessly involves youths in the juvenile justice system. The member suggested the appropriate standing committees and the Juvenile Justice Oversight Committee look at this issue carefully as implementation efforts continue.

Adult inmate prison population projections. The Executive Director of the Kansas Sentencing Commission (KSC) provided a summary of current population characteristics and trends, as well as its projections. Over the next ten years, KSC projected growth of 13.5 percent, with the largest increases among drug offenders and offenders convicted of low-level felonies. He continued by briefing the members on the progress of 2013 HB 2170 implementation. As the Secretary reported, use of sanctions has increased since enactment, while prison admissions for technical violations have declined. Finally, the Executive Director summarized legislation KSC will propose in the 2017 Session, including bills concerning penalties for tampering with electronic monitoring equipment, the felony loss threshold for miscellaneous property crimes, criminal history scoring of juvenile adjudications, the 2003 SB 123 drug treatment program, the Kansas Offender Registration Act, and postrelease supervision.

November 15

Mental health treatment resources available to offenders at the state and local levels. Committee members received testimony from representatives of state and community mental health and substance use treatment providers, including Rainbow Services, Inc. (RSI), a collaborative effort of Wyandot, Inc., Johnson County Mental Health Center, Heartland Regional Alcohol and Drug Assessment Center, and the State of Kansas to offer alternative services at Rainbow Mental Health Facility. The RSI budget of approximately $3.5 million is based on a grant from the Kansas Department for Aging and Disability Services (KDADS). The representative opined that rather than expanding services available through RSI, it would be better to restore beds at Osawatomie State Hospital until adequate community resources are in place.

A representative of OJA discussed resources available to people throughout the state through court services. Many have mental health issues and substance use issues; however, services are not always available at the local level. A representative of the Kansas Association of Addiction Professionals and Central Kansas Foundation provided information specific to substance use treatment and prevention and confirmed there is overlap between groups of people with mental illness and with substance use issues; however, it is often difficult to know which started first. Consequently, substance use providers must work closely with those in the mental health community to work through those issues. A representative of the National Alliance on Mental Illness testified regarding steps to avoid incarceration of those with mental health issues, saying when community-based supports are not adequate, jail becomes the default solution.

2016 HB 2639. The Committee was charged with consideration of 2016 HB 2639, concerning the use of licensed crisis recovery centers for emergency observation and treatment of persons with mental illness, substance use disorders, and co-occurring conditions, including the Judicial Council's report on the bill, if available. Staff from the Office of Revisor of Statutes reviewed the bill, and staff from the Legislative Research Department summarized the efforts of the Kansas Judicial Council thus far. The advisory committee studying the bill had not reached consensus as of the meeting date; however, the final Judicial Council report was expected to be available to the 2017 Legislature. A representative of KDADS discussed the agency's position on the bill, which would continue to provide safeguards to those with mental illness or substance use issues through use of licensed crisis recovery centers. A private citizen expressed concerns about due process and individual rights in the bill. A Committee member commented that unless KDADS provides funding for these centers in its upcoming budget, this will be an unfunded state mandate on communities.

SPTP at Larned State Hospital. Staff from the Legislative Division of Post Audit (LPA) reviewed its recent audit on SPTP operations. In conducting the audit, LPA contacted 12 states, but only 3 responded, possibly because of pending federal litigation in Minnesota concerning sexual predator treatment programs. In response to questions, LPA staff explained the disparity between the number of releases in Kansas and Wisconsin may be due to the Kansas program not having individualized treatment plans built into the program. Further, staff provided supplemental information regarding the criteria other states use for discharging residents from sexual predator treatment programs.

A representative of KDADS provided an update on the revised SPTP and some of the enhancements made over the past few years. The Kansas program now provides more individualized programs that take into account each resident's risks and needs. After a lack of documentation was identified in the audits, a finding KDADS disputed, staff increased the amount of data it collects and monitors. Committee members expressed a desire to ensure continual monitoring of the program rather than wait another ten years before learning of a problem.

Conclusions and Recommendations

The Committee recommended the Legislature continue to monitor issues concerning adequate staffing at state correctional facilities, including retention and pay, and the prevalence of mental health issues among inmates.

The Committee referred to the RSI representative's testimony, which indicated its efforts resulted in cost savings of $6.1 million in 2015, including $3.9 million in state hospital bed days, $2.1 million in emergency room diversions, and $75,200 in jail diversions. The Committee recommended the appropriate standing committees carefully consider testimony on cost savings from such diversions as well as the Judicial Council's report on 2016 HB 2639, concerning use of licensed crisis recovery centers.

Concerning the SPTP, the Committee recommended the appropriate standing committees continue to receive information from KDADS about its progress in implementing the changes LPA recommended in its audit of the program. Further, the Committee recommended the Legislative Post Audit Committee approve an additional audit of the SPTP in the next year.

Report of the Joint Committee on Information Technology to the 2017 Kansas Legislature

Chairperson: Senator Mike Petersen

Vice-chairperson: Representative Brett Hildabrand

Other Members: Senators Marci Francisco, Tom Holland, Garrett Love, and Jeff Melcher; and Representatives J.R. Claeys, Keith Esau, Brandon Whipple, John Wilson, Blake Carpenter (substitute), and Peggy Mast (substitute)

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 House Committee on Appropriations on implementation plans, budget estimates, and three-year plans of state agencies and institutions;
- Review information technology security at Kansas government agencies, including findings from Legislative Post Audit reports and agency responses; and
- Report annually to the Legislative Coordinating Council and make special reports to other legislative committees as deemed appropriate.

December 2016

Joint Committee on Information Technology

Report

Conclusions and Recommendations

The Committee recommended the following:

- The Legislative Chief Information Technology Officer (CITO) consider requiring multi-factor authentication for legislators in order to access the legislative network;
- The Executive CITO make IT security a primary priority as the Executive Branch Information Technology (IT) 2016-2017 Strategic Plan is implemented; the Committee supports the guiding principles of the Plan related to customer focus, financial value, people, solution brokers, innovation, and security;
- The House Committee on Appropriations and Senate Committee on Ways and Means consider adding proviso language to the FY 2018 budget bill to identify a portion of an agency's budget that may be deferred until the agency can show it has addressed findings of critical security risks made in the agency's most recent security audit;
- The Chief Information Security Officer separately review security plans and certify approval of the security plan for proposed new projects over $250,000 prior to approval by the Executive CITO;
- The Legislative CITO review the security policies for interns and temporary staff accessing the secure legislative network and collaborate with leadership to implement necessary security changes; and
- Technology security training be provided to all members within the first three weeks of the 2017 Legislative Session and House and Senate leadership record such attendance.

Proposed Legislation: None.

Background

The Joint Committee has statutory duties assigned by its authorizing legislation in KSA 46-2101 *et seq*. The Joint Committee may set its own agenda, meet on call of its Chairperson at any time and any place within the state, and introduce legislation. The Joint Committee consists of ten members: five senators and five representatives. The Joint Committee met during the 2016 Interim as authorized by the Legislative Coordinating Council [LCC] (the LCC approved three meeting days for the 2016 Interim). The Committee met March 14, December 8 (interim), and December 9 (interim).

The duties assigned by its authorizing legislation in KSA 46-2102 and by KSA 2016 Supp. 75-7201 *et seq.* are as follows:

- Study computers, telecommunications, and other information technologies used by state agencies and institutions. The state governmental entities defined by KSA 2016 Supp. 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 2016 Supp. 75-7209 *et seq.* in submitting such information for review by the Joint Committee;
- 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 annually to the LCC and make special reports to other legislative committees as deemed appropriate.

In addition to the Joint Committee's statutory duties, the Legislature or its committees, including the LCC, may direct the Joint Committee to undertake special studies and to perform other specific duties.

KSA 2016 Supp. 75-7210 requires the legislative, executive, and judicial chief information technology officers (CITOs) to submit annually to the Joint Committee all information technology project budget estimates and revisions, all three-year plans, and all deviations from the state information technology architecture. The Legislative CITO is directed to review the estimates and revisions and the three-year plans and the deviations, then to make recommendations to the Joint Committee regarding the merits of and appropriations for the projects. In addition, the Executive and Judicial CITOs are required to report to the Legislative CITO the progress regarding implementation of projects and proposed expenditures, including revisions to such proposed expenditures.

Committee Activities

March 14

At the March 14 meeting, the Joint Committee was briefed on the activities of the Legislative Office of Information Services by the Legislative CITO. He updated the Committee on the application services and technical services areas. The Legislative CITO indicated it is the desire of the Executive CITO to transition network and web-hosting services to in-house staff and third-party vendors to reduce costs. The Judicial CITO outlined the progress on two Office of Judicial Administration projects: electronic filing and a centralized case management system called eCourt. The Chief Operating Officer of the Executive Branch presented the latest Kansas Information Technology Office (KITO) quarterly report and told the Committee Office 365 would be fully deployed by December 2016. Also at this meeting, the project manager of the Kansas Eligibility Enforcement System (KEES) commented on the challenges of keeping the KEES project on schedule.

The Joint Committee requested six meeting days during the Interim and were granted three meeting days. The Joint Committee met on December 8 and 9, 2016.

December 8

The Joint Committee met on December 8 to hear updates from the three branch CITOs. The Executive CITO presented the most recent KITO quarterly report; of the 21 active projects, 13 were in good standing, 2 were in caution status, 3 are in alert status, 2 were on hold, and 1 was being recast. Details regarding these projects can be found on the Office of Technology Services (OITS) website: http://oits.ks.gov/kito/epmo/summary-of-information-technology-project-status-reports. He also reported the statewide Office 365 rollout had been installed on 11,000 of 18,000 devices and the project would be completed in February 2017. Finally, the Executive CITO presented the Executive Branch Information Technology 2016-2017 Strategic Plan and answered Committee members' questions.

The Judicial CITO presented a status update for the eCourt project, which includes a centralized case-management system and an improved Kansas Judicial Branch website by which the system may be accessed. A request for proposal was anticipated to close by mid-December for the case-management portion of the project. A $50,000 grant from the State Justice Institute will be used for a complete redesign of the Judicial Branch website in 2017. The Judicial CITO also reported the electronic filing project is now complete statewide, with two-thirds of district courts participating.

The Legislative CITO updated the Committee on the Kansas Legislative Information Services and Systems (KLISS), specifically the five application modules that provide services to the legislature and to the public, identifying specific areas where enhancements are being made. He stated the new biennium rollout will be ready for the legislative session on January 8, 2017. The Legislative CITO also updated the Committee on the status of the plan to provide live audio streaming in certain committee rooms. Finally, he announced the deployment of new legislative laptops and the transition of data storage from OITS to a third-party vendor, a change that will address bandwidth and capacity concerns.

The Committee also heard from a representative of the Kansas Highway Patrol, who provided information regarding the agency's compliance with the requirements of the Kansas Criminal Justice Information System and from Legislative Division of Post Audit (LPA) staff, who reported on a comprehensive three-year IT security audit of 20 selected Kansas agencies. The audit concluded 13 of the 20 agencies did not substantially comply with applicable IT standards.

December 9

The Joint Committee met again on December 9. The Interim Director of KITO presented information on what is required of IT project managers, including education and certification requirements. She also responded to several questions posed by Committee members regarding project management.

The Committee entered into a closed executive session to receive an update from LPA staff regarding IT security audits conducted. The Executive CITO also was present in the closed session in order to confer with the Committee and LPA staff. Upon resumption of the regular public meeting, the Executive CITO expanded his previous comments about cybersecurity, outlining three steps to improve the State's IT security: thorough training for staff competency, multi-layered backdrop response, and encryption.

Conclusions and Recommendations

No legislation was recommended for introduction. The Joint Committee agreed on the the following recommendations:

- The Legislative CITO consider requiring multi-factor authentication for legislators in order to access the legislative network;
- The Executive CITO make IT security a primary priority as the Executive Branch IT 2016-2017 Strategic Plan is implemented; the Committee supports the guiding principles of the Plan related to customer focus, financial value, people, solution brokers, innovation, and security;
- The House Committee on Appropriations and Senate Committee on Ways and Means consider adding proviso language to the FY 2018 budget bill to identify a portion of an agency's budget that may be deferred until the agency can show it has addressed findings of critical security risks

made in the agency's most recent security audit;

- The Chief Information Security Officer separately review security plans and certify approval of the security plan for proposed new projects over $250,000 prior to approval by the Executive CITO;
- The Legislative CITO review the security policies for interns and temporary staff accessing the secure legislative network and collaborate with leadership to implement necessary security changes; and
- Technology security training be provided to all members within the first three weeks of the 2017 Legislative Session and that House and Senate leadership record such attendance.

The Committee also expressed gratitude to LPA for the security audits and noted the value to the Committee. The Committee requested its annual report be distributed to both House Committee on Appropriations and Senate Committee on Ways and Means.

Report of the Joint Committee on Kansas Security to the 2017 Kansas Legislature

Chairperson: Senator Greg Smith

Vice-chairperson: Representative Mario Goico

Other Members: Senators Anthony Hensley, Forrest Knox, Mike Petersen, and Pat Pettey; and Representatives Kevin Jones, Adam Lusker, Peggy Mast, and Louis Ruiz

Charge

KSA 2016 Supp. 46-3301 directs the Joint Committee to study, monitor, review, and make recommendations on matters related to the security of state officers or employees, state and other public buildings and other property, and infrastructure in the state, and to consider measures for the improvement of security for the state. Specifically, in 2016, the Committee is authorized to tour the Kansas Intelligence Fusion Center and to address these additional topics:

- Investigations of threats to security of and within public offices;
- Legal issues facing the state with regard to security, including a review of the aftermath of use of deadly force;
- Security in the Capitol, to include the effects of changes in concealed carry law and the state of screening equipment, and at Cedar Crest;
- Communications within the state's law enforcement community, including the status of the Kansas Criminal Justice Information System;
- Security within educational settings;
- Agreements between the Wolf Creek Generating Station and state and local agencies;
- Moneys received from state and federal sources for security and an overview of how those moneys are spent;
- The readiness of the Kansas Army National Guard and the Air National Guard, to include procurement of needed equipment, uniforms, and other material needed to perform their missions;
- Efforts to attain optimal staffing at the Kansas Bureau of Investigation and the Kansas Highway Patrol and the effects of suboptimal staffing levels on fulfilling their missions; and
- An update on veterans issues, including protection of veterans programs from fraud.

December 2016

Joint Committee on Kansas Security

Report

Conclusions and Recommendations

The Committee recommends review of preparedness for possible terrorism events involving the Capitol. It recommends screening of items delivered to the loading dock and reduced access to the Capitol grounds be among those measures.

The Committee recommends the Legislative Coordinating Council and Capitol Police implement training on Statehouse emergency policies and procedures for all legislators.

The Committee recommends the House and Senate Committees on Education consider these changes to laws affecting K-12 school districts:

- Amending the Jason Flatt Act (KSA 2016 Supp. 72-8260, added by 2016 Sub. for SB 323) to require the board of education of each school district provide suicide awareness and prevention programming to all school staff in direct contact with students, rather than to all staff; and

- Amending a limitation on the use of mechanical restraints in KSA 2016 Supp. 72-89d03(f)(3) (an amendment in 2016 House Sub. for SB 193) to allow trained school administrators and district security staff as well as certified law enforcement officers to use mechanical restraints when necessary to constrain violent behavior.

The Committee notes all law enforcement agency representatives who testified regarding recruitment and retention of security personnel in their organizations said that low pay is a major factor, and it notes turnover and replacement with inexperienced personnel is detrimental to effective security. The Committee recommends the Legislature address this issue.

The Committee recommends the House Committee on Veterans, Military and Homeland Security review recruitment and retention incentives applicable to the Kansas Army National Guard and the Kansas Air National Guard, including tuition assistance.

The Committee recommends the House Committee on Appropriations and the Senate Committee on Ways and Means remove expenditure limits from federal funds received by the Kansas Commission on Veterans Affairs Office.

The Committee recommends the 2017 Joint Committee on Kansas Security review the topic of preparedness for natural disasters, incidents of terrorism, and other potential causes of mass casualties at major venues in the state, such as the Kansas Speedway.

Proposed Legislation: None. However, the Committee recommends the legislative actions listed above.

Background

The 2004 Legislature created the Joint Committee on Kansas Security (KSA 2016 Supp. 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 communications within the state's law enforcement community, security within educational settings, moneys received and spent for security, the readiness of the Kansas Army National Guard and the Air National Guard, efforts to attain optimal staffing at the Kansas Highway Patrol (KHP) and the Kansas Bureau of Investigation (KBI) and the effects of suboptimal staffing, and veterans issues.

Committee Activities

The Committee received permission from the LCC to meet on two days and to tour the Kansas Intelligence Fusion Center (Fusion Center). The Committee met November 9 and 10, 2016. The tour of the Fusion Center took place on November 9 and was conducted in an executive session closed under the provisions of KSA 2016 Supp. 75-4319(b)(13). The Committee heard information at the Statehouse on the topics below.

Capitol Complex Security and Threats to Public Officials

The captain of Troop K of the KHP addressed the Committee on the role of the Capitol Police, also referred to as Troop K: providing safety and security and police services to state employees and visitors to state-owned or -leased properties. He reviewed the Troop's command structure; steps taken to improve investigative services; training provided to state employees and agencies on emergency preparedness, including active shooter training; ways in which the Capitol Police get messages to building users; key card access to the Statehouse and how recent efforts have improved the overall security of that system; central monitoring of Capitol Complex buildings and grounds using cameras; and use of bicycle patrols in the Complex and for special events. He noted use of bicycles allows officers quicker response times when streets are blocked due to special events in the downtown Topeka area. He noted the agency uses social media and email to alert state officials and employees and members of the public to incidents and to provide additional information.

The Troop K captain also provided an overview of the equipment used for Statehouse security screening and noted the equipment is aging, it was exposed to much dust during construction and moved several times, and warranties have expired for those systems. He stated information on costs for replacement equipment had been obtained and suggested that, if it were determined that security screening processes are acceptable and funding available, certain factors, such as warranties and on-site training, should be considered when looking at options for replacing that equipment. The options studied included adding an x-ray inspection system for the loading dock to supplement visual inspections. He also noted computer capacity is being reached for storage of images from the cameras.

In written materials, the captain provided an overview of Statehouse security procedures, such as checks for suspicious behavior or unlawful or restricted weapons. The testimony listed types of crimes and incidents reported during the previous year, including vehicle thefts, domestic incidents, suspicious activity, traffic crashes, and medical issues.

The director of the KBI stated the agency's Investigations Division limits acceptance of requests for investigative assistance to those who fall into the categories of homicide or major violent crime, crimes against children, governmental integrity and public corruption, and violent or drug-trafficking organizations. He said credible threats against public officials fall under those priorities and that the KBI and Capitol Police have recognized a need to better document and share information regarding threats to public officials. The Capitol Police materials provided general information about threats made to public officials and reported to the Capitol Police. Both the Capitol Police captain and the KBI director urged public officials to report threats to both their local law enforcement officials and to state officials.

The captain, the KBI director, and KBI officials met with Committee members during an executive session. Any information provided during a closed session is not summarized in this report; staff were not present during closed sessions.

State Agency Data Security

A representative of the Legislative Division of Post Audit (LPA) reviewed LPA's process for reviewing information technology (IT) security at state agencies and how that process has changed in the more than 12 years the agency has been performing such audits. He stated early audits focused on a few areas within IT security, such as server and workstation patching processes, plans for continuing operations in the event of emergencies, and change control. The current process involves choosing agencies for in-depth security audits based on risk. LPA staff evaluate agencies in 20 IT security areas to determine whether the agencies adhere to requirements of the Kansas Information Technology Executive Council and follow other best practices. Audits involve agency self-assessment, interviews with agency officials, and fieldwork. Reviews also include a social engineering component, at agency discretion. He noted LPA auditors hold certifications such as Certified Information Systems Auditor and Certified Information Systems Security Professional.

The LPA representative stated he would present results of two IT security audits in executive session. The Committee meeting was closed for that presentation.

Public Safety Communications

Criminal Justice Information System (CJIS)

The Chief Information Officer of the KBI (KBI CIO) and the Kansas CJIS System Officer, a captain of the KHP, presented information on this topic.

The Kansas Criminal Justice Information System (KCJIS) was described as a well-utilized public safety collaboration that provides for the secure, efficient, and timely sharing of critical and sensitive law enforcement data with local, state, and national public safety agencies. It is established in KSA 2016 Supp. 22-4701 *et seq.* The KBI CIO said state agencies both provide information and use the information. The KBI, KHP, Department of Corrections, and the Office of Judicial Administration are heavy users, and the Departments of Health and Environment, Education, and Aging and Disability Services also are among the users. Kansas Car Stop queries, for example, are frequently used. Some agencies, such as the Department of Revenue Division of Vehicles, are primarily data providers. The KBI is the State's only connection to federal systems such as the FBI Interstate Identification Index and the National Crime Information Center (NCIC), and to INTERPOL.

The number of agencies using the information has remained relatively flat, but the number of requests for information has increased 34 percent over the past five years to more than 40 million a year, which is more than one per second, the KBI CIO said. Usage of the KCJIS Portal, a master search that pulls information from more sources than the Car Stop program, has increased 90 percent since 2011 to nearly 1 million searches a year. He noted the Kansas DUI Commission in its final report (to the 2011 Legislature) found the KCJIS should be the driving under the influence (DUI) central repository and said it should be funded appropriately. The 2011 Legislature added a statutory requirement that the KBI develop rules and regulations to require district courts to electronically report to the central information repository the filing of any case alleging a charge for DUI or commercial DUI. He cited an example of how improvements to the service improve factbased decision making: investigators of a crash in which a mother and daughter were killed found the driver had 11 previous convictions for DUI, not the 2 in Division of Vehicles records, which changed the punishment and may have prevented other tragedies.

The KBI CIO said the KCJIS infrastructure and technology is supported by KBI IT staff and the Office of Information Technology Services administers routers and circuits, operating much as a secure Internet provider for agencies belonging to KCJIS. He briefly described controls that ensure information and requests for it are secure. He stated a core firewall replacement will be needed in fiscal year (FY) 2019. Because personnel remain as the greatest vulnerability, continual training of system users is necessary. He further noted updates to the security architecture are still needed as part of an ongoing process.

The Kansas CJIS System Officer described the KCJIS Committee, which includes representatives of the KBI; KHP; Kansas Departments of Administration and Corrections; the Office of Judicial Administration; and associations of chiefs of police, sheriffs, public safety communications officials, county and district attorneys, and district court clerks and administrators. The Committee meets monthly and annually updates the KCJIS Policy and Procedure Manual. The System Officer stated KHP's role includes training and testing all NCIC Kansas terminal agency coordinators, conducting technical security audits, providing security awareness training, auditing users of the National Data Exchange, and conducting records checks on contractors and vendors.

The Kansas CJIS System Officer also described KHP Central Communications. He stated KHP Central Communications has 64 positions, 5 of which were vacant as of the date of the meeting. KHP Central Communications is located in Salina in the Troop C building; it is continually staffed. Additional systems to maintain continuity in the event of an emergency include remote sites as back-up locations, laptops, and wireless routers that act as mobile wireless Internet hotspots. KHP Central Communications can use a MotoBridge system on the Kansas Department of Transportation's (KDOT's) 76 tower sites to connect predetermined channels of different radio systems and frequencies; that system is intended for multi-disciplinary and multi-jurisdictional use when other common means of radio communications are not available. KHP Central Communications duties also include answering the Safe School Hotline, answering a toll-free number regarding hazardous materials after normal business hours, monitoring KDOT tower alarms and Notices to Airmen from the Federal Aviation Administration, and monitoring facility alarms, he said.

The Communication System Administrator for the Bureau of Maintenance, KDOT, reported a study is under way of the Kansas State Interoperability Communication System (KSICS). The KSICS is a statewide 800 megahertz (MHz) wide-area radio system used by local law enforcement and government users as well as KDOT, KHP, and emergency medical services to achieve interoperable radio communications across the state. The scope of services for the contract for the study states the contractor will, among other tasks, inventory and value KSICS components and appraise the value for licensing, leasing, or partnering with a private entity. The Administrator stated he did not know whether security of the towers or communications is being considered by the contractor, Mission Critical Partners. He said the contractor's report was expected in late December 2016.

Statewide Interoperability Executive Committee, FirstNet (Public Safety Broadband), and the 911 Coordinating Council

The Chief Information Officer for the Kansas Adjutant General's Department (AG CIO) briefed the Committee on the status of three public safety communications areas: the Statewide Interoperability Executive Committee (SIEC), the First Responder Network Authority (FirstNet) (public safety broadband), and the 911 Coordinating Council.

SIEC. The SIEC, created by Executive Order 07-27, provides governance and guidance related to the interoperability of public safety communication systems, the AG CIO said. He stated the SIEC, working with KDOT, was successful in establishing a model statewide interoperable public safety radio capability. The SIEC also oversees the efforts of the Office of Emergency Communications, which provides public safety radio training to first responders and deploys and operates two mobile towers designed to augment the statewide radio system in times of disaster or high need. The SIEC is assisting the Kansas Chief Information Technology Officer with the FirstNet decision-making process.

FirstNet. The AG CIO described FirstNet as an independent authority within the National Telecommunications and Information Administration to provide emergency responders with a nationwide high-speed, wireless broadband network dedicated to public safety use. It was created as part of the Middle Class Tax Relief and Job Creation Act of 2012. Since 2014, Kansas public safety broadband outreach coordinators have met with more than 1,700 first responders at more than 200 agencies to discuss a public safety broadband network. FirstNet has issued a request for proposal for the nationwide network, and the AG CIO expected to learn within 30 days of the meeting who was chosen for the project. He further expected to see a draft plan for Kansas three or four months after the award is made. Once the final Kansas plan is received, probably in late Summer 2017, the Governor will have 90 days to choose to join the nationwide network or have the state build out its own network. The AG CIO said he and his staff continue to work with first responders and will evaluate the FirstNet plan using a state-specific checklist.

911 Coordinating Council. The AG CIO stated the mission of the 911 Coordinating Council is to ensure Kansas' 117 public safety answering points (PSAPs) can leverage all available resources to advance the implementation of Next Generation 911 (NG911), capable of sharing text, photos, and video as well as voice calls. After extensive evaluation of strategies for updating the systems of the PSAPs, which are operated independently of one another, the 911 Coordinating Council contracted in February 2015 with AT&T to host a NG911 system. As of the date of the meeting, 39 counties used the system, 32 were in line to join, and 13 more had indicated significant interest; together, those counties cover 80 percent of the state, the AG CIO reported. (He provided a map of the counties in each category.) He stated the Council also supports the operations of PSAPs that have not chosen to use the AT&T system and has worked on standardization of the data utilized to route calls and dispatch responders.

The AG CIO noted PSAP systems had been aging and using a hosted system reduced equipment costs for those local systems. By using the hosted system, soon Kansans will be able to send text messages to 911, he said. As of the date of the meeting, no Kansas PSAPs could accept a text to 911; an application to the Federal Communications Commission was expected to be under way in January 2017.

The AG CIO also noted the personnel working on each of these communications efforts overlap, which improves coordination, and that these groups continue to work on strategies to improve unified governance. He provided an organizational chart on interoperability and public safety broadband governance in Kansas.

Security Within Educational Settings

Regents Institutions

Campus law enforcement agency directors (directors) from Emporia State University (ESU), Fort Hays State University (FHSU), Kansas State University (KSU), Pittsburg State University (PSU), the University of Kansas (KU), Washburn University (Washburn), and Wichita State University (WSU) presented information to the Committee.

On behalf of the group, the director from KU highlighted collaborative activities the group of law enforcement agencies undertakes, including sharing a firearms "shoot, don't shoot" training simulator that uses lasers rather than bullets, and meetings of firearms instructors and emergency managers from each campus to share information and ideas. He stated hiring and retention are constant struggles and added that older officers are retiring and the process of fully training a new officer can take nearly a year. The director stated the campus law enforcement agencies are responding to requests from students for campuses to make available safety apps such as Rave Guardian and LiveSafe. He said all law enforcement officers at the Regents universities have attended active shooter training. He noted many on campus have questions about the loss of exemption which had allowed the prohibition of concealed carry of firearms in campus buildings and the effect on the campus environment.

Each campus law enforcement director briefly addressed the Committee and all responded to questions. Among the points they made are those given below.

Concealed carry. Some on campuses have concerns that, even though carrying a concealed weapon is legal only for someone 21 or older, more students will have access to guns and, potentially, violence and suicides will increase. Directors stated they are working to ensure all officers receive training in crisis intervention. It was noted no mental health screening is required to legally carry a concealed personal firearm. Another concern expressed is that a responding officer may not be able to distinguish "a good guy from a bad guy" when multiple people have guns at an incident scene.

Department size and responsibility. The directors from KSU, KU, and WSU noted their campuses have significantly increased in physical size with no increase in the number of officers; the KU director said his department has seven fewer officers than it did when he was an undergraduate. The ESU director said he has eight officers total, making it extremely difficult to send any for off-site training. All noted they will temporarily assign officers to other campuses when situations demand, such as a presidential visit, and their agencies cooperate with the KHP and city and county law enforcement agencies. The ESU and WSU directors noted the job of campus officer means a lot of "parenting." It was noted the National Agro and Bio Defense Facility at KSU will have its own federal security; KSU will have a mutual aid agreement with that force. The KSU director noted the university follows National Football League security guidelines for those entering its football stadium on game days and expects to add a magnetometer next season.

Pay and recruitment. Directors stated their agencies no longer use state pay scales because pay under that system is frozen and also that pay compression is a serious concern. All said they compete with local and state agencies with regard to pay and for qualified applicants. The FHSU director stated he had 13 applicants for a recent opening, 3 of which showed up for testing, and 2 of those failed tests related to report writing and mathematics. The PSU director said he had six applicants for a recent opening. The ESU director said he had had to fill four of that agency's eight positions in recent years, and the WSU director said that department had lost eight officers to other law enforcement agencies. Starting pay was given as about $28,000/year at FHSU, $24,000/year at KU, and $15.03/hour, or about $31,000/year, including a retention bonus, at PSU. While officers fluent in multiple languages, especially Spanish, were recruited, several directors noted officers with those language skills are very difficult to retain. They reported some positions, such as dispatchers, are often filled by students.

Alcohol and drug use. The WSU director said her agency has had to respond to a significant increase in the number of incidents in this category, with 2016 numbers by August surpassing 2015 full-year totals. The KSU director stated students have actively made other students aware of the provisions of 2016 SB 133 that provide immunity from prosecution for a minor in possession of alcohol when medical assistance is needed, under certain circumstances.

K-12

The Executive Director of Safety Services for the Wichita Public Schools (USD 259) and the Director of School Safety for the Topeka Public Schools (USD 501) addressed the Committee. Each provided information on the makeup of the district's safety staff, discussed district initiatives, and offered suggestions for improving safety in K-12 facilities.

The Executive Director of Safety Services (USD 259) stated the officers in her department are not commissioned law enforcement officers and discussed her department's cooperation and collaboration with the Wichita Police Department and the Sedgwick County Sheriff's Department, such as training for those departments' officers in school district buildings. She discussed prevention work including training for students, staff, parents, and the community on topics including bullying, drug and alcohol use, and gangs. She noted students in the district are encouraged to anonymously report questionable activity through the district's "See Something, Say Something" campaign. She stated the district complies with the Kansas School Safety and Security Act (KSA 2016 Supp. 72-89b01 *et seq.*) and also noted the district's support for provisions of 2016 SB 367, which allows interventions with students other than arrest; she said the district had created an agreement to appear even before enactment of SB 367.

Other topics addressed by the Executive Director of Safety Services (USD 259) included crisis planning and preparedness, crime prevention through environmental design (*e.g.*, fencing, electronic monitors at doors), and training. She said the district created an earthquake protocol and a video to demonstrate it and has conducted district-wide earthquake drills. She stated the district also practices emergency evacuations twice a semester and created a video for K-12 on a "Run, Hide, Fight" response to a violent intruder. Other districts have asked to use the videos, she said. She cited the work of the former Center for Safe and Prepared Schools in furthering awareness of and development of procedures for emergency preparedness. She also briefly described efforts to deal with student anxiety associated with the year's political debates on topics including school funding.

The Executive Director of Safety Services (USD 259) requested consideration of changes to recent laws:

- Freedom from Unsafe Restraint and Seclusion Act, as amended by 2016 House Sub. for SB 193—Amend this to allow trained school administrators and district security staff as well as certified law enforcement officers to use mechanical restraints (*e.g.*, handcuffs) when necessary to prevent further harm. She cited an example of a violent juvenile who could not be restrained as law enforcement officers had not yet arrived at the scene; the juvenile struck a school official and faced an additional charge; and

- Jason Flatt Act—Amend this to exempt school district personnel who have no direct contact with students (*e.g.*, food preparation staff) from the training so the district can avoid the cost of that use of staff time.

The Director of School Safety (USD 501) stressed the value of prevention, preparedness, and awareness that a crisis could happen in a school in any town. He noted staff as well as students may face crises, such as health emergencies, in schools. He discussed training he and his officers have received, such as a multi-hazard course, and stated schools must have plans to react in various types of emergencies and must practice those plans so they can be carried out in the chaotic, emotional circumstances of a real emergency. Security audits are used to check on preparedness at individual schools. He noted the role of an officer in a school includes mentoring and coaching students in making good decisions and solving problems; the role also includes constant situational awareness and suggestions for improvements to environmental design related to safety.

He noted he had been a member of the Center for Safe and Prepared Schools Advisory Board and stated funding for prevention programs is essential for continued school security and should not be diverted. He said he believes a school district must be safe to be great and that harm has been prevented in schools through preparedness and safety activities.

The Director of School Safety (USD 501) requested consideration of funding to the Kansas Division of Emergency Management to restore training like that previously offered by the Kansas Center for Safe and Prepared Schools, restoration of the Safe and Prepared Schools Advisory Board, a requirement for emergency operations plans for all schools, consideration of a requirement for earthquake drills and training, and an annual school safety conference held in Topeka during the legislative session so that legislators could learn more about school safety.

Funding for Security Efforts

Information on the Homeland Security Grant Program was provided by the Chief Financial Officer (CFO) and the Homeland Security Grant Program Manager of the KHP. The KHP is the designated State Administrative Agency for all preparedness grant program operations funded by the Department of Homeland Security and the Federal Emergency Management Agency.

Funding through the grants has ranged from $670,000 in 1999 to $21.9 million in 2004 (in response to the 9/11 terrorist attacks); since 2013, the amount has been approximately $3.7 million per year. The current grant ends in fiscal year (FY) 2018.

According to testimony, federal law requires 80 percent of the awarded funds go to local units of government or regional councils through a sub-grantee process, and Kansas passes the remaining 20 percent to state agencies also through a sub-grantee process. At least 25 percent of the funds must be used for law enforcement terrorism prevention activities. The CFO stated some of the terrorism prevention activities supported through grant funding include information sharing and analysis at the Fusion Center; Fusion Center analyst salaries; equipment, training, and exercises related to target hardening and terrorist interdiction; and agricultural security sustainment.

To ensure grant moneys and any moneys available should these grants end are spent appropriately, state and local officials have evaluated state capabilities in 32 core areas to determine areas of greatest need, a KHP official said. She noted cyber-capability currently is rated as the area of greatest need in the state and across the country. The Homeland Security Grant Program Manager explained each project to be funded with Homeland Security grant moneys must be pre-approved by the regional council, and the agency receiving the money is later reimbursed after spending is reviewed. It was noted grants provide local units of government opportunities to train and equip themselves in order to begin the response in any emergency response before state officials can arrive at the scene, if state officials will be needed. The KHP Superintendent stated funds had been used to ensure interoperable communications and local units of government purchased equipment with Homeland Security grant moneys; he noted sustaining interoperable communications is an issue as equipment must be updated.

Staffing and Readiness at State Agencies

KHP

The Superintendent of the KHP stated the number of troopers dropped from 501 in 2006 to 399 in 2015, and he showed graphs indicating correlations with arrests; there were fewer arrests for impaired driving, speeding, and hazardous moving violations. He provided information on numbers of troopers in surrounding states overall, per local law enforcement agency served, per capita, per lane mile, and per registered vehicle, but also noted direct comparisons with other state patrols are difficult because of variations in the duties assigned to the highway patrol agencies.

The Superintendent provided information on the assistance the KHP provides to local law enforcement agencies. He noted the KHP is the only Kansas law enforcement agency with air assets and the agency provides bomb technicians, canines, and ordinance disposal for 75 percent of Kansas. KHP personnel train other agencies in impaired driving detection and apprehension, provide crime scene mapping and accident reconstruction, train and audit all law enforcement users of the KCJIS, participate in the Joint Terrorism Task Force and the Drug Enforcement Administration Task Force, and provide debriefings at critical incidents. He also noted the agency provides an automated reporting system used by KHP and other law enforcement agencies. Increases in suspected drugged driving will require additional training for law enforcement officers, including troopers.

The Superintendent thanked legislators for actions over the previous two years to increase the number of troopers by approving a compensation plan for troopers, the Deferred Retirement Option Program (in which a trooper who delays retirement is paid deferred retirement benefits when the trooper actually retires), and a $2 surcharge added to each motor vehicle registration and directed to the Kansas Highway Patrol Staffing and Training Fund. He stated the impact is evident: 439 troopers as of the date of the meeting and 34 on track to graduate from the KHP academy in December 2016. He also stated most recruits come from local law enforcement and the military, pay is decidedly a factor for recruiting and retention, and efforts to attract troopers from racial and ethnic minorities are ongoing.

KBI

The Director stated the KBI defined its investigative priorities in FY 2012 in an attempt to manage its finite resources and address the most critical needs of its local law enforcement agency "customers," 70.0 percent of which have ten or fewer officers each. Since then, the Director said, the agency has declined requests for assistance that did not fall within four categories: homicide/major violent crime; crimes against children; governmental integrity/public corruption; and violent/drug trafficking organizations. Due to staffing shortages, the agency has declined 20 percent of requests for assistance in FY 2016, and 45 percent of those declined fell into the priority categories. Focusing on these categories of crime has meant certain categories of crime—such as cybercrime, most white-collar crime, and less-than-the-most-extreme child abuse cases—are not investigated by the KBI. Case requests increased this year by 42.0 percent. He noted violent crime increased by 11.2 percent in Kansas in 2015, mostly because of increases in the numbers of murders and robberies.

The Director provided statistics on staffing within various sectors of the KBI, for which he listed main duties:

Information Services Division—6 percent vacancies, 19 percent below optimal level. The Division's duties include collection, maintenance, and dissemination of all incident and arrest data and criminal history information and administration of the Kansas Offender Registration Act. It has backlogs of more than 400,000 records in the automation of criminal history records and 1.2 million for scanning of historical fingerprint cards.

Forensic Laboratory—17 percent of positions vacant, 43 percent below optimal staffing. Staff examine evidence from criminal cases, issue reports, and render expert opinions in court. With current levels of staffing, it often is impossible to meet the agency's goal of completing evidence examinations within 60 days. For a period of time, the KBI had requested local law enforcement agencies not send sexual assault kits for testing if DNA evidence was not necessary, but since 2014 the KBI has requested the kits be submitted—a backlog of approximately 2,200 kits—to further the apprehension of serial sexual offenders and prevent future victimization. The Director stated new laboratory facilities at Washburn University have assisted with recruitment.

Criminal Intelligence Unit—44 percent vacancies, 64 percent below optimal staffing. The Unit facilitates internal and external information exchange and provides tactical case support. Understaffing has negatively impacted dissemination of the most current intelligence information to law enforcement, including reporting on potential incidents of terrorism.

Investigations Division—24 percent vacancies, 42 percent below optimal staffing. The Division provides expert investigative services to Kansas law enforcement agencies. The primary performance measure is the percentage of cases substantially completed within 90 days, a goal met less than half of the time. Adding staff would allow the agency to accept more cases within the current list of priorities and accept requests for investigations of additional types of crime, such as fraud, cybercrime, and human trafficking. The Director noted drug trafficking is linked to much violence and said drug use is linked to drug availability.

The Director stated an internally financed recruitment and retention initiative in FY 2017 was helpful but, without secure funding for FY 2018, will result in the loss of eight additional agent positions. He also stated 45 percent of those offered KBI jobs do not accept them, and certain supervisory positions have been open for periods of time longer than optimal because of salary compression. The agency would prefer a gradual increase to target levels.

National Guard

The Adjutant General stated that department's complex mission set includes training and making ready resources and the necessary force to respond to disasters, natural and man-made, and to provide trained and ready armed forces for deployments. He stated that, of the 7,200 Army and Air National Guard members across the state, 86 were currently deployed, 226 had recently returned, and 834 were preparing to deploy within a year of the date of the meeting. The Department also has 42 in the Kansas Division of Emergency Management (KDEM) and 222 in other Department roles. Federal sequestration will mean a reduction in the Department's full-time federal workforce of 10 percent over the next 2 years and reductions of 487 in the Army component and 123 in the Air component. He noted the percentage of the U.S. population serving in the military services has steadily decreased (approximately 12 million in service of 132 million population in the 1940s, 2.1 million of 215 million in the 1970s, and 1.3 million of 321 million currently). The Adjutant General stated only approximately 15 percent of those ages 16 through 24 have a willingness to serve in the military and, of those, 72 percent are ineligible for reasons including medical conditions, obesity, and moral character.

Tuition assistance is the number one benefit helping to attract and retain recruits, he said. However, the tuition assistance program is appropriated a set amount, to be divided among those qualifying, which means the amount any one recruit gets could vary substantially from semester to semester, an unpredictability detracting from the appeal of the benefit. He commended the Board of Regents for making additional moneys available to the tuition assistance program when available.

With regard to physical facilities, the Adjutant General highlighted two initiatives. One is placement of Kansas National Guard Headquarters, the Fusion Center, and KDEM at Forbes Field. He said this uses excess capacity at Forbes Field, making it less susceptible to a future Base Realignment and Closure Commission action by establishing it as a joint activity. KDEM proximity to a runway also could be important in an emergency response, he said. Another is a partnership with Garden City Community College to lease and use that campus as a National Guard facility on weekends, taking advantage of infrastructure such as classrooms available at the college. He noted Garden City is growing in population and has the second most diverse population in Kansas. He said efforts continue to transfer ownership of land at the Crisis City training facility, used frequently by entities, including the U.S. Army and State Fire Marshal, to the State. He further stated the Department takes steps to conserve resources and enhance operational efficiencies at all facilities.

The Adjutant General addressed questions regarding types of warfare by stating he expects to see changes including more unmanned weapons, more computer-networked systems, and on-demand supply of needed parts using 3-D printing. Given the trouble spots around the world, battles with a peer or near-peer country are possible and must be considered for training and resources. The State continues its partnership with the country of Armenia, which has been in place since 2003, and that country also has a Russian base; a goal of the partnership is more stability in the region.

Veterans Issues

The Director of the Kansas Commission on Veterans Affairs Office reviewed progress and challenges facing the agency in its efforts to serve veterans.

The Director reviewed improvements to physical facilities at the Kansas Veterans' Home in Winfield and the Kansas Soldiers' Home at Fort Dodge, including replacement of single-pane windows, replacing roofs at cottages, and renovating access to buildings for Americans with Disabilities Act compliance. Both facilities now use PointClickCare software and tablet computers, a step toward paperless medical records, and installed new servers and wireless systems. The agency will request approval for 8 projects at the Winfield facilty and 6 at Fort Dodge for FY 2018; the projects include sewage infrastructure and window and door replacements. While construction at the Fort Dodge facilities has temporarily reduced the number of residents, numbers are expected to increase again; the resident population at the Winfield facility has increased significantly in the previous 6 to 8 months to approximately 130.

The Director stated attracting and retaining qualified medical staff remains a challenge. There is much competition for qualified medical professionals, especially in rural settings, and the agency cannot compete with salaries or with signing bonuses from private providers.

The Director requested legislators consider removing caps on spending from 6 of 26 federal funds available to the State, saying those caps reduce flexibility and, with other moneys reduced, mean the agency cannot take steps to improve the security and well-being of residents in its facilities.

The Deputy Director stated the agency has vacancies for veterans service representatives and has a turnover rate of nearly 40 percent because of pay and the intense responsibilities of the job. However, several long-term vacancies have recently been filled. Each claim is reviewed before submission, and approximately 89 percent of claims are approved. Most records have been computerized and can be accessed only through a virtual private network from a recognized device; in the past year, the agency hired a contractor for a cybersecurity test and has upgraded some of its security procedures as a result.

The Deputy Director also said the agency would support a new bill similar to 2016 HB 2692 on the topic of disclosures to veterans and meant to help eliminate pension poaching scams. (2016 HB 2692 was not enacted.) He said AARP and the Veterans Administration also are working on this issue.

Conclusions and Recommendations

The Committee recommends the LCC, in collaboration with the KBI, the Capitol Police of the KHP, and other appropriate parties, review preparedness for possible terrorism events involving the Capitol. The Committee recommends measures including screening of large items delivered to the Capitol's loading dock and reduced access to the grounds, especially by vehicles, be considered and that protocols, including additional security measures, be developed and put into place at times of increased threat level.

The Committee recommends the LCC require and Capitol Police implement training on Statehouse emergency policies and procedures for all legislators in odd-numbered years.

The Committee recommends the House and Senate Committees on Education consider these changes to laws affecting K-12 school districts:

- Amending the Jason Flatt Act (KSA 2016 Supp. 72-8260, added by 2016 Sub. for SB 323) to require the board of education of each school district provide suicide awareness and prevention programming to all school staff in direct contact with students, rather than to all staff; and
- Amending a limitation on the use of mechanical restraints in KSA 2016 Supp. Supp. 72-89d03(f)(3) (an amendment in 2016 House Sub. for SB 193) to allow trained school administrators and district security staff as well as certified law enforcement officers to use mechanical restraints when necessary to constrain violent behavior.

The Committee notes all law enforcement agency representatives who testified regarding recruitment and retention of security personnel in their organizations said that low pay is a major factor, and it notes turnover and replacement with inexperienced personnel is detrimental to effective security. The Committee recommends the Legislature address this issue.

The Committee recommends the House Committee on Veterans, Military and Homeland Security review recruitment and retention incentives applicable to the Kansas Army National Guard and the Kansas Air National Guard, including tuition assistance. The Committee notes the National Guard Educational Assistance Account of the Kansas Board of Regents is appropriated an overall amount, which is then divided by the number of recipients, and the amount to each recipient may change with each semester.

The Committee recommends the House Committee on Appropriations and the Senate Committee on Ways and Means remove expenditure limits from federal funds received by the Kansas Commission on Veterans Affairs Office.

The Committee recommends the 2017 Joint Committee on Kansas Security review the topic of preparedness for natural disasters, incidents of terrorism, and other potential causes of mass casualties at major venues in the state, such as the Kansas Speedway.

Report of the Joint Committee on Pensions, Investments and Benefits to the 2017 Kansas Legislature

CHAIRPERSON: Senator Jeff King

VICE-CHAIRPERSON: Representative Steven Johnson

OTHER MEMBERS: Senators Anthony Hensley, Mitch Holmes, Laura Kelly, and Ty Masterson; and Representatives John Alcala, John Edmonds, Daniel Hawkins, Jerry Henry, Charles Macheers, Gene Suellentrop, and Ed Trimmer

CHARGE

The Joint Committee is directed to monitor, review, and make recommendations regarding the retirement system pertaining to:

- Legislation enacted during the 2016 Legislative Session affecting the Kansas Public Employees Retirement System (KPERS);
- The overall funding ratio for the Retirement System; and
- Various reports statutorily required to be submitted by KPERS and other state agencies to the Joint Committee.

Joint Committee on Pensions, Investments, and Benefits

Annual Report

Conclusions and Recommendations

The Joint Committee requests KPERS report the investment performance of the proceeds of the 2004 and 2015 bond series to the members of the Joint Committee.

When considering future modifications of working-after-retirement policy, the Joint Committee suggests legislation be considered that would allow retirees to return to public employment if certain hardship conditions are met.

The Joint Committee recommends the State honor its obligation to contribute the approximately $97 million that was delayed in FY 2016, plus 8 percent interest.

Proposed Legislation: A bill that would exempt Regents' schools and employed retirees from certain working-after-retirement rules.

Background

The Joint Committee on Pensions, Investments and Benefits was created in 1992 and is directed by KSA 2016 Supp. 46-2201 to:

- Monitor, review, and make recommendations relative to investment policies and objectives formulated by the Kansas Public Employees Retirement System (KPERS) Board of Trustees;
- Review and make recommendations related to KPERS benefits; and
- Consider and make recommendations on the confirmation of members nominated by the Governor to serve on the KPERS Board of Trustees.

The Joint Committee may introduce legislation it determines to be necessary.

Committee Activities

The Joint Committee met September 12, 2016, to review KPERS long-term funding, the performance of pension obligation bonds, and newly enacted provisions pertaining to working after retirement. The Joint Committee also acknowledged receipt of information submitted by KPERS.

Review of KPERS Long-Term Funding

The Joint Committee reviewed the 2015 actuarial valuation, which is a snapshot of the financial condition of the Retirement System as of December 31, 2015. The actuarial valuation of System assets, which includes the $1.0 billion proceeds of the recently issued pension obligation bonds, was estimated to be $17.409 billion.

Actuarial assets are calculated by "smoothing" investment gains and losses over a five-year period. A market value higher than the actuarial value means deferred investment gains will flow through valuations over the subsequent four years.

An estimated $515 million in net deferred loss is to be realized in the outlying years.

The funding status has improved for four membership groups (KPERS state, school, and local groups and the Judges' Retirement System). The funded ratio for the Kansas Police and Firemen's Retirement System (KP & F) decreased by 10 basis points to 74.0 percent. The unfunded actuarial liability for the entire system decreased in 2015 by $929 million, leaving $8.539 billion remaining to be funded. The funded ratio increased from 62.3 percent in 2014 to 67.1 percent in 2015. Legislative reforms enacted in 2012, including increased employer and employee contributions, will continue to improve funding. Assuming all actuarial assumptions are met in the future, KPERS will be fully funded at the end of the amortization period in calendar year 2033.

Bond Proceeds, 2015 Series

The Executive Director of KPERS explained the bonds were invested within a few days after receipt in accordance with KPERS' target asset allocation plan. Some adjustments have been made to rebalance the asset mix in domestic equity, private equity, and real estate. The 2015 pension obligation bonds were issued with an effective interest rate of 4.688 percent. Over the long term, a return over 4.7 percent would outperform the interest cost of the pension obligation bonds.

The first annual period for investment of the bond proceeds ended in August 2016. KPERS had not received the financial performance report by the date of the Committee's meeting.

Overview of 2016 Legislation Enacted; Implementation of New Provisions

Staff from the Office of Revisor of Statutes provided an overview of House Sub. for SB 168, which amended several provisions pertaining to a moratorium for KPERS death and disability contributions for the last quarter of FY 2016 and all of FY 2017, accidental death benefits for members of KPERS Tier 3, the sharing of account information with vendors associated with the KPERS 457 plan, tax treatment of Roth 457 plans, the establishment of a new 401(a) deferred compensation plan for local government employees, recalculation of final average salary for a KP & F member who participates in the Deferred Retirement Option Program, and working after retirement (which is discussed in a separate section).

KPERS staff reminded Committee members the KPERS 457 Plan is a deferred compensation plan for public employees and consists of contributions by employees only. This plan is the "third leg" of the "retirement stool" which allows state and local employees to have sound retirement incomes consisting of their Social Security income, KPERS benefits, and personal savings. KPERS is working on three initiatives to enhance KPERS 457: a Roth 457(b) plan; a pension data-sharing agreement with Empower, the current record keeper; and a 401(a) plan option for local employers. KPERS' goal was to present these plans to the Board of Trustees during its meeting on September 30, 2016. Implementation would occur in 2017.

Working After Retirement; Implementation of New Provisions; Related Issues

Working-after-retirement rules that permit employees to simultaneously work and receive KPERS benefits encourage earlier retirements, which has a cost to the Retirement System because there is a shorter period for contributions and a longer period for benefit payouts.

The Executive Director of KPERS discussed the implementation of new provisions and related issues regarding working after retirement. He described the old rules as effective until the end of FY 2016 and explained changes had been made because the temporary rules for licensed school professionals were initially scheduled to sunset on June 30, 2015, but were extended to June 30, 2016. The Legislature wanted to find a more permanent plan rather than continuing to extend the sunset. The IRS requires a *bona fide* retirement take place before distributions can occur. If an employer pre-arranges with an active member to retire and to return to work as a retiree, the member's retirement is not *bona fide* in the eyes of the IRS. Other circumstances, such as reemployment of a retiree as an independent contractor or through a third party, may cause questions about whether a legitimate retirement occurred.

The annual earnings limitation increased from \$20,000 to \$25,000 beginning July 1, 2016. Employers must report all rehired retirees to KPERS. The employer and employee must certify that no prearrangement has occurred. The 60-day waiting period for retirement benefits has not changed. The Executive Director also discussed the provisions for grandfathered positions (*e.g.*, licensed school professionals and other retirees) and also great-grandfathered positions (non-licensed) pertaining to rules if rehired by a different employer or the same employer. After reviewing the law with KPERS' tax counsel, it was determined all employees of KPERS-affiliated employers would be subject to the new rules, even if the position was not a KPERS-covered position.

A representative from the Kansas Board of Regents and the President of Fort Hays State University discussed the impact on the Regents System created by the 2015 and 2016 post-retirement legislation. A retiree who returns to work for a Regents institution is subject to the new rules even if the retiree is employed in a position covered by the Regents Mandatory Retirement Plan. Paying the 30 percent surcharge would be cost prohibitive for universities. The Board's staff requested legislation be introduced to create an exemption to KSA 2016 Supp. 74-4914: If a KPERS retiree is hired to a position covered by the Regents Mandatory Retirement Plan, the employee would not be impacted by the compensation limitation and the employer would not be affected by the new KPERS contribution requirement.

Representatives from the departments of Children and Families and Education expressed concerns about the applicability of working-after-retirement provisions to personnel associated with the respective two agencies. Two members of the public also questioned the effect the new post-retirement employment rules may have on individuals facing unique circumstances.

Receipt of KPERS Reports

The Joint Committee acknowledged receipt of the statutorily required Sudan Divestment Report.

Conclusions and Recommendations

The Joint Committee requests KPERS report the investment performance of the proceeds of the 2004 and 2015 bond series to the members of the Joint Committee. When this matter was discussed during the Interim, the performance analysis for the 2015 proceeds was not yet complete. As the State works to balance its budget, it is essential for the Legislature to know how well these special investments are working for the future solvency of the Retirement System.

The Joint Committee recommends a bill be introduced to exempt Regents' schools and employed retirees from certain working-after-retirement rules. It has come to the Committee's attention that some recently enacted changes to the law are having unintended consequences for positions covered by the Regents Mandatory Retirement Plan, which is not part of KPERS. The Board of Regents estimates that 140 KPERS retirees are re-employed on the campuses, mainly at the schools of education.

When considering future modifications of working-after-retirement policy, the Joint Committee suggests legislation be considered that would allow retirees to return to public employment, the earnings cap notwithstanding, if certain hardship conditions are met.

When the 2011 KPERS Study Commission proposed reforms, it was estimated the Retirement System would be fully funded by 2033. Due to increased contributions by both employers and employees, recent market performance, and the creation of a hybrid system, KPERS is expected to meet that goal. The State-School Employer Group should meet its actuarially required contribution rate in FY 2020, which would be a milestone success. However, both the Legislature and the Governor must refrain from the temptation to balance the budget by reducing or delaying future contributions, which only delays the inevitable—making future contributions more expensive than they should be. The Joint Committee recommends the State honor its obligation to contribute the approximately $97 million that was delayed in FY 2016, plus 8 percent interest. Once public employees have performed their work for the people and State of Kansas, public employers must honor their obligations to ensure the financial integrity of KPERS so that, among other purposes as specified in KSA 74-4901, the Retirement System may promote "economy and efficiency in the administration of governmental affairs."

Report of the Joint Committee on State Building Construction to the 2017 Kansas Legislature

CHAIRPERSON: Senator Kay Wolf

VICE-CHAIRPERSON: Representative Mark Hutton

OTHER MEMBERS: Senators Marci Francisco, Laura Kelly, Forrest Knox, and Larry Powell; and Representatives John Alcala, Steve Alford, Will Carpenter, and Adam Lusker

CHARGE

The Joint Committee is authorized by KSA 46-1701, which includes provisions allowing the Joint Committee to meet on call of its Chairperson at any time and any place within the state and to introduce legislation. The Committee is to:

- Study, review, and make recommendations on all agency five-year capital improvement plans;
- Review leases, land sales, and other statutorily required reports by agencies; and
- Travel throughout the state to observe state-owned buildings.

Joint Committee on State Building Construction

Annual Report

Conclusions and Recommendations

The Joint Committee recommended all the agencies' five-year capital improvement plans except for the following:

- Department of Administration—7B-Heat Plant, 7C-Demolition to three floors, 7D-Total renovation, 7E-Deconstruction all for the Docking State Office Building, and 8-New Energy Center; and
- Department of Corrections—S2-Construct two cell houses at El Dorado Correctional Facility.

The Committee recommended the Department for Children and Families (DCF) move forward with the sale of the property in Chanute and if DCF considers the offered price of $121,000 to be reasonable, to finalize the sale. The Committee believes this to be a reasonable rate based on issues affecting the property.

The Committee does not object to the advancement of the construction of the Capitol Snack Bar project.

Proposed Legislation: None

Background

The Joint Committee was established during the 1978 Session. The Special Committee on Ways and Means recommended the bill creating the Joint Committee, 1978 HB 2722, as a result of its interim study of state building construction procedures.

The Joint Committee was expanded from six members to ten members by 1999 HB 2065. It is composed of five members of the Senate and five members of the House of Representatives. Two members each are appointed by the Senate President, the Senate Minority Leader, the Speaker of the House of Representatives, and the House Minority Leader. The Chairperson of the Senate Committee on Ways and Means and the Chairperson of the House Committee on Appropriations serve on the Joint Committee or appoint a member of such committee to serve (KSA 46-1701).

Terms of office are until the first day of the regular legislative session in odd-numbered years. A quorum of the Joint Committee is six members. The chairperson and vice-chairperson are elected by the members of the Joint Committee at the beginning of each regular session of the Legislature and serve until the first day of the next regular session. In odd-numbered years, the chairperson is to be a representative and the vice-chairperson is to be a senator. In even-numbered years, the chairperson is to be a senator and the vice-chairperson is to be a representative (KSA 46-1701).

The Joint Committee may meet at any location in Kansas on call of the Chairperson and is authorized to introduce legislation. Members receive the normal *per diem* compensation and expense reimbursements for attending meetings during periods when the Legislature is not in session (KSA 46-1701).

The primary responsibilities of the Joint Committee are set forth in KSA 2016 Supp. 46-1702. The Joint Committee is to review and make recommendations on all agency capital improvement budget estimates and five-year capital improvement plans, including all project program statements presented in support of appropriation requests, and to continually review and monitor the progress and results of all state capital construction projects. The Joint Committee also studies reports on capital improvement budget estimates that are submitted by the State Building Advisory Commission. The Joint Committee makes annual reports to the Legislature through the Legislative Coordinating Council (LCC) and other such special reports to the appropriate committees of the House of Representatives and the Senate (KSA 2016 Supp. 46-1702).

Each state agency budget estimate for a capital improvement project is submitted to the Joint Committee, the Division of the Budget, and the State Building Advisory Commission by July 1 of each year. Each estimate includes a written program statement describing the project in detail (KSA 2016 Supp. 75-3717b).

The budget estimate requirement does not apply to federally funded projects of the Adjutant General or to projects for buildings or facilities of the Kansas Correctional Industries of the Department of Corrections that are funded from the Correctional Industries Fund. In those cases, the Adjutant General reports to the Joint Committee each January regarding the federally funded projects, and the Director of Kansas Correctional Industries advises and consults with the Joint Committee prior to commencing such projects for the Kansas Correctional Industries (KSA 2016 Supp. 75-3717b and 75-5282).

The Secretary of Administration issues monthly progress reports on capital improvement projects including all actions relating to change orders or changes in plans. The Secretary of Administration is required to first advise and consult with the Joint Committee on each change order or change in plans having an increase in project cost of $125,000 or more, prior to approving the change order or change in plans (KSA 2016 Supp. 75-1264). This threshold was increased from $25,000 to $75,000 in 2000 HB 2017 and to $125,000 in 2008 HB 2744. Similar requirements were prescribed in 2002 for projects undertaken by the State Board of Regents for research and development facilities and state educational facilities (KSA 2016 Supp. 76-786), and in 2004 for projects undertaken by the Kansas Bioscience Authority (KSA 2016 Supp. 74-99b16).

If the Joint Committee will not be meeting within ten business days, and the Secretary of Administration determines it is in the best interest of the State to approve a change order or change in plans with an increase in project costs of $125,000 or more, 2000 HB 2017 provided an alternative to prior approval by the Joint Committee. Under these circumstances, a summary description of the proposed change order or change in plans is mailed to each member of the Joint Committee, and a member may request a presentation and review of the proposal at a meeting of the Joint Committee. If, within seven business days of the date the notice was mailed, two or more members notify the Director of Legislative Research of a request to have a meeting on the matter, the Director will notify the Chairperson of the Joint Committee, who will call a meeting as soon as possible. At that point, the Secretary of Administration is not to approve the proposed action prior to a presentation of the matter at a meeting of the Joint Committee. If two or more members do not request the proposed matter be heard by the Joint Committee, the Secretary of Administration is deemed to have advised and consulted with the Joint Committee and may approve the proposed change order, change in plans, or change in proposed use (KSA 2016 Supp. 75-1264).

The comprehensive energy bill 2009 Senate Sub. for HB 2369 required the State to establish energy efficient performance standards for State-owned and -leased real property, and for the construction of state buildings. State agencies are required to conduct energy audits at least every five years on all State-owned property, and the Secretary of Administration is prohibited from approving, renewing, or extending any building lease unless the lessor has submitted an energy audit for the building. Each year, the Secretary of Administration shall submit a report to the Joint Committee that identifies properties where an excessive amount of energy is being used (KSA 2016 Supp. 75-37,128).

Committee Activities

The LCC approved two meeting dates for the Joint Committee on State Building Construction, of which there were to be no travel days. Those meetings were held October 4 and 5, and the Committee reviewed agencies' five-year capital improvement plans. All plans were approved, although two were modified as shown in the conclusions and recommendations. There were also two phone-in conference call meetings of the Committee on July 19 and December 2.

Five-Year Plans

Schools for the Deaf and Blind. The Chief Operating Officer (COO) for the Kansas Schools for the Deaf and Blind noted the debt service for energy conservation for the School for the Blind would soon be retired and the agency would be purchasing a new heating, ventilation, and air conditioning system, which was more cost-effective than repairing the old system. Regarding the School for the Deaf, the COO outlined four capital improvement needs to be addressed.

Insurance. The Comptroller for the Kansas Insurance Department discussed routine maintenance and repair projects.

Commerce. The Building Services Manager for the Department of Commerce discussed the agency's seven workforce centers across the state. All capital improvements are federally funded.

Highway Patrol. The Chief Financial Office of the Kansas Highway Patrol (KHP) stated the final payment for the Billard Airport facility will be made in FY 2018. Other plans include upgrading the security system at the Governor's residence, improvements to Training Academy buildings at Salina, and construction of a vehicle-storage building at the Troop F headquarters in Wichita. The total costs of $6.4 million will be met with various funds but no State General Fund (SGF) moneys.

Adjutant General. The Director of Public Works for the Adjutant General's Department reviewed the agency's rehabilitation and repair projects, which total $40 million in estimated costs. There was further conversation on the Facility Conservation Improvement Program.

Transportation. The State Transportation Engineer of the Kansas Department of Transportation (KDOT) noted the agency's primary focus is to preserve building assets and infrastructure and reviewed priorities scheduled for the next five years with all costs being met through the State Highway Fund. It was explained rectangle buildings with gable roofs are less expensive to build and maintain, even though they sacrifice space efficiency. It was noted the agency's plans nearly double over the course of five years; it was stated the agency includes some maintenance plans even though funding may not be available.

Corrections. The Director of Capital Improvements and Facilities Maintenance for the Kansas Department of Corrections (KDOC) reviewed the agency's five-year capital improvement plans. The rehabilitation, repair, and replacement costs total $30.0 million for adult correctional facilities, all drawn from the Correctional Institutions Building Fund, and $6.7 million for juvenile correctional facilities drawn from the State Institutions Building Fund (SIBF). It was stated the construction of two cell houses (Project S2) would be postponed, bringing the total estimated costs (including debt service and new construction) to $63.0 million. The Director stated projections are required by statute and are made by a sentencing group. The prison count includes not only state facilities but also offenders housed in city and county jails. It was stated the Larned Juvenile Correctional Facility was too expensive to maintain, and KDOC will make it available to other state agencies.

Labor. The Chief Fiscal Officer (CFO) for the Kansas Department of Labor discussed the rehabilitation and repair projects that are all paid with federal funds. It was noted the funding source for capital improvements had changed from

Federal Unemployment Insurance to the Workers Compensation Fund, and the CFO traced current and planned rehabilitation and repair projects. Item one, rehabilitation and repair, is used primarily for unexpected and emergency expenses.

Board of Regents and universities. The Director of Facilities for the Kansas Board of Regents (KBOR) discussed KBOR's intention to minimize demands on the SGF except for deferred maintenance and to draw from the Educational Building Fund (EBF) and the Expanded Lottery Act Revenue Fund for some projects. He requested $35.0 million from the EBF. He also explained, in response to the 2016 Legislative Session, policy changes were made regarding public-private partnerships; any sublease must now be approved by KBOR. Following a request for proposal, each school makes its own selection of a contractor; KBOR was encouraged to establish a standardized format for procuring contracted services.

Kansas State University. The Associate Vice President and University Architect at Kansas State University discussed the five-year plans that will complete the last of seven large projects; outlined current and future projects total an estimated $928.5 million. He stated bond payments for the Seaton Hall project will be drawn from the EBF.

Fort Hays State University. The Director of Facilities Planning for Fort Hays State University discussed details regarding current and future projects, for which costs total $109.3 million. The Director stated the University's wind-generation project provides 54 percent of the campus' required energy; future plans are to produce and sell hydrogen through wind generation.

Pittsburg State University. The Director of Facilities Planning for Pittsburg State University reviewed the campus' current projects. The Director provided details and illustrations of current and future projects, for which costs totaled an estimated $58.9 million. The school was congratulated on its Block 22 interactions with the city.

Wichita State University. The Director of Facilities Planning for Wichita State University discussed current and future projects, noted the only project funded by SGF is the Central Energy Plant, and offered details regarding other current and future projects, for which costs total an estimated $128.1 million. It was explained that the Innovative Campus initiative is a private development using private funds. The Director provided additional information:

- Funding for the bonds and infrastructure ($1.2 million and $15.0 million respectively) comes from Wichita's Public Building Commission;
- The ground lease for the Innovative Campus project is paid by a city sales tax;
- The lease for the off-campus site is contracted through the private Wichita State Innovative Alliance Board; and
- The city/county owns the Law Enforcement Center, except for the ground lease.

Emporia State University. The Vice President of Administration and Finance for Emporia State University reviewed the school's five-year capital improvement plans. It was noted that recently completed projects, including rehabilitation and deferred maintenance, total $1.9 million; future projects were outlined, with estimated costs totaling $47.9 million.

University of Kansas Medical Center. The University Architect and Assistant Director of Projects from the University of Kansas Medical Center highlighted the new Health Education Building, which was expected to be completed on July 15, 2017, at a cost of $75.0 million. It was stated the new parking garage was 50 percent completed as of the meeting date.

University of Kansas. The University Architect/Director of Design and Construction Management for the University of Kansas provided a status update of current projects and listed proposed future projects. He noted the significant private support for the new Capitol Federal School of Business building.

Aging and Disability Services. The Facilities Architect for the Kansas Department for Aging and Disability Services stated a bond issue for general rehabilitation and repair was refinanced and will be retired in several years. The building at Osawatomie is in excellent shape; the added costs are required to comply with federal regulations. It was recommended an agency's debt service extend beyond the five-year plans.

Veterans' Affairs. The Director of the Kansas Commission on Veterans' Affairs Office discussed the agency's five-year capital improvement plans, which include improvements at the Kansas Soldiers' Home in Dodge City and the Kansas Veterans' Home in Winfield. Ongoing projects were identified and details were provided regarding the need for rehabilitation, repair, and renovation of the agency's buildings—a total of \$13.6 million funded through the SIBF. It was noted projects at the cemetery in Fort Dodge were done using Kansas Lottery funds. It also was noted that unspent funds are returned to the SIBF. Responding to other questions, he stated roof replacement cost calculations are provided by the Department of Administration's Office of Facilities and Property Management (OFPM) and that, before developing a veterans' facility in northeast Kansas, the state must first commit to providing its share of the federal/state (65 percent federal/35 percent state) costs. The Director stated a veterans' facility is still needed for western Kansas. The agency's Chief Fiscal and Property Officer stated bids are submitted to the OFPM, and the agency selects the lowest bid.

Judicial Branch. The Budget and Fiscal Officer for the Judicial Branch briefed the Committee on the branch's five-year capital improvement plans, which included workspace for the eCourt Information Technology project and remodeling of the Judicial Center, a total of \$502,778. She stated no extra funds were left over from the insurance payment for the damaged roof.

Wildlife, Parks and Tourism. The Budget Director for the Kansas Department of Wildlife, Parks and Tourism reviewed the agency's five-year capital improvement plans. The Director stated all projects draw from federal funds matched with agency fee funds, with none sourced from the SGF. It also was stated the plans are bifurcated, with some funds allocated to new construction and the remaining allocated to rehabilitation and repair of current assets, with a total estimated cost of \$38.9 million. It was stated land acquisition is limited to a certain number of acres per year and no land is acquired for conservation easements. A member encouraged the agency to publicize Kansas trails to stimulate tourism.

Historical Society. The Director of the Historical Society noted \$250,000 is regularly allotted to meet needs for emergency repairs of the 50-plus buildings under the oversight of the agency, and he itemized other planned projects; some costs will be met with private funds.

Bureau of Investigation. The Director of the Kansas Bureau of Investigation (KBI) commented on successes for the KBI as follows:

- Moved to the new Forensic Laboratory building on the Washburn University campus;
- Enhanced funding for 12 more forensic staff; and
- Relocated to the KHP Troop F headquarters in Wichita, a move that doubled the office space with no additional cost.

The KBI will not seek further enhancements even though the annual appropriation of \$100,000 for rehabilitation and repair does not address the needs of the agency's facilities.

The Director provided additional information:

- The KBI owns 12 vacant properties next to the Topeka headquarters; the total assessed value is \$140,000;
- There is no insurance coverage for the roof hail damage at the Great Bend facility; and
- The evidence backlog at the Forensic Laboratory has improved slightly, but the backlog may increase until all the new forensic equipment is validated.

State Fair. The General Manager of the Kansas State Fair noted that, besides during the 10 days of the State Fair, 150 buildings are used throughout the year to host more than 600 outside events. The General Manager highlighted the need to address the crucial needs of the Expo Building and Bison Arena; the General Manager stated some events have chosen not to use the Expo Building because of its condition, and the Fair Board is still considering razing the Bison Arena rather than repairing it. A member suggested having a phone company provide wireless connectivity for the fairgrounds, and another member recommended the DA418A document show bond payments beyond the five-year parameter.

Administration. The Deputy Director, Design, Construction, and Compliance, of the Department of Administration outlined the agency's five-year capital improvement plans. The Deputy Director reviewed completed and current projects and identified future rehabilitation and repair initiatives. A member expressed concern that funds allocated for rehabilitation and repair were insufficient. The Deputy Director noted, if the agency were granted more flexibility in the appropriations process, some projects could move forward more efficiently.

The Deputy Director, Facilities Operations/Engineering Operations, Department of Administration, outlined procedures for decommissioning the Docking State Office Building (DSOB); by July 2017, only security personnel and the power plant employees will occupy the building. The Deputy Director noted that as of the date of the meeting, the Legislature had given no further directions regarding the DSOB. The Legislative Liaison for the Department of Administration affirmed the agency is waiting for legislative authorization before committing any more funds to the DSOB.

The Director of Facilities for the Department of Administration added, for either a one-story or a three-story building at the DSOB site, several thousands of dollars will be needed for design. A member recommended that a design-build approach would quantify uses for the property. The Deputy Director stated that during the previous week, an independent preservation group toured the DSOB, but it had presented no recommendations for the building as of the date of the meeting.

The Deputy Director presented a request from Department for Children and Families (DCF) to construct a snack bar at the Visitor's Center of the Capitol. It was stated an architect is preparing a preliminary plan. The Deputy Director stated J.E. Dunn Construction estimated a cost of $250,000. The Director suggested $150,000 would likely be the cost of renovation. He noted DCF has allocated $50,000 for the project.

Statutorily Required Reports

The State Transportation Engineer, in accordance with KSA 2016 Supp. 75-3516, reported on KDOT's inventory system for real property and real estate transactions. The Engineer illustrated the process of disposing of excess right-of-way properties with a table showing tracts identified and sold. It was noted that in fiscal year 2015, tracts marketed produced $820,379.39 in revenue. The Chief of KDOT's Bureau of Right of Way explained most property is acquired through negotiation, usually without any permanent easement; if a property is acquired through eminent domain, the landowner is paid the appraised value for the property.

Leases and Sales

The State Lease Administrator, OFPM, presented the following leases and the Deputy Director of Real Estate presented an update on the sale of a building and land, all of which were recommended by the Committee:

- Lease for the Department for Children and Families, Corporation Commission, Department for Aging and Disability Services, and Wildlife, Parks and Tourism, all in Chanute;
- Lease for the Department of Revenue in Olathe; and
- Proposed sale of the building vacated by the Department for Children and Families in Chanute.

Conclusions and Recommendations

The Joint Committee recommended all the agencies' five-year capital improvement plans except for the following:

- Department of Administration—7B-Heat Plant, 7C-Demolition to three floors, 7D-Total renovation, 7E-Deconstruction all for the Docking State Office Building and 8-New Energy Center; and
- Department of Corrections—S2-Construct two cell houses at El Dorado Correctional Facility.

The Committee recommended DCF move forward with the sale of the property in Chanute if DCF considers the offered price of $121,000 to be reasonable, to finalize the sale. The Committee believes this to be a reasonable rate based on issues affecting the property.

At the October 5 meeting, the Committee recommended to the LCC that DCF not move forward with the creation of the Capitol Snack Bar in the Visitor's Center. After the meeting, the Committee reviewed additional information. During a conference call meeting on December 5, the Committee adopted a motion to say the Committee does not object to the advancement of the construction of the Capitol Snack Bar project.

Report of the Legislative Budget Committee to the 2017 Kansas Legislature

CHAIRPERSON: Senator Ty Masterson

VICE-CHAIRPERSON: Representative Ron Ryckman, Jr.

OTHER MEMBERS: Senators Jim Denning and Laura Kelly; and Representatives Jerry Henry, Marvin Kleeb, and Sharon Schwartz

CHARGE

The Legislative Budget Committee is statutorily directed to compile fiscal information and to study and make recommendations on the state budget, revenues, and expenditures and the organization and functions of the State, its departments, subdivisions, and agencies with a view of reducing the cost of state government and increasing efficiency and economy.

HB 2739 (2016) established the Budget Stabilization Fund within the State Treasury as of July 1, 2017, and directed the Legislative Budget Committee to meet for up to ten days between the 2016 and 2017 Legislative Sessions to study and review policies concerning transfers to and expenditures from the Budget Stabilization Fund. The review by the Legislative Budget Committee was to include, but not be limited to:

- Analyzing risk-based budget stabilization practices in other states;
- The appropriate time period over which to analyze State General Fund revenues and expenditures;
- Which entity should certify the reserve amount necessary in the Budget Stabilization Fund;
- Sources of funding for the Budget Stabilization Fund;
- The appropriate level of risk of exhausting the balance within the Budget Stabilization Fund during an economic downturn; and
- The circumstances under which money could be withdrawn from the Budget Stabilization Fund.

December 2016

Legislative Budget Committee

Annual Report

Conclusions and Recommendations

Following its review and discussion, the Committee made no recommendations.

- ***Proposed Legislation:*** None

Background

The Legislative Budget Committee is statutorily directed in KSA 46-1208 to compile fiscal information. It also is directed to study and make recommendations on the state budget, revenues, expenditures, and on the organization and functions of the State, its departments, subdivisions, and agencies with a view of reducing the cost of state government and increasing efficiency and economy.

Committee Activities

The Committee met December 16, 2016, to review fiscal information regarding revenues and expenditures and to specifically discuss the revenue estimates and what components comprise the state tax revenue and human services caseloads estimates; receive an update on Kansas Public Employees Retirement System (KPERS) valuation; review the Kansas Efficiency Study recommendations progress; review the Department of Corrections facility closure; receive an update on performance-based budgeting; and review information related to the establishment of a Budget Stabilization Fund in accordance with 2016 HB 2739 (KSA 2016 Supp. 75-6706).

State Budget, Revenues, and Expenditures

Consensus Revenue Estimates for FY 2017, FY 2018, and FY 2019

Kansas Legislative Research Department (KLRD) staff presented an overview of the projection of State General Fund (SGF) receipts for fiscal year (FY) 2017, FY 2018, and FY 2019. Staff noted most major economic variables and indicators have been adjusted downward since the Consensus Group had last convened in April 2016. For FY 2017, the revised estimate is 5.5 percent below the previous forecast; the revised estimate for FY 2018 is 7.4 percent below the revised forecast for FY 2017. Staff noted Kansas personal income has been growing more slowly than U.S. personal income since the first quarter of 2014 and that trend is expected to continue. The Kansas Department of Labor reports job growth has been stagnant since early 2015. Staff noted a great deal of uncertainty about the future of U.S. foreign policy, trade policy, health policy, immigration policy, and tax policy has already shown signs of increasing volatility in global and domestic markets. The impact of any such increased volatility on confidence, as well as consumption and investment decisions by consumers and businesses alike, will be monitored by the Consensus Group over the winter prior to the next meeting in April.

Staff stated the consensus revenue estimates will be further adjusted in mid-April prior to the conclusion of the 2017 Legislative Session.

Human Services Caseloads

KLRD staff explained the human services caseload impacts detailed in the Fall 2016 Human Services Consensus Caseload Estimates for FY 2017, FY 2018, and FY 2019.

The estimate for FY 2017 is an increase of $147.0 million from all funding sources and $1.9 million from the SGF as compared to the budget approved by the 2016 Legislature. (The approved amount reflects the Governor's May 2016 allotments.) The estimate for FY 2018 is a decrease of $120.4 million from all funding sources and an increase of $35.3 million from the SGF above the FY 2017 revised estimate. The estimate for FY 2019 is an increase of $48.4 million from all funding sources and $165.8 million from the SGF above the FY 2018 estimate.

FY 2017

For FY 2017, the revised estimate for all human services caseloads is an all funds increase of $147.0 million and an increase in SGF expenditures of $1.9 million above the budget approved by the 2016 Legislature.

The estimate for the Temporary Assistance for Needy Families program is an increase of $255,000, all from federal funds, above the approved amount. The number of individuals receiving cash assistance benefits is still expected to decrease compared to the number in the previous fiscal year, just not as quickly as had been anticipated in the spring estimate. Estimated expenditures for the Foster Care program were increased by $4.9 million, including $4.0 million from the SGF, above the approved amount. The number of children served is growing slower than anticipated, and the cost per child is expected to be higher than was anticipated in the spring.

The FY 2017 estimate for KanCare Medical is $2.7 billion from all funding sources, including $889.5 million from the SGF, reflecting an increase of $130.1 million from all funding sources and a decrease of $6.6 million from the SGF from the amount approved by the 2016 Legislature. The KanCare Medical estimate includes Kansas Department of Health and Environment, Kansas Department for Aging and Disability Services, and Kansas Department of Corrections KanCare medical expenditures. The estimate includes an all funds addition of $93.5 million, including $41.0 million from the nursing facility quality care assessment, due to the enactment of 2016 Senate Sub. for HB 2365.

FY 2018

The FY 2018 estimate is $2.8 billion from all funding sources, including $1.0 billion from the SGF. The estimate is an all funds decrease of $120.4 million and an increase in SGF expenditures of $35.3 million above the FY 2017 revised estimate. The federal Medicaid matching rate determined by the federal Centers for Medicare and Medicaid Services increased the required state share (commonly referred to as FMAP [federal medical assistance percentages]) by 1.04 percent between FY 2017 and FY 2018, with an estimated impact of approximately $27.0 million in additional SGF expenditures.

The estimate for the Temporary Assistance for Needy Families program is a decrease of $814,289, including $185,477 from the SGF, below the amount estimated for FY 2017. The number of individuals receiving cash assistance is expected to continue to decrease. Estimated expenditures for the Foster Care program were increased by $4.1 million, including $3.5 million from the SGF, above the FY 2017 estimate based on increased numbers of children served.

The FY 2018 estimate for KanCare Medical is $2.6 billion from all funding sources, including $925.0 million from the SGF. The estimate is an all funds decrease of $114.9 million and an increase in SGF expenditures of $35.5 million from the FY 2017 revised estimate.

The SGF increase is largely attributable to the state share (FMAP) increase and a scheduled increase in Medicare buy-in payments. The all funds decrease is due to a federal suspension of health insurance provider fee payments decreasing KanCare expenditures by $53.9 million, including $23.6 million from the SGF. A decrease is expected to be seen in the member population due to the elimination of the eligibility determination backlog and the managed care organization (MCO) privilege fee reduction from 3.31 percent to 2.0 percent, effective January 1, 2018.

FY 2019

The FY 2019 estimate is $2.9 billion from all funding sources, including $1.2 billion from the SGF. The estimate is an all funds increase of $48.4

million and an increase in SGF expenditures of $165.8 million above the FY 2018 estimate.

The estimate for the Temporary Assistance for Needy Families program is a decrease of $940,711, including $12,581 from the SGF, below the amount estimated for FY 2018. The number of individuals receiving cash assistance is expected to continue to decrease. Estimated expenditures for the Foster Care program were increased by $6.9 million, including $5.8 million from the SGF, above the FY 2018 estimate. The number of children to be served in the foster care system is expected to continue to increase.

The FY 2019 estimate is higher than the FY 2018 estimate by $42.4 million from all funding sources and $160.0 million from the SGF. The increase is largely attributable to the MCO privilege fee continuing at the reduced 2.0 percent rate for the entire fiscal year. Under current law, the funds from the privilege fee move from being deposited in the Medical Assistance Fee Fund back to the SGF in FY 2019. In addition, health insurance provider fee payments suspended in FY 2018 will be reinstated in FY 2019, which will increase KanCare expenditures by $72.4 million, including $32.5 million from the SGF.

Expanded Lottery Act Revenue Fund

KLRD staff presented an overview of the Expanded Lottery Act Revenue Fund (ELARF) for FY 2016 through FY 2019. Staff explained the reduction of expenditures in FY 2017 is attributable to a reduction in debt service. The FY 2017 estimate for ELARF gaming revenues was reduced downward by roughly $2.3 million as a result of the Fall 2016 Gaming Revenue Consensus Estimate.

Staff further explained a balance of roughly $10.9 million is projected to be carried forward from FY 2018, as there is no law governing the transfer of the ELARF ending balances beyond FY 2017.

State General Fund Profile

KLRD staff provided an overview of the SGF Profile for FY 2015 through FY 2019. Staff noted the reduction in expenditures needed to maintain a zero ending balance on June 30, 2017, is $349.1 million; on June 30, 2018, is $582.6 million; and on June 30, 2019, is $172.3 million.

Review of Kansas Efficiency Study

Legislative Division of Post Audit staff provided an update on the August 2016 progress report on the Alvarez and Marsal efficiency recommendations prepared for the Legislature. Staff stated the Legislative Division of Post Audit is monitoring the State's progress in addressing and implementing the recommendations in the February 2016 Alvarez and Marsal efficiency study report. Staff also noted, in preparing the progress report, each agency was contacted and asked to provide information on the Alvarez and Marsal recommendations that affected the agency. The report characterized the 105 Alvarez and Marsal recommendations in five categories: 1) fully implemented; 2) partially implemented; 3) in progress; 4) not started; and 5) no action.

Staff indicated the agency plans to provide another follow-up on the recommendations and report back to the Legislature in February 2017. The Committee requested Post Audit provide an update at that time on total savings achieved by recommendation implementation.

Review of KPERS Valuation

KPERS staff reviewed the 2015 actuarial valuation, which is a snapshot of the financial condition of the Retirement System as of December 31, 2015. The actuarial valuation of system assets, which includes the $1.0 billion proceeds of the pension obligation bonds issued in 2015, was estimated to be $17.409 billion. Staff reported the funding status has improved for four membership groups (KPERS state, school, and local groups and the Judges' Retirement System). The funded ratio for the Kansas Police and Firemen's Retirement System decreased by 10 basis points to 74.0 percent. The unfunded actuarial liability for the entire system decreased in 2015 by $929 million, leaving $8.539 billion remaining to be funded. The funded ratio increased from 62.3 percent in 2014 to 67.1 percent in 2015. Legislative reforms enacted in 2012, including increased employer and employee contributions, will continue to improve funding. Assuming all actuarial assumptions are met in the future, KPERS will be fully funded at the end of the amortization period in calendar year 2033.

Staff also presented information on the revised actuarial assumptions adopted by the KPERS board. The Committee was informed the presumed rate of return for the System's investments has been revised down from 8.00 percent to 7.75 percent, in addition to other revised assumptions. Taken as a whole, the revised assumptions are projected to increase actuarial recommended employer contribution rates, above what otherwise would have been recommended, beginning in FY 2020. There was Committee discussion of the "layered amortization" the KPERS board has endorsed for the actuarial effects of the revised assumptions.

Review of Corrections Facility Closure

Staff from the Department of Corrections presented a review of corrections facility closures. Staff explained the Department was in the process of moving inmates from the Larned Juvenile Correctional Facility to the Kansas Juvenile Correctional Complex in Topeka. Staff noted housing units are being closed as the population shrinks. In addition, no capital outlay improvements are being considered for the facility. Staff indicated current staff at Larned are being hired at other facilities if possible and additional training will be provided where necessary. Staff noted a workforce is being maintained at Larned Juvenile Correctional Facility, responsible for the security of the facility. In addition, utilities are being maintained at the level needed.

The Committee expressed concern that inmates are being moved away from their families or home area. Staff stated some families are being involved in the relocation process.

Performance-Based Budgets

KLRD staff presented an update on the performance-based budget process established in accordance with enacted 2016 HB 2739. Staff explained the Legislature retained the services of Alvarez and Marsal to examine several areas of state operations and spending, including a review of the state budget process. Staff noted HB 2739 requires the State to begin the implementation of performance-based budgeting (PBB). Staff indicated PBB differs from the current budget process in Kansas by emphasizing performance measures and, to the extent possible, creating correlations between dollars, outcomes, and objectives.

Staff noted Phase I of the performance-based budgets will be completed by January 9, 2017, and available to legislators to review along with other budget documents and the Governor's recommendation.

Rainy Day Fund

KLRD staff provided an overview of a rainy day fund. Staff explained enacted 2016 HB 2739 created the Budget Stabilization Fund (KSA 2016 Supp. 75-6706) and called for the Legislative Budget Committee to identify and recommend deposit rules, withdrawal provisions, and policies to calculate the appropriate risk-based balance for the Fund.

Staff provided information concerning funding for the Budget Stabilization Fund, including how other states secure funding, how funds are expended from the budget stabilization fund, and how a risk-based balance is calculated.

Staff noted the Alvarez and Marsal 2016 report recommends such a fund and states Kansas would need to establish deposit rules, withdrawal rules, and the size of the fund.

Conclusions and Recommendations

The Committee made no recommendations to report to the 2017 Legislature.

Report of the Capitol Preservation Committee to the 2017 Kansas Legislature

Chairperson: Jennie Chinn, State Historical Society

Senate President's Appointees: Senator Elaine Bowers; Harrison Hems

House Speaker's Appointees: Rachel Whitten; Lana Gordon, Secretary of Labor

Senate Minority Leader's Appointee: Tim Graham

Governor's Appointees: Kim Borchers; Jeremy Stohs; Vacant position

House Minority Leader's Appointee: Representative Valdenia Winn

Other Members (*Ex Officio*): Peter Jasso, Kansas Creative Arts Industries Commission; Vacant (Statehouse Architect)

Charge

Review finalists for *Brown v. Board of Education* mural. The study would include an invitation to the finalists for the *Brown v. Board of Education* mural to present final renditions and provide an opportunity for public input on the selections as a part of its statutory duties outlined in KSA 2016 Supp. 75-2269.

December 2016

Capitol Preservation Committee

Annual Report

Conclusions and Recommendations

The Committee selects Michael Young of Kansas City, Kansas, as the artist for the *Brown v. Board of Education* mural in the Capitol.

The Committee recommends the Chairperson meet with the Department of Administration and the Division of Legislative Administrative Services to move the *Brown v. Board of Education* mural project forward.

The Committee does not approve a Request for Approval of Artwork for Permanent Display submitted by an artist.

The Committee recommends the Chairperson meet with the Department of Administration to discuss the preservation of the Curry murals in the Capitol.

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 ensure the historical beauty of the areas are preserved, preserve the proper decor of those areas, assure that any art or artistic displays are historically accurate and have historic significance, approve the location and types of temporary displays, and oversee the reconfiguration or redecoration of committee rooms within the Capitol. As provided by KSA 2016 Supp. 75-2269, the Division of Legislative Administrative Services has the responsibility of implementing the recommendations of the Committee.

The Committee is made up of 12 members, with the Governor appointing 3, the President of the Senate and the Speaker of the House each appointing 2, and the Minority Leaders of the House and Senate each appointing 1. The Committee's three *ex officio* members are the Statehouse Architect, the Executive Director of the Kansas State Historical Society, and the Director of the Creative Arts Industries Commission. The Governor has the authority to appoint the chairperson from the Committee's membership.

Committee Activities

The Capitol Preservation Committee met November 29, 2016, to review a request to purchase paintings for the Capitol, discuss a request to review lighting of the John Steuart Curry murals in the Capitol, and to select the artist for the *Brown v. Board of Education* mural in the Capitol.

Purchase of Paintings

The Committee reviewed a Request for Approval of Artwork for Permanent Display from a Lenexa, Kansas-based artist. The artist requested the Committee approve for permanent exhibit in the Capitol five pieces of his artwork at a cost of $14,000. The Committee reviewed the Request for Approval form and accompanying documentation.

Lighting of Curry Murals

The Committee received concerns from tour groups visiting the Capitol that the Curry murals are not lighted properly, which could destroy the paintings in the future. The Committee acknowledged the Curry murals are an important resource to the State and it is important they are preserved.

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

Of the 34 artists who submitted qualifications for the *Brown v. Board of Education* mural, 14 artists were selected in 2013 to be semi-finalists and each was invited to submit a proposal. Nine artists submitted proposals in 2014. In 2015, the Committee selected four artists as finalists:

- Wayne Wildcat, Lawrence, Kansas;
- Michael Young, Kansas City, Kansas;
- Mark Flickinger, Arkansas City, Kansas; and
- Thomas Hooper Seaman, New York, New York.

Each of the four finalists presented his original and revised mural proposals to the Committee and was given the opportunity to explain why the mural would be the best fit for the Capitol. The Committee asked questions of each artist to determine who should be chosen as the *Brown v. Board of Education* muralist.

Staff from the Legislative Research Department provided the Committee with letters of support for particular murals from community members.

The Committee heard testimony from a representative of the Brown Foundation, the Vice President of Academic Affairs at Cowley College, the Executive Director of the Kansas African American Affairs Commission, the former President of the Kansas NAACP, an Associate Dean of Washburn University, and a finalist's wife. Conferees said the mural should portray the magnitude of *Brown v. Board of Education* and the decades of work leading to the outcome. Specific elements of the proposals were discussed.

Conclusions and Recommendations

The Committee does not wish to proceed any further with the artist's Request for Approval of Artwork for Permanent Display.

The Committee recommends the Chairperson, in her role as Executive Director of the State Historical Society, meet with the Department of Administration to discuss the preservation of the Curry murals in the Capitol.

The Committee selects Michael Young of Kansas City, Kansas, as the artist for the *Brown v. Board of Education* mural in the Capitol.

The Committee recommends the Chairperson meet with the Department of Administration and the Division of Legislative Administrative Services to move the *Brown v. Board of Education* mural project forward.

Report of the Health Care Stabilization Fund Oversight Committee to the 2017 Kansas Legislature

Chairperson: Gary Hayzlett

Legislative Members: Senators Laura Kelly and Vicki Schmidt; and Representatives Jerry Henry and Rich Proehl

Non-legislative Members: Darrell Conrade; Dennis George; Dr. Jimmie Gleason; Dr. Paul Kindling; Dr. James Rider; and vacant position (health care provider)

Charge

The Committee annually receives a report on the status of the Health Care Stabilization Fund and makes recommendations regarding the financial status of the Fund.

Health Care Stabilization Fund Oversight Committee

Annual Report

Conclusions and Recommendations

The Health Care Stabilization Fund Oversight Committee considered two items central to its statutory charge: should the Committee continue its work and whether a second, independent analysis of the Health Care Stabilization Fund (HCSF) is necessary. The Oversight Committee continues in its belief that the Committee serves a vital role as a link among the HCSF Board of Governors, the health care providers, and the Legislature and should be continued. Additionally, the Committee recognizes the important role and function of the HCSF in providing stability in the professional liability marketplace, which allows for more affordable coverage to health care providers in Kansas. The Committee is satisfied with the actuarial analysis presented and did not request the independent review.

The Committee considered information presented by the Board of Governors' representatives, the Board of Governors' actuary, and health care provider and insurance company representatives. The Committee agreed to make the following recommendations and comments:

- **The Health Care Provider Insurance Availability Act (HCPIAA) and its milestone anniversary—stability for Kansas health care providers and the medical malpractice insurance marketplace in Kansas.** The Committee recognizes the 40th anniversary of enactment of this significant legislation occurred on July 1, 2016. The Committee continues to appreciate the intent of the original law and amendments over time that have facilitated a healthy, working public-private partnership among health care providers, insurers, the Legislature, and the Board of Governors and the benefits of a stable HCSF and more affordable coverage to not only those in the professional liability insurance marketplace but also as adequate remedy to injured persons seeking remedy under Kansas law. Over time, amendments to the law have expanded the defined "health care provider" and allowed additional providers and facilities to come into the HCSF and secure more affordable coverage. This partnership has helped to sustain the marketplace and support Kansas health care providers even in times of incredible market volatility. The Committee notes how the Kansas Supreme Court framed the purpose of and partnership created by the HCPIAA:

  - On October 5, 2012, the Kansas Supreme Court upheld the $250,000 cap on noneconomic damage awards in *Miller v. Johnson*. The Committee notes the following from the Court's findings about the *quid pro quo* relationship between the purposes of the HCPIAA and the requirement for certain health care providers to carry professional liability insurance and participate in the HCSF and the guaranteed source of recovery for persons seeking to recover pain and suffering damages (limited by the cap, as set by the Legislature);

  - "As noted in several of our prior cases, the Legislature's expressed goals for the comprehensive legislation comprising the Health Care Provider Insurance Availability Act and the noneconomic damages cap have long been accepted by this court to carry a valid public interest objective"; and

- [The statute was enacted] "in an attempt to reduce and stabilize liability insurance premiums by eliminating both the difficulty with rate setting due to the unpredictability of noneconomic damage awards and the possibility of large noneconomic damage awards";

- **Reimbursement of the HCSF.** The Committee notes the reimbursement schedule created by 2010 SB 414. This law allowed for the reimbursement of deferred payments to the HCSF for administrative services provided to the self-insurance programs at the University of Kansas (KU) Faculty and Foundations and the University of Kansas Medical Center (KUMC) and the Wichita Center for Graduate Medical Education (WCGME) residents for state fiscal years (FYs) 2010, 2011, 2012, and 2013. The Committee notes normal reimbursements occurred starting July 1, 2013; and the Board of Governors had received 80 percent of the accrued receivables for the past four years as of July 2016. The HCSF received $1,544,084.43 reimbursement in July 2013, $1,544,084.45 in July 2014, $1,544,084.45 in July 2015, and $1,544,084.45 in July 2016. The remaining reimbursement receivables of $1,544,084.45 are to be received in one remaining annual installment on July 1, 2017;

- **Proposed amendments.** The Committee notes two amendments presented for its consideration. First, an amendment to the HCPIAA was proposed by the Board of Governors to create an exception in HCSF coverage requirements for certain providers whose services are covered by Kansas and federal tort law. Additionally, a technical amendment to the Nurse Practice Act regarding the creation of an inactive license for certain providers was discussed. Such matters may be brought to the 2017 Legislature for its consideration;

- **Monitoring and oversight of positive and negative indicators to the health of the HCSF.** The Committee expects both the Board of Governors and its actuary, and the Committee acting in its statutory role, as monitors, to continue to evaluate the impact of changes to law made in 2014. In addition to its recommendation (below) regarding holding the HCSF in trust, the Committee notes indicators suggested by the actuary that could impact the assets and liabilities of the HCSF, including:

  - The change in Missouri law in response to the *Watts* decision; it is anticipated more claims will come forward with the new cap in place;

  - The negative indication seen with investment income changes; and

  - The change in the cap on noneconomic damages as required by 2014 SB 311: increased to $300,000 in 2014 (from $250,000), and increasing to $325,000 in 2018; and

- **Fund to be held in trust.** The Committee recommends the following language to the Legislative Coordinating Council, the Legislature, and the Governor regarding the HCSF:

  - The Health Care Stabilization Fund Oversight Committee continues to be concerned about and is opposed to any transfer of money from the HCSF to the State General Fund. The HCSF provides Kansas doctors, hospitals, and the defined health care providers with individual professional liability coverage. The HCSF is funded by payments made by or on the behalf of each individual health care provider. Those payments made to the HCSF by health providers are not a fee. The State shares no responsibility for the liabilities of the HCSF. Furthermore, as set forth in the HCPIAA, the HCSF is required to be ". . . held in trust in the state treasury and accounted for separately from other state funds"; and

- Further, this Committee believes the following to be true: All surcharge payments, reimbursements, and other receipts made payable to the HCSF shall be credited to the HCSF. At the end of any fiscal year, all unexpended and unencumbered moneys in such Fund shall remain therein and not be credited to or transferred to the SGF or to any other fund.

Finally, in recognition of new members to the Legislature, the Committee requests its report be directed to the standing committees on health and insurance, as well as to the appropriate budget and subcommittees of the standing committees on appropriations.

Proposed Legislation: None

Background

The Committee was created by the 1989 Legislature and is described in KSA 2016 Supp. 40-3403b. The 11-member Committee consists of 4 legislators; 4 health care providers; 1 insurance industry representative; 1 person from the public at large, with no affiliation with health care providers or with the insurance industry; and the Chairperson of the Health Care Stabilization Fund (HCSF) Board of Governors or another member of the Board designated by the Chairperson. The law charges the Committee to report its activities to the Legislative Coordinating Council (LCC) and to make recommendations to the Legislature regarding the Health Care Stabilization Fund. The reports of the Committee are on file in the Legislative Research Department.

The Committee met November 30, 2016.

Committee Activities

Report of Willis Towers Watson

The Willis Towers Watson actuarial report serves as an addendum to the April 19, 2016 report provided to the HCSF Board of Governors based on HCSF data as of December 31, 2015. The actuary addressed the HCSF's position at June 30, 2016, and forecast for June 30, 2017. The HCSF's position at June 30, 2016, was as follows: the HCSF held assets of $278.22 million and liabilities of $230.02 million, with $48.20 million in reserve. The projection for June 30, 2017, is as follows: assets of $282.98 million and liabilities of $234.40 million, with $48.58 million in reserve. The actuary indicated the forecasts of unassigned reserves assume an estimate of surcharge revenue in FY 2017 of $27.8 million, a 2.00 percent interest rate for estimating the tail liabilities on a present-value basis, a 3.25 percent yield on HCSF assets for estimating investment income, continued full reimbursement for University of Kansas (KU)/Wichita Center for Graduate Medical Education (WCGME) claims, and no change in current Kansas tort law or HCSF law. The actuary noted, based on the review, it was suggested by the actuarial firm that the Board of Governors consider a modest reduction in rates for calendar year (CY) 2017 and consider lessening the difference in rates by years of compliance (YOC) and making adjustments by specialty.

The actuary highlighted both the positive and negative developments in the HCSF's experience since the most recent review and indicated, due to growth in both the assets and the liabilities, the unassigned reserves are expected to be slightly higher at June 30, 2017. The actuary noted this increase in both categories is going to happen for some time due to the changes to the law made in 2014. (The 2014 Legislature added five new categories of health care providers under the

HCSF coverage provisions: nursing homes, assisted living, residential health care facilities, nurse midwives, and physician assistants.) He stated, with more providers in the system, it is a bigger pool than in 2013. He said until the new groups of providers have been in the program for a few years, it would be expected there would be a little more than an inflationary-type growth in both the assets and the liabilities of the HCSF. The actuary indicated, based on the analysis provided to the Board of Governors, the HCSF could reduce its CY 2017 surcharge rates by 3.2 percent and still maintain its unassigned reserves at approximately $48 million.

The actuary reviewed the HCSF's liabilities at June 30, 2016. The liabilities highlighted included claims made against active providers as $79.4 million; associated defense costs as $13.9 million; claims against inactive providers reported by the end of FY 2016 as $9.1 million; tail liability of inactive providers as $113.4 million; future payments as $11.2 million; claims handling as $7.5 million; and other, which is mainly plaintiff verdicts on appeals, as $2.5 million. Total gross liabilities were $237.0 million; the HCSF is reimbursed $8.7 million for the KU and WCGME programs, for a final net liability of $228.3 million. The actuary further discussed the tail liability of inactive providers, noting the 2014 change in the law removed the requirement for providers who have been in the HCSF for less than five years to pay the additional premium to have those claims made after that provider becomes inactive. He explained it is a very long tail liability, and that is why the number is so large and is discounted for present value.

The actuary also reviewed the HCSF's rate level indications for CY 2017, noting the indications assume a break-even target. The actuary highlighted payments, with settlements and defense costs of $28,934,000; change in liabilities of $5,717,000; administrative expenses of $1,770,000; and transfers to the Availability Plan and the Kansas Department of Health and Environment are assumed to be $200,000 (assumes no Availability Plan transfer); in total, the cost for the HCSF to "break even" for another year is $36,621,000. The actuary indicated, if the HCSF did not change its surcharge rates next year, it is believed the HCSF balance would be about $28,569,000. The actuary stated it was his firm's opinion the HCSF could reduce its surcharge rates for CY 2017 and still maintain its unassigned reserves in the $48 million area. (See information on indications by provider class for the surcharge rates approved by the Board of Governors.)

The actuary provided an overview on the rating by YOC. With the enactment of 2014 HB 2516, the HCSF provides tail coverage at no additional cost to all providers upon becoming inactive. The actuary indicated providers who have been in the program less than four years no longer had to pay the HCSF additional money to have their subsequent claims covered after they became inactive. The actuary noted without that requirement, the HCSF's traditional rating by YOC was no longer appropriate because everyone was adding the same exposure to the HCSF each year they were involved. He indicated the advice to the Board of Governors is to continue to migrate this group of providers who have been in the HCSF less than five years to the rates being charged to those providers who are in the five-years-plus group.

The actuary provided an overview regarding indications by provider class. He noted Classes 21 to 24 were added as a result of legislation reform; these classes were not part of the HCSF prior to 2015. The report states the analysis of experience by HCSF class continues to show differences in relative loss experience among classes. The actuary reviewed the recommendations to the Board of Governors regarding suggestions for improving the equity among classes and also provided a history of surcharge rate changes since 2004. The actuary next provided an overview of the three options for CY 2017 surcharge rates provided to the Board of Governors, and highlighted the Board of Governors' decision on the surcharge rate changes:

- Providers with five or more YOC (Classes 1-14) – decrease by 7.0 percent for classes 1-5, 8-10, and 12-14; no change for classes 6, 7, and 11;
- Providers with less than five YOC (Classes 1-14) – increase by 5.0 percent over CY 2016 rate;
- Providers with less than five YOC (Classes 16-24) for coverage limit of:

$100,000/$300,000 – decrease by 1.0 percent; $300,000/$900,000 – decrease by 2.0 percent; and $800,000/$2,400,000 – decrease by 2.0 percent; and

- Providers with five or more YOC (Class 15) for coverage limit of: $100,000/$300,000 – increase by 1.0 percent; $300,000/$900,000 – increase by 2.0 percent; and $800,000/$2,400,000 – increase by 2.0 percent.

The actuary indicated the estimated overall impact of these changes to be about a 2.7 percent decrease in surcharge revenue.

The actuary stated the firm's overall conclusions are that the HCSF remains in a very strong financial position and indicated the changes being adopted for CY 2017 are improving the rating equity within the program. He noted it will be important to watch in the next year or two to see whether the new providers are paying too little or too much and to monitor the interest rate issue. The actuary also indicated interest income again exceeding $10 million will keep the pressure off the rate increases for a bit longer.

The actuary explained Class 15 is made up of providers not insured voluntarily by the primary market as they have been turned down for coverage. He stated one could view them as being less desirable a risk to the primary insurance market; therefore, they cannot get the primary insurance coverage. The Health Care Provider Insurance Availability Act (HCPIAA) provides a coverage option for them at a slightly higher rate (the "Availability Plan"). The actuary stated that looking at it from the perspective of the HCSF and cost of the providers' claims, Class 15 providers have been paying less than they should in terms of losses to the HCSF.

The actuary also addressed a question regarding the "credit" for future liability relative to the $113 million tail liabilities. The actuary explained that some of these claims are not going to be resolved until 2050 so, in that regard, he considered it somewhat analogous to a pension plan liability where these payments are not going to be made for decades. Defined benefit pension plans, the actuary noted, use a valuation interest rate to discount those liabilities to current value (this discounted amount reflects the present value of all benefits expected to be paid from the pension plan to its current members). Therefore, he believed it was appropriate to use a present value calculation for those tail liabilities as well, but less than what his firm and the Board are assuming the HCSF will earn. The actuary said it would be questionable to some extent to use a 6 or 7 percent interest rate to discount those liabilities, which would bring their value down considerably. The actuary also stated they did believe some discounting for present value was in order for that liability given how far into the future those claims will be occurring or being paid.

Comments

In addition to the report from the HCSF Board of Governors' actuary, the Committee received information from Committee staff detailing resource materials provided for consideration, including an updated memorandum on the HCSF and medical malpractice law in Kansas published on the Kansas Legislative Research Department's website and the Committee's conclusions and recommendations contained in its most recent annual report.

Chief Counsel's Update

The Deputy Director and Chief Counsel for the Board of Governors addressed the FY 2016 medical professional liability experience (based on all claims resolved in FY 2016 including judgments and settlements). Of the 14 cases involving 17 Kansas health care providers tried to juries during FY 2016, 13 were tried to juries in Kansas courts and 1 case involving a Kansas health care provider was tried in Arkansas. The trials were held in the following jurisdictions: Sedgwick County (4); Johnson County (4); U.S. District Court (1); Crawford County (1); Grant County (1); Labette County (1); Saline County (1); and Arkansas (1). Of those 14 cases tried, 12 resulted in defense verdicts, 1 resulted in a plaintiff verdict, and 1 case ended in mistrial.

The Chief Counsel noted that 14 trials is the fewest annual number of trials since the early inception of the HCSF. She indicated this may be due to the number of claims being down and the happenstance of the calendar of what cases were ready for trial or settlement this past year, and stated 10 cases had gone to trial to date in FY 2017. The Chief Counsel noted one case went to trial in Arkansas with a defense verdict. She also noted, during FY 2016, no cases went to trial in Missouri for the first time in a long time. The Chief Counsel indicated, again, this may be due to happenstance of the calendar. To date in FY 2017, two cases had gone to trial in Jackson County, Missouri; both were defense verdicts. She pointed out that a few years ago, the Missouri Supreme Court declared the cap on noneconomic damages to be unconstitutional (the *Watts* decision; for a time after this decision, there was no cap on noneconomic damages). The Missouri Legislature enacted a new cap, effective after August 2015. The Chief Counsel indicated the Board of Governors anticipates cases in which there is a cap in place soon.

The Chief Counsel reported there were 248 new cases during FY 2016. She noted there was a 5-year decrease in the number of new claims from FY 2009 through FY 2013, with a modest increase in FY 2014 and a decrease in FY 2015. For FY 2016, there was an increase of 13 cases, which was not unexpected due to categories of providers being added. The HCSF has excess coverage for these health care providers for care provided on and after January 1, 2015. For FY 2016, there were 12 claims involving these new health care providers. The Chief Counsel stated if those claims were taken out of the mix, there was no increase in the number of new claims this past year—the increase was due to the new health care providers joining the HCSF. She also stated for FY 2017 to date, 8 claims have arisen from these new health care providers. The Chief Counsel stated out of the new groups of health care providers in the HCSF, nursing homes have seen the most claims. She indicated there had been about 16 or 17 claims so far: 2 for certified nurse midwives, 1 for a physician assistant, 2 for assisted living facilities, and the remainder for nursing homes.

The Chief Counsel addressed the self-insurance programs and reimbursement for the KU Foundations and Faculty and residents. She stated the FY 2016 KU Foundations and Faculty program incurred $1,028,751.91 in attorney fees, expenses, and settlements; $500,000 came from the Private Practice Reserve Fund and $528,751.91 came from the State General Fund (SGF). The conferee stated this was down $888,438.50 from the previous fiscal year, noting there were both fewer settlements and the attorney fees and expenses also were down. The Chief Counsel also stated four settlements involved KU full-time faculty members in FY 2016, compared to seven settlements the previous year and nine settlements in FY 2014. The Chief Counsel indicated, so far in FY 2017, there have been five settlements involving KU full-time faculty for which the HCSF has been reimbursed $850,000, as well as a case then at trial in Douglas County; therefore, attorneys' fees and expenses also will increase for next year.

In regard to the self-insurance programs for the KU/WCGME resident programs, the Chief Counsel indicated the total amount incurred for FY 2016 appears to be almost the same as for FY 2015. The Chief Counsel stated there were no FY 2016 settlements or judgments involving any of the residents. She noted the HCSF incurred $664,698.71 for attorney fees and expenses for the WCGME residents, and only $28,625.85 for attorney fees and expenses for the KU residents. In Kansas City, the Chief Counsel explained the attending physicians are full-time faculty and, most of the time, take full responsibly for the residents. In Wichita, most of the attending physicians are private practice physicians who have private insurance, so more residents are named individually as defendants. Therefore, there are fewer claims and cost with the residency program in Kansas City as compared to the Wichita program. The Chief Counsel stated there also was a case that went to trial in Wichita involving a resident this past year that resulted in a defense verdict, but was then appealed. The Court of Appeals overturned the defense verdict, so it is now being appealed to the Supreme Court and has become quite expensive, which contributed to more expenses this past year.

The Chief Counsel's report listed the historical expenditures by fiscal year for the KU Foundations and Faculty and the KU and WCGME residents since inception. The Chief Counsel indicated, for the past ten years, the faculty self-insurance program has incurred about $1.6 million on the average and, for the residency program, that ten-year average is about $863,000. She noted that FY 2016 was a below-average year as far as the amount of moneys incurred for both the faculty and residency programs.

The conferee next addressed the reimbursement of expenses for administrative services provided by the Board of Governors noting in 2010, the Legislature reached a compromise that for four fiscal years (FY 2010, FY 2011, FY 2012, and FY 2013), the HCSF would not be reimbursed. Beginning with FY 2014, two things would occur: quarterly reimbursements were to begin and, for five fiscal years (FY 2014 through FY 2018), the HCSF was to be reimbursed 20 percent of the accrued receivable for those four years that the HCSF was not reimbursed. At the end of June 30, 2013, the amount of accrued receivables was $7,720,422.23 for which the HCSF had not been reimbursed. The Chief Counsel stated this past July 1, for the fourth year in a row, the HCSF was reimbursed. The HCSF has received reimbursements of $6,176,337.78, which is 80 percent of the total amount. One remaining installment payment of $1,544,084.45 is due July 1, 2017. She also provided information about moneys paid by the HCSF as an excess carrier, stating for those claims involving the KU faculty members, the HCSF paid $625,000 out of its excess coverage.

Medical Malpractice Insurance Marketplace; Update on the Availability Plan

The President and CEO for the Kansas Medical Mutual Insurance Company (KaMMCO) addressed a question about health care providers who are moonlighting and are covered under the Kansas or Federal Tort Claims Act. The KaMMCO conferee indicated 43 residents in training in Kansas moonlight outside of the programs, primarily to provide emergency room coverage and often in rural areas.

The conferee presented information on the number of physicians and other providers insured by HCPIAA from 1990, when KaMMCO first took over the administration of the Availability Plan, through 2016. The conferee explained the cycles of the market, indicating the market currently is in a low-ebb area, where the medical malpractice insurance market is very robust with many companies competing for business, and there is usually a low-claims environment. He stated that over the course of the past few years because of the low claims environment, the Availability Plan has returned money to the HCSF; this year, $250,000 will be returned to the HCSF. The KaMMCO conferee described the current marketplace as a very healthy, competitive environment with plenty of capacity and very affordable coverage. The conferee highlighted factors on the horizon that might signal some future changes—changes to the Affordable Care Act and related changes in the health care delivery and financing mechanism or marketplace. He indicated KaMMCO will be watching to see what impact future changes may have on health care delivery in this state and what will need to be done to be able to insure those providers in the changing environment. The conferee stated KaMMCO has reviewed the proposed changes to the HCPIAA and is very supportive of those changes.

Comments from Health Care Provider Representatives

The Executive Director of the Kansas Medical Society (KMS) provided some historical information regarding the HCSF and the HCPIAA. He commented on the HCSF's anniversary, noting the HCSF and its governance is a public-private partnership that was purposefully constructed. The KMS conferee also noted Kansas was the first state to require health care providers to demonstrate financial responsibility to their patients and carry insurance as a condition of licensure to practice medicine. The conferee indicated the HCSF created a more stable, less volatile environment. He noted at the time the law was created and has since been debated, it was important to not transfer liabilities from one generation of physicians onto the next generation of physicians, and stated that is why it is important that the HCSF operate in an actuarially sound manner. The conferee indicated it is essential to have this unassigned reserve or surplus in the HCSF, so when this generation of physicians retires, enough money is set aside in the HCSF to pay those claims when they come due and to not push those liabilities onto the younger health care providers coming into the system. The KMS conferee also noted it could be tempting for the Legislature to look at the $275 million in the HCSF, but this money has been paid by the health care provider community and set aside in trust to make sure that patients are covered in the event there is a claim in the future. The conferee indicated the Legislature has honored that commitment to not touch those funds and is encouraged to continue to do so. The KMS conferee also noted the importance of the Committee in providing a connection to the Legislature, the health care provider community, and the insuring community to have a public forum to talk about changes. He noted KMS members believe the Committee serves a useful function and would encourage its continuation. The conferee concluded the KMS also supports the request that the Committee report to the Legislature these funds need to stay in trust to preserve the integrity of the HCSF.

Board of Governors' Statutory Report

The Executive Director provided the Board of Governors' statutory annual report (as required by KSA 2015 Supp. 40-3403(b)(1)(C).| Among the items detailed in the FY 2016 report:

- Net premium surcharge revenue collections amounted to $28,114,941. The lowest surcharge rate for a health care professional was $100 (for a first-year provider, opting for lowest coverage option) and the highest surcharge rate was $16,510 for a neurosurgeon with five or more years of HCSF liability exposure (selecting the highest coverage option). Application of the Missouri modification factor for this Kansas resident neurosurgeon if licensed in Missouri would result in a total premium surcharge of $21,463 for this health care practitioner;

- The average compensation per settlement (66 cases involving 76 claims were settled) was $309,733. These amounts are in addition to compensation paid by primary insurers (typically $200,000 per claim). The report states amounts reported for verdicts and settlements were not necessarily paid during FY 2016 and total claims paid during the fiscal year amounted to $27,278,643; and

- The balance sheet, as of June 30, 2016, indicated total assets of $278,583,425 and total liabilities of $229,267,579. The Executive Director stated this amount is a comfortable margin (net assets).

The Executive Director noted the 40th anniversary of the HCPIAA (July 1, 2016). He indicated three essential components in the original HCPIAA have remained intact:

- Requiring all health care providers, as defined in the HCPIAA, to maintain professional liability insurance and participate in the HCSF coverage as a condition of active licensure;

- Creation of a joint underwriting association, the "Health Care Provider Insurance Availability Plan," to provide professional liability coverage for those health care providers who cannot purchase coverage in the commercial insurance market; and

- Creation of the Health Care Stabilization Fund to provide supplemental coverage above the primary coverage purchased by health care providers and to serve as reinsurer of the Availability Plan.

The Executive Director highlighted the October 2012 *Miller v. Johnson* decision, indicating it was an extremely important decision and demonstrates the importance of keeping those three essential ingredients that were in the original HCPIAA back in 1976.

The Executive Director also provided an update on the medical professional liability insurance marketplace. His testimony stated the HCPIAA creates a favorable environment for responsible professional liability insurance companies. The Executive Director indicated it has been suggested because there has been a sustained "soft market" for professional liability insurance that the HCPIAA has outlived its usefulness. Members of the Board of Governors disagree with that assessment and think it is important to maintain the three essential features under the HCPIAA to assure long-term stability. His testimony also indicated the Legislature may wish to consider adjusting the coverage levels (*e.g.,* insurers may want higher risks) and then make corresponding adjustments in the level of HCSF coverage as well.

The Executive Director noted the HCPIAA is a successful public-private partnership that has accomplished legislative intent; it has provided the stability the Legislature originally intended, and actuarial integrity has been maintained. From a public policy perspective, it assures that in the event of an unfortunate medical outcome, the patient will always have a reliable remedy available. He indicated the Legislature has maintained the fiscal discipline to make this program work successfully. The Executive Director stated the Board appreciates this Committee has supported the fundamental principle that the HCSF should be used exclusively for its statutory purposes, and the Board of Governors respectfully requested the Committee include similar language in its report to the Legislature for 2017. The statutory report also stated, other than a few technical adjustments, the Board of Governors is unaware of any reason to substantially amend the HCPIAA. After four decades of success, the HCPIAA has achieved its legislative intent.

The Executive Director stated some residents moonlight, usually in their third or fourth year of residency training. He indicated those residents typically buy a special policy from the Availability Plan because most commercial insurance companies would prefer not to deal with that situation. The Executive Director noted this is a good example of a situation where the Availability Plan is needed, not because the residents are bad risks, but because they represent a unique group of health care providers for whom no insurance product is available in the regular marketplace. In answer to whether the proposed amendment would affect that moonlighting arrangement, the Executive Director stated it could affect residents in training if they were working in a federal facility or perhaps a clinic for medically indigent patients. But as far as moonlighting in a typical hospital, that would continue to be insured as it is now and will continue to be covered by the HCSF. The Executive Director stated a specific provision in the law says the academic part of the residency training is self-insured by the State of Kansas, but the extra-curricular activity, which means moonlighting, must be insured in the commercial insurance market, which in this case is the Availability Plan. (See further comment from the KaMMCO conferee.)

HCPIAA amendment and other legislative proposals. The Executive Director addressed some preliminary draft legislation for the 2017 Session concerning a requirement that may result in duplication of coverage under either the Kansas Tort Claims Act or the Federal Tort Claims Act. He highlighted the circumstances of the duplication of coverage in these situations. The Executive Director indicated the Board of Governors has drafted a technical amendment that would amend the HCPIAA to allow exclusion of insurance and HCSF coverage when the health care provider is covered under the Kansas or Federal Tort Claims Act. He indicated it was the opinion of the Board of Governors that if a health care provider already has coverage under the tort claims act, there is no reason the HCSF should have any liability for that provider's coverage obligation, nor should the primary insurance company. The Executive Director noted the Board of Governors has solicited input from the Kansas Insurance Department as well as from organizations that represent health care providers, and stated if those organizations indicate support, the Board will request introduction of a bill when the Legislature convenes in January 2017.

The Executive Director reviewed another issue: the lack of an inactive license category for advanced practice nurse anesthetists and nurse midwives. The Executive Director noted when the law was amended to include nurse midwives in 2014, there was no inactive license category for advanced practice nurses. His testimony indicated draft amendments to the Nurse Practice Act have been sent to the Board of Nursing as well as to the associations that represent the professions.

No additional amendments were brought before the Committee.

Conclusions and Recommendations

The Oversight Committee considered two items central to its statutory charge: should the Committee continue its work, and whether a second, independent analysis of the HCSF necessary. The Oversight Committee continues in its belief that the Committee serves a vital role as a link among the Board of Governors, health care providers, and the Legislature and should be continued. Additionally, the Committee recognizes the important role and function of the HCSF in providing stability in the professional liability marketplace, which allows for more affordable coverage to health care providers in Kansas. The Committee is satisfied with the actuarial analysis presented and did not request the independent review.

The Committee considered information presented by the HCSF Board of Governors' representatives, the Board of Governors' actuary, and health care provider and insurance company representatives. The Committee agreed to make the following recommendations and comments:

- **The HCPIAA and its milestone anniversary—stability for Kansas health care providers and the medical malpractice insurance marketplace in Kansas.** The Committee recognizes the 40th anniversary of enactment of this significant legislation occurred on July 1, 2016. The Committee continues to appreciate the intent of the original law and amendments over time that have facilitated a healthy, working public-private partnership among health care providers, insurers, the Legislature, and the Board of Governors and the benefits of a stable HCSF and more affordable coverage to not only those in the professional liability insurance marketplace but as adequate remedy to injured persons seeking remedy under Kansas law. Over time, amendments to the law have expanded the defined "health care provider" and allowed additional providers and facilities to come into the HCSF and secure more affordable coverage. This partnership has helped to sustain the marketplace and support Kansas health care providers even in times of incredible market volatility. The Committee notes how the Court framed the purpose of and partnership created by the HCPIAA:
    - On October 5, 2012, the Kansas Supreme Court upheld the $250,000 cap on noneconomic damage awards in *Miller v. Johnson*. The Committee notes the following from the Court's findings about the *quid pro quo* relationship between the purposes of the HCPIAA and the requirement for certain health care providers to carry professional liability insurance and participate in the HCSF and the guaranteed source of recovery for persons seeking to recover pain and suffering damages (limited by the cap, as set by the Legislature);
    - "As noted in several of our prior cases, the [L]egislature's expressed goals for the comprehensive legislation comprising the Health Care Provider Insurance Availability Act and the noneconomic damages cap have long been accepted by this court to carry a valid public interest objective"; and
    - [The statute was enacted] "in an attempt to reduce and stabilize liability insurance premiums by eliminating both the difficulty with rate setting due to the unpredictability of noneconomic damage awards and the possibility of large noneconomic damage awards";
- **Reimbursement of the HCSF.** The Committee notes the reimbursement schedule created by 2010 SB 414. This law allowed for the reimbursement of deferred payments to the HCSF for administrative services provided to the self-insurance programs at the KU Faculty and Foundations and the KUMC and the WCGME residents for state FY 2010, FY 2011, FY 2012, and FY 2013. The Committee notes normal reimbursements occurred starting July 1, 2013; and the Board of Governors had received 80 percent of the accrued receivables for the past four years in July. The HCSF received $1,544,084.43 reimbursement in July 2013, $1,544,084.45 in July 2014, $1,544,084.45 in July 2015, and

$1,544,084.45 in July 2016. The remaining reimbursement receivables of $1,544,084.45 are to be received in one remaining annual installment on July 1, 2017;

- **Proposed amendments.** The Committee notes two amendments presented for its consideration. First, an amendment to the HCPIAA was proposed by the Board of Governors to create an exception in HCSF coverage requirements for certain providers whose services are covered by Kansas and federal tort law. Additionally, a technical amendment to the Nurse Practice Act regarding the creation of an inactive license for certain providers was discussed. Such matters may be brought to the 2017 Legislature for its consideration;

- **Monitoring and oversight of positive and negative indicators of the health of the HCSF.** The Committee expects both the Board of Governors and its actuary, and the Committee acting in its statutory role, as monitors, to continue to evaluate the impact of changes made to laws in 2014. In addition to its recommendation (below) regarding holding the HCSF in trust, the Committee notes indicators suggested by the actuary that could impact the assets and liabilities of the HCSF, including:

  - The change in Missouri law in response to the *Watts* decision; it is anticipated more claims will come forward with the new cap in place;

  - The negative indication seen with investment income changes; and

  - The change in the cap on noneconomic damages as required by 2014 SB 311: increased to $300,000 (from $250,000) in 2014, and increasing to $325,000 in 2018; and

- **Fund to be held in trust.** The Committee recommends the continuation of the following language to the LCC, the Legislature, and the Governor regarding the HCSF:

  - The Health Care Stabilization Fund Oversight Committee continues to be concerned about and is opposed to any transfer of money from the HCSF to the SGF. The HCSF provides Kansas doctors, hospitals, and the defined health care providers with individual professional liability coverage. The HCSF is funded by payments made by or on the behalf of each individual health care provider. Those payments made to the HCSF by health providers are not a fee. The State shares no responsibility for the liabilities of the HCSF. Furthermore, as set forth in the HCPIAA, the HCSF is required to be ". . . held in trust in the state treasury and accounted for separately from other state funds"; and

  - Further, this Committee believes the following to be true: All surcharge payments, reimbursements, and other receipts made payable to the HCSF shall be credited to the HCSF. At the end of any fiscal year, all unexpended and unencumbered moneys in such Fund shall remain therein and not be credited to or transferred to the SGF or to any other fund.

Finally, in recognition of new members of the Legislature, the Committee requested its report be directed to the standing committees on health and insurance, as well as to the appropriate budget and subcommittees of the standing committees on appropriations.