

Committee Reports to the 2022 Kansas Legislature

KLRD

*Providing objective research and fiscal
analysis for the Kansas Legislature*

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

**Kansas Legislative Research Department
January 2022**

2021 Legislative Coordinating Council

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**Special Committees;
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Special Committee on Child Support Enforcement and Collection
Special Committee on Education
Special Committee on Federal 340B Drug Program
Special Committee on Government Overreach and
the Impact of COVID-19 Mandates
Special Committee on Home and Community Based Services Intellectual and
Developmental Disability Waiver
Special Committee on Liquor Law Modernization

Joint Committee on Child Welfare System Oversight
Joint Committee on Corrections and Juvenile Justice Oversight
Joint Committee on Fiduciary Financial Institutions Oversight
Joint Committee on Information Technology
Joint Committee on Kansas Security

Alvin Sykes Cold Case DNA Task Force
Capitol Preservation Committee
Health Care Stabilization Fund Oversight Committee
Kansas Criminal Justice Reform Commission
Legislative Task Force on Dyslexia



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Foreword

In the 2021 Interim, the Legislative Coordinating Council appointed seven special committees to study seven study topics and authorized meetings of two special committees created pursuant to provisions in the Omnibus appropriations bill (SB 159). Legislation recommended by the committees will be available in the Documents Room early in the 2022 Session. Such legislation will also be available on the Kansas Legislature's website at: <http://kslegislature.org/li/>.

Joint committees created by statute met in the 2021 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 2022 Session. Such legislation will also be available on the Kansas Legislature's website at: <http://kslegislature.org/li/>.

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 the 30 x 30 Federal Initiative
- Special Committee on Kansas Mental Health Modernization and Reform
- Special Committee on Taxation
- Joint Committee on State Building Construction
- Joint Committee on Pensions, Investments and Benefits
- Legislative Budget Committee
- Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight
- Kansas Senior Care Task Force
- Redistricting Advisory Group

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 ix.

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Summary of Conclusions and Recommendations

Special Committee on the 30 x 30 Federal Initiative

The Committee recommended the House Committee on Agriculture and Senate Committee on Agriculture and Natural Resources study and monitor both the 30 x 30 Federal Initiative and National Heritage Areas during the 2022 Legislative Session.

Special Committee on Child Support Enforcement and Collection

The Committee made several recommendations and conclusions. The Committee submitted the following recommendations for action by the Department for Children and Families (DCF):

- Explore best practices for child support enforcement and collection in other states and identify any legislative changes that may be needed;
- Establish reciprocity agreements with bordering states to improve cross-state coordination;
- Streamline the process for payees and payors when cases move between the IV-D and non-IV-D programs;
- Determine and monitor improved performance measures for both the IV-D and non-IV-D programs;
- Ensure every family can access a child support professional through DCF, child support contractors, or both;
- Introduce a customer service evaluation for clients utilizing child support services in the state; and
- Reinstate quarterly or monthly meetings between trustee offices and DCF to encourage improved communication in cases that are served by both IV-D and non-IV-D programs.

Special Committee on Education

The Committee recommended the Legislature and State Board of Education collaborate to ensure all Kansas students are reading at grade level by third grade by considering what barriers and issues arise in third grade and earlier.

Special Committee on Federal 340B Drug Program

The Committee recommends further research on outcomes for providers in 340B covered entities and prescription drug costs prior to the start of the 340B program and currently, a summary of legislation passed by other states concerning 340B, and updated fiscal notes for 2021 HB 2260 and HB 2383.

Additionally, the Committee recommends the submission of a request for an audit by the Legislative Division of Post Audit to work with Kansas hospitals to better understand the impact of 340B.

Special Committee on Government Overreach and the Impact of COVID-19 Mandates

The Committee recommended the Legislature call a Special Session by petition for consideration of three bill drafts: a bill requiring exemptions from employer COVID-19 vaccine requirements and providing for waiver requests and a civil action for violations related to exemptions; a bill providing exceptions to unemployment benefit eligibility rules for otherwise eligible claimants who left work or were discharged for refusing to comply with a COVID-19 vaccine requirement after being denied an exemptions and retroactively providing benefits for such claimants who were denied benefits; and a bill authorizing a civil action for damages caused by an adverse reaction or injury related to a COVID-19 vaccine.

Special Committee on Home and Community Based Services Intellectual and Developmental Disability Waiver

The Committee primarily recommended the Legislative Coordinating Council approve a task force or committee, similar to the 2020 and 2021 Special Committee on Kansas Mental Health Modernization and Reform, to study modernization of the Home and Community Based Services (HCBS) Intellectual and Developmental Disability Waiver (I/DD waiver). The Committee also recommended the Legislature explore the funding of the I/DD waiver in order to increase reimbursement rates for services and recommended the Kansas Department for Aging and Disability Services and the Kansas Department of Health and Environment provide information in order to explore ways the I/DD waiver can be modernized in order to eliminate the waitlist.

Special Committee on Kansas Mental Health Modernization and Reform

The Committee:

- Recognized the opportunities for coordination and collaboration between other committees, including the Kansas Criminal Justice Reform Commission, the Governor's Behavioral Health Services Planning Council subcommittees, the Governor's Commission on Racial Equity and Justice, the Special Committee on Foster Care Oversight, and the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight;
- Recommended the Committee's report be distributed to the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight, House Committee on Children and Seniors, House Committee on Corrections and Juvenile Justice, House Committee on Health and Human Services, House Committee on K-12 Education Budget, House Committee on Social Services Budget, Senate Committee on Judiciary, Senate Committee on Public Health and Welfare, and Senate Committee on Ways and Means (agency subcommittees);
- Ratified the *Strategic Framework for Modernizing the Kansas Behavioral Health System*:

2021 High Priority Update (Working Groups Report to the Special Committee). The Strategic Framework Update contains 10 new high-priority recommendations and 20 revised high-priority recommendations of the 2020 Special Committee on Kansas Mental Health Modernization and Reform over a variety of behavioral health topics, categorized for immediate actions and strategic importance.

Special Committee on Liquor Law Modernization

The Special Committee made recommendations to the 2022 Legislature related to consumption of alcohol on the grounds of the Kansas State Fair; licensure of farm wineries; creating a new urban farm winery license; the excise tax on wine; and the sale and delivery of alcoholic beverages between a retailer and certain licensees for resale.

Special Committee on Taxation

The Committee recommended the 2022 Legislature limit the growth of state government spending and employment and not expend current State General Fund ending balances and receipts in excess of expenditures for new ongoing budgetary items. It also recommended the Legislature consider repealing tax credits, exemptions, and abatement that are not currently in use and have not been used in recent years. Finally, the Committee recommended the Legislature devise a system of taxation that is equal and fair across the spectrum of forms of energy production.

Joint Committee on Child Welfare System Oversight

The Joint Committee made recommendations and proposed legislation concerning improving the child welfare system. The Joint Committee made recommendations regarding the Department for Children and Families (DCF) to address its foster and adoption programs, relationship with legislators in addressing child welfare system-related matters, and requested DCF update the Joint Committee regarding 2019 sexual assault legislation. The Joint Committee also recommended modifications to court procedure; funding assurances for CASA and the Juvenile Justice Improvement Fund; the Legislature explore a statutory cap on caseworker workload, prioritize kinship-placed children, consider attachment science, and collaborate with the Governor on a bill establishing an Office of the Child Advocate.

The Joint Committee recommended the Governor issue an Executive Reorganization Order in place of Executive Order 21-28; and the Child Death Review Board (CDRB) establish rules and regulations concerning local death review boards, and include in its report information on sexual orientation, gender identity, and race and ethnicity.

The Joint Committee proposed legislation concerning *Adrian's Law*, clarification of information sharing between DCF and local law enforcement, and amendment of language to address extending CDRB confidentiality rules and regulations to local child fatality review organizations.

Joint Committee on Corrections and Juvenile Justice Oversight

The Committee requested the introduction of two bills in both the Senate and House of Representatives during the 2022 Legislative Session: a bill to restore \$21.1 million to the Evidence-Based Programs account of the State General Fund and a bill that would prohibit the physical restraint of juveniles in court appearances without a showing of just cause. The Committee expressed concern regarding expenditures from the Evidence-Based Programs account being limited only to programs identified in the annual budgeting process and recommends consideration be given to a bill that clarifies the distribution of funds from the account. The Committee made a recommendation to the Kansas Department of Corrections (KDOC) Community and the Kansas Field Services Division (Community Corrections) and the Secretary of Corrections for immediate development of an incentives plan for correctional staff for payment from COVID-19 federal relief funds. The Secretary should then come to the 2022 Legislature with a pay enhancement package for wages.

The Committee made recommendations to the 2022 Legislature related to: support of a \$6.6 million proposal to use the maintenance of effort (MOE) funds for educational technology upgrades at correctional facilities; allowing all KDOC employees to be included in the Kansas Employee Retirement System Corrections Plan, with first priority given to juvenile corrections officers; encouraging the Senate Judiciary Committee to take action on 2021 HB 2030, which relates to terminal medical release of inmates; considering eliminating fines and fees for justice-involved youth; directing KDOC to conduct a public outreach campaign on how to apply for funds from the Evidence-Based Program account; funding the JAG-K program at the Kansas Juvenile Correctional Complex (KJCC); submission by KDOC of an appropriation request for Career Tech Education (CTE) renovation at KJCC; supporting of the offender registration bill recommended by the Kansas Judicial Council's Advisory Committee; postponing structural changes to the Topeka Correctional Facility and KJCC until the report on juvenile facilities is complete; and adoption of the Kansas Sentencing Commission's policy recommendations that includes ten proposed bills.

Joint Committee on Fiduciary Financial Institutions Oversight

The Committee, established by 2021 law (Senate Sub. for HB 2074), submitted comments and recommendations regarding legislative intent, as it applies to the issuance of a final or "permanent" charter for the applicant TEFFI (technology-enabled fiduciary financial institution). The Committee also requested the respective House and Senate standing committees on financial institutions introduce changes to the Technology-enabled Fiduciary Financial Institutions Act, which were submitted and outlined by the State Bank Commissioner. The Committee further recommended its report be submitted to the House Committee on Financial Institutions and Rural Development and the Senate Committee on Financial Institutions and Insurance to permit review and consideration of Senate Sub. for HB 2074 and its implementation.

Joint Committee on Information Technology

The Joint Committee made recommendations related to continued review and eventual introduction of legislation to modify the definition of an information technology (IT) project, to modify the role of the Joint Committee in review of IT projects, and to provide updates to the Cybersecurity Act. The Joint Committee also noted the benefits of the oversight process used for the unemployment insurance

modernization project as established in 2021 Senate Sub. for Sub. for HB 2196 and encouraged the exploration of involving the Legislature in more conversations with vendors who submit proposals for state IT projects.

Further, the Joint Committee noted the importance of cybersecurity to Kansas, recommended the consideration of the findings contained in the final report of the Governor's Cybersecurity Task Force, encouraged the study of state collaboration with local entities for assisting with IT and cybersecurity needs, and recommended the adoption of cybersecurity guidelines for school districts by the State Board of Education. The Joint Committee commended the Kansas Legislative Office of Information Services for work conducted throughout the year.

Joint Committee on Kansas Security

The Joint Committee on Kansas Security recommends increasing attention to cybersecurity statewide and several measures related to cybersecurity, cybercrime, and Capitol security: that the Legislature consider recommendations of entities including the Kansas Cybersecurity Task Force, the Kansas Information Security Office, and state agencies in determining legislative priorities for adding cybersecurity capability in state agencies; that the Legislature review the penalties for crimes related to identity theft or fraud; that the Kansas Bureau of Investigation develop and distribute protocols for documenting cybercrime for use by state agencies; that emergency response training be developed for legislators and legislative staff, coordinated through the Capitol Police; and that the Capitol Police evaluate security measures in the lower level of the Capitol Parking Garage.

Legislative Budget Committee

The Committee recommended that various legislative committees receive further updates on issues reviewed by the Legislative Budget Committee (LBC) during the 2021 Interim.

Specifically, the LBC recommended that the House Committee on Appropriations and the Senate Committee on Ways and Means receive updates on the following items:

- Status of foster care system and implementation of the Family First Prevention Services Grants (Department for Children and Families);
- A report from the Kansas Housing Resources Corporation on the use of federal housing funds and a possible first-time home buyers program;
- The impact of the loss of federal COVID-19 pandemic relief funds on the State budget and avoidance of creating a fiscal cliff;
- The possibility of salary enhancements for community corrections officers relative to adjustments made to the Kansas Department of Corrections salaries;
- Review of the temporary salary increase created by the Governor's Executive Order to avoid the creation of a "spiral," with the state competing with itself for employees;

- The timeline for eliminating the moratorium on voluntary admission to Osawatimie State Hospital and the status of youth mental health inpatient beds in Hays (Department for Aging and Disability Services);
- Bonded indebtedness of the State with consideration of what debt might be advantageous to be retired early (Kansas Development Finance Authority);
- Deferred maintenance at the state postsecondary institutions;
- Waiver application for maintenance of effort requirements in federal COVID-19 pandemic relief legislation on K-12 and Higher Education budgets;
- Possible addition of funding to the Budget Stabilization Fund; and
- Possible addition of funding to KPERS to decrease unfunded actuarial liability.

The LBC also recommended that the SPARK Efficiency and Modernization Advisory Panel receive an update on Statehouse technology needs. The LBC further recommended that the Senate Committee on Utilities receive an update on the status of the litigation regarding natural gas rates during the 2021 extreme winter weather event from the Attorney General.

Joint Committee on Pensions, Investments and Benefits

The Joint Committee recommended standing committees review working after retirement, Kansas Public Employees Retirement System (KPERS) tier 3 dividends, possibly expanding KPERS Corrections (tier 2) local jailers and the Deferred Retirement Option Program to state and local Kansas police and fireman employers. The Joint Committee also recommended paying down the KPERS unfunded liability with Pension Obligations Bonds or with State General Fund resources. The Joint Committee also introduced legislation to remove the statutory requirement that 80 percent of the proceeds of state surplus land and building sales be credited to KPERS.

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

The Committee made recommendations regarding several Medicaid codes, including those for psychotherapy, emergency medical services, pediatric primary care, certified nurse midwives, and specialized medical care. The Committee also made several recommendations regarding professional certification and payment of temporary nurse aides, family caregivers, personal care attendants, and certified medication aides. The Committee made further recommendations regarding extending postpartum Medicaid coverage to 12 months, perinatal behavioral health, licensed beds at skilled nursing facilities, and the intellectual and developmental disability waiver.

Joint Committee on State Building Construction

The Committee recommended all agency five-year capital improvement plans, with certain notations

for the Kansas Department of Corrections and the Kansas Bureau of Investigation. The Committee recommended construction of a Kansas Department of Health and Environment laboratory at the Kansas Neurological Institute site and renovation or construction of a three-story event center at the Docking State Office Building site. The Committee made further recommendations regarding deferred maintenance at universities, increased utilization of the State Institutions Building Fund, and adjustments to State Gaming Revenues Fund transfers to account for inflation among capital improvement projects at correctional facilities.

Alvin Sykes Cold Case DNA Task Force

The Task Force recommends each law enforcement agency develop a protocol for notifying the prosecuting agency of a criminal case of any corresponding Laboratory Information Management System (LIMS) report when a cold case Combined DNA Index System (CODIS) hit occurs, and for the Kansas County and District Attorney Association (KCDAA) to develop best practices related to cold case CODIS hits. The prosecuting agency should promptly determine whether there is an immediate investigative reason not to turn a LIMS report over to defense counsel; if such investigation is necessary, it should be concluded within a reasonable time, after which the LIMS report should be transmitted to the defense counsel of record. The Task Force also recommends the Kansas Bureau of Investigation provide training regarding the use and availability of the LIMS portal to prosecutors and defense counsel through KCDAA, the State Board of Indigents' Defense Services, and the Kansas Association of Criminal Defense Lawyers.

Capitol Preservation Committee

The Committee recommended installation of a Kansas Gold Star Memorial on the Capitol grounds, approved the temporary installation of the Hungry Heartland exhibit in the Capitol, and recommended the creation of a subcommittee to further discuss the installation of a Commemorative Suffragist Monument in the Capitol or on the Capitol grounds. The Committee also recommended legislation be drafted to authorize the installation of a 1st Kansas (Colored) Infantry mural in the Capitol and creation of a subcommittee to further discuss *Ad Astra* Plaza.

Health Care Stabilization Fund Oversight Committee

The Health Care Stabilization Fund Oversight 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 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 insurance 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 an independent review. The Committee considered information presented by the Board of Governors' representatives, including its required statutory report, the Board's actuary, and health care provider and insurance company representatives.

For the purposes of conclusions and recommendations in its report, the Committee acknowledged its role to provide oversight and monitoring of the HCSF, including legislative actions and other contemporary issues affecting the soundness of the HCSF, and submitted conclusions and recommendations pertaining to the reports submitted by the Board of Governors, the impact and implementation associated with 2021 law, HCSF investment policy, COVID-19 and conditions in the insurance marketplace, a health care provider insurance concern, and the purpose of the HCSF.

Kansas Criminal Justice Reform Commission

The Commission made several recommendations with respect to the following topics: pre-filing diversions; guidelines for consolidating supervision of persons under multiple supervision terms; standards for communication in dual supervision cases; proportional penalties; felony loss threshold; prior convictions and domestic violence designation; drug and nondrug sentencing grid amendments; compassionate release; sentencing grid consolidation; penalty for noncompliance with Kansas Offender Registration Act; exit mechanism for certain registered offenders; online offender registry search settings; creation of a co-responder program advisory board; enhanced training for law enforcement, probation officers, parole officers, and licensed mental health providers; Kansas Commission On Police Officers' Standards and Training membership; criminal street gang—bail requirement; criminal street gang definitions; offenses eligible for incentives and early discharge from probation; KSA 21-6608(d) amendments; implementation of the 4:1 Behavior Management System statewide; sanctions and incentives structure within the criminal justice system; and standardized terms and conditions of supervision.

Legislative Task Force on Dyslexia

The Task Force held its final meeting to receive written reports containing updates on the progress of the implementation of previous Task Force recommendations. The Task Force made no formal recommendations to the 2022 Legislature.

Redistricting Advisory Group

The Redistricting Advisory Group made several recommendations for the redistricting process, including recommendations for townhall meetings, redistricting guidelines, redistricting technical committee rules, available data for redistricting, requirements for map submission, and amendment requirements.

Kansas Senior Care Task Force

The Senior Care Task Force recommended:

- The Kansas Department for Aging and Disability Services should reach out to universities for assistance on producing mapping of various senior services across the state;
- The Legislature should explore the possibility of using temporary aides in long-term care;

- A request should be made to the Legislative Division of Post Audit to perform a limited scope audit to determine where broadband funding, including federal funding, has been spent and to identify the differences between urban, rural, and frontier regions;
- The Kansas Legislative Research Department should research the funding for broadband for the state; and
- The Legislature should seek funding to produce a new Kansas Elder Count book, including a digital version.

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Report of the Special Committee on Child Support Enforcement and Collection to the 2022 Kansas Legislature

CHAIRPERSON: Senator Carolyn McGinn

VICE-CHAIRPERSON: Representative Susan Humphries

OTHER LEGISLATIVE MEMBERS: Senators Molly Baumgardner, Elaine Bowers, Cindy Holscher, and Alicia Straub; and Representatives Tory Marie Arnberger, Leo Delperdang, Shannon Francis, Jarrod Ousley, and Ponka-We Victors

STUDY TOPIC

The Committee is directed to:

- Study child support enforcement and collection, with the objective of gaining a better understanding of the current process and contracts, as well as the impact of child support payment collections on Kansans within the system;
 - Review an evaluation conducted by Midwest Evaluation and Research, LLC, of the IV-D Program in 2020;
 - Hear testimony from the Office of Judicial Administration; and
 - Hear from a court trustee on a non-IV-D perspective.
- [Note: Provisions in 2021 SB 159, Section 20 (b), directed the Legislature to create an interim study committee on child support enforcement and collection.]

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Special Committee on Child Support Enforcement and Collection

REPORT

Conclusions and Recommendations

The Special Committee on Child Support Enforcement and Collection (Committee) submits the following recommendations for action by the Department for Children and Families (DCF):

- Explore best practices for child support enforcement and collection in other states and identify any legislative changes that may be needed;
- Establish reciprocity agreements with bordering states to improve cross-state coordination;
- Streamline the process for payees and payors when cases move between the IV-D and non-IV-D programs;
- Determine and monitor improved performance measures for both the IV-D and non-IV-D programs;
- Ensure every family can access a child support professional through DCF, child support contractors, or both;
- Introduce a customer service evaluation for clients utilizing child support services in the state; and
- Reinstate quarterly or monthly meetings between trustee offices and DCF to encourage improved communication in cases that are served by both IV-D and non-IV-D programs.

Additionally, if sufficient information is not provided to the Committee prior to the 2022 Legislative Session by the appropriate stakeholders, the Committee recommends the Legislative Post Audit Committee request an audit be conducted by the Legislative Division of Post Audit after the current contractors have had six months to a year to perform under the contracts effective October 1, 2021. If the audit is conducted, then the report should be provided to the following standing committees: Senate Committee on Ways and Means, Senate Committee on Public Health and Welfare, House Committee on Appropriations, House Committee on Health and Human Services, and House Committee on Children and Seniors.

Proposed Legislation: None.

BACKGROUND

The Special Committee on Child Support Enforcement and Collection (Committee) was created by 2021 SB 159 to advise and make recommendations to the Legislature regarding matters concerning child support enforcement and collection. The Legislative Coordinating Council directed the Committee to:

- Study child support enforcement and collection, with the objective of gaining a better understanding of the current process and contracts, as well as the impact of child support payment collections on Kansans within the system;
- Review an evaluation conducted by Midwest Evaluation and Research, LLC, of the IV-D Program in 2020;
- Hear testimony from the Office of Judicial Administration; and
- Hear from a court trustee on a non-IV-D perspective.

During the 2021 Legislative Session, the Senate Committee on Ways and Means Human Services Subcommittee held an informational hearing regarding child support enforcement and collection. Members of the subcommittee determined that an in-depth analysis of the process for child support payment collections would be beneficial.

COMMITTEE ACTIVITY

The Legislative Coordinating Council approved two meeting days for the Committee. The Committee met on October 19 and November 9, 2021, and heard from representatives from the IV-D and non-IV-D child support programs, contractors, a private citizen, and other stakeholders regarding the child support enforcement and collection process. [Note: IV-D refers to Title IV, Part D of the federal Social Security Act of 1975, which requires each state to enforce support obligations.

A non-IV-D case is one in which no party receives certain types of state services.]

October 19, 2021

The Committee received presentations from Kansas Legislative Research Department (KLRD) staff on the collection of child support payments and an overview of child support enforcement in Kansas. The Director of the Child Support Services Division of the Department for Children and Families (DCF) provided an overview of IV-D child support payment collections, and the 18th Judicial District Court Trustee provided an overview of non-IV-D child support payment collections.

A representative of the Kansas Payment Center (KPC) provided an overview of the KPC's operations, and representatives of the two contracted child support enforcement and collection vendors in Kansas, Maximus and YoungWilliams, each presented an overview of their company's services. The Committee also received information from a representative of Midwest Evaluation and Research, LLC, summarizing its findings on the effectiveness of the Kansas IV-D program. A private citizen personally affected by the current child support enforcement and collection process also provided testimony to the Committee.

Staff Overview of Child Support Payment Collections and Child Support Enforcement

KLRD staff provided information regarding how money flows from payor to payee in the child support system, dependent on whether the parties are in the IV-D program, in the non-IV-D program, or have a private payment agreement. If the parties are in the IV-D program, the payment goes through the Kansas Automated Eligibility Child Support Enforcement System (KAECSES) to determine whether money is owed to the State before being distributed to the payee. In the non-IV-D program, this step is eliminated. In a private arrangement, the payor and payee exchange the payment directly.

KLRD staff also presented information on previous and current federal laws that impact child support, state entities involved in the child support system, and the process for updating

Kansas child support guidelines. In addition, KLRD staff presented findings and recommendations made by Midwest Evaluation and Research, LLC, which evaluated the IV-D program.

Overview of IV-D Child Support Payment Collections

The Director of the Child Support Services Division of DCF presented information on the current delivery model of IV-D services, including internal processes, data and record management, and partnering with others to release customer service surveys. According to the Director, as of October 1, 2021, there were two full-service child support services contractors in the state, Maximus and YoungWilliams.

Overview of Non-IV-D Child Support Payment Collections

The 18th Judicial District Court Trustee presented information on the non-IV-D perspective of child support payment collections. He stated court trustees throughout the state collect child and spousal support payments when they are ordered by a court. Additionally, some trustees collect court fees and restitution.

He noted that trustees do not establish orders but enforce orders as granted by a judge. Support payments established by trustees flow through the KPC, similar to IV-D payments. The trustee also noted that trustee office budgets are widely based on the amount of fees collected each year, though some offices do receive funding through the county (or counties) they serve.

Private Citizen Testimony

A private citizen testified on her experience navigating the IV-D and non-IV-D system in her attempts over multiple years to work through state systems to collect past-due child support, which grew to exceed \$50,000. She stated she believes there are many failures in the system, including a lack of coordination between the states of Kansas and Missouri as well as between the IV-D and non-IV-D systems. She said child support is an essential income for thousands of Kansans, and lack of enforcement causes strains on families.

Overview of the Kansas Payment Center

A representative of YoungWilliams, the contractor for DCF that operates the KPC, presented information on payment processing. KPC disburses funds on IV-D court orders per information transmitted by KAECSSES and disburses funds on non-IV-D court orders based on information provided by court trustees.

KPC receives approximately \$383.8 million from payors and disburses approximately \$412.8 million to payees annually.

Overview of Customer Service Centers

A representative of Maximus discussed the company's approach to providing child support services under a contract effective October 1, 2021. She stated the company's current focus is to establish a strong working communication process with DCF, to hire competent staff, understand current metrics of performance and identify opportunities for improvement, and understand its communities and engage with stakeholders. Maximus provides service to Johnson, Sedgwick, Shawnee, and Wyandotte counties.

A representative of YoungWilliams presented information on the company's performance history since 2013. Previously, YoungWilliams provided child support service for 23 judicial districts in Kansas and had 9 offices across the state. Under a contract effective October 1, 2021, YoungWilliams provides service in 27 of the 31 judicial districts in Kansas.

November 9, 2021

The Committee received staff presentations on child support enforcement in Kansas and the history of child support enforcement privatization, non-IV-D child support payment collections, the non-IV-D system, performance measures and changes to the current system.

It also received testimony from the 9th Judicial District Court Trustee, a representative of the Office of Judicial Administration, the Director of the Child Support Services Division, and representatives of contractors.

Additional Child Support Enforcement Information and History of Child Support Enforcement Privatization

KLRD staff provided additional information regarding the roles of the federal government and state agencies in the child support system and the differences among various models of establishment and enforcement of support orders, and how Kansas specifically handles enforcement and collection. In addition, KLRD staff presented a summary of two Legislative Division of Post Audit reports (from 1990 and 1996) of audits conducted prior to privatization that provided findings and recommendations that may have impacted the state's eventual decision to privatize child support enforcement and collection. Privatization of the collection of child support payments took place in 2005. In 2013, this expanded to a fully privatized enforcement and collection model.

Overview of Non-IV-D Child Support Payment Collections

The 9th Judicial District Court Trustee provided information on the collaboration among child support professionals across the state prior to the privatization of child support enforcement. The trustee also discussed possible implications of moving more cases to the IV-D system. Other court trustees were introduced and available for questions.

Overview of Non-IV-D System

A representative of the Office of Judicial Administration provided testimony on her role as a liaison between court trustees and the KPC. The representative noted she also provides technical support to the Kansas Supreme Court's Child Support Guidelines Advisory Committee during its review period every four years.

Monitoring Performance Measures

The Director of the Child Support Services Division of DCF presented information on the five performance metrics that each state reports to the Office of Child Support Enforcement of the U.S. Department of Health and Human Services: cost-effectiveness, paternity establishment percentage, support order

establishment, collections on current support, and collections on arrears.

Also, full-service customer center contractors are required to maintain a level of performance established by the federal government, have adequate staffing levels and single points of contact for specific program needs, and visit all communities in which a DCF office exists at least once a month. Contractors also receive penalties for cases with unresolved escalations.

A representative of Maximus provided an overview of the organization's philosophy of service, including prioritizing stakeholder needs through employer support, linkage to jobs, resources for improved customer service, having resources for both custodial and non-custodial parents, and being accessible.

A representative of YoungWilliams provided information on the company's past performance regarding services the company was responsible for overseeing in a prior contract for 23 judicial districts.

Changes to the Current System

The 9th Judicial District Court Trustee expressed concern over the difficulty in using the KAESCES, stating it is overly burdensome for users and is not efficient for child support professionals. He stated he also believes separate IV-D and non-IV-D systems should be maintained.

The Director of Child Support Services provided suggestions for potential changes related to the availability of IV-D services, technology upgrades, utilizing meaningful performance measures, referring certain non-IV-D cases to the IV-D program, modernizing funding, changing distribution of payments, optimizing the use of administrative processes, and de-privatizing part of the system. She stated her top three specific recommendations are to identify meaningful performance metrics for the IV-D and non-IV-D programs, ensure that every family is able to access a child support professional, and investigate payment distribution and long-term funding.

CONCLUSIONS AND RECOMMENDATIONS

The Committee requested supplemental information regarding: out-of-state child support cases, KAECSSES and how it will be updated, a map showing non-IV-D counties and their populations, information on expanding the court trustee program to other counties, federal performance measures as they relate to state rankings, pass through payments, the amount of child support that should be collected, quantifying how many children and households are impacted by the child support system, and details of the new service contracts including return on investment, penalties, and customer service.

Following this discussion at its November 9 meeting, the Committee agreed upon the following recommendations for action by DCF:

- Explore best practices for child support enforcement and collection in other states and identify any legislative changes that may be needed;
- Establish reciprocity agreements with bordering states to improve cross-state coordination;
- Streamline the process for payees and payors when cases move between the IV-D and non-IV-D programs;

- Determine and monitor improved performance measures for both the IV-D and non-IV-D programs;
- Ensure every family can access a child support professional through DCF, child support contractors, or both;
- Introduce a customer service evaluation for clients utilizing child support services in the state; and
- Reinstate quarterly or monthly meetings between trustee offices and DCF to encourage improved communication in cases that are served by both IV-D and non-IV-D programs.

Additionally, the Committee also recommends, if sufficient information is not provided to this Committee prior to the 2022 Legislative Session by the appropriate stakeholders, the Legislature request an audit be conducted by the Legislative Division of Post Audit after the current contractors have had six months to a year to perform under the contracts effective October 1, 2021. If the audit is conducted, then the report should be provided to the following standing committees: Senate Committee on Ways and Means, Senate Committee on Public Health and Welfare, House Committee on Appropriations, House Committee on Health and Human Services, and House Committee on Children and Seniors.

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Report of the Special Committee on Education to the 2022 Kansas Legislature

CHAIRPERSON: Representative Kristey Williams

VICE-CHAIRPERSON: Senator Molly Baumgardner

RANKING MINORITY MEMBER: Representative Valdenia Winn

OTHER MEMBERS: Senators Renee Erickson, Michael Fagg, Alicia Straub, and Dinah Sykes; and Representatives Kyle Hoffman, Jo Ella Hoyer, Steve Huebert, and Adam Thomas

STUDY TOPIC

The *Kansas Constitution* states that the “Legislature shall provide for intellectual, educational, vocational, and scientific improvement by establishing and maintaining public schools.” The Kansas Supreme Court, in *Gannon IV*, charged the Legislature to fund schools at an adequate level that ensured all Kansas public school students met academic standards. The Committee will examine the issue of academic achievement in K-12 education by reviewing the following topics:

- Funding increases approved under the *Gannon* decisions;
- Legislation related to longitudinal reporting from 2015 to 2021;
- Kansas State Department of Education rules and regulations updates in 2021 related to achievement;
- The State Board of Education’s legislation priorities for the 2022 session;
- The Kansas State Department of Education’s priorities from its 50-stop Success Tour;
- Achievement expectations and funding for at-risk students; and
- Constitutional roles of the Legislature, State Board of Education, and local school boards.

December 2021

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Special Committee on Education

REPORT

Conclusions and Recommendations

The Special Committee on Education discussion focused on determining one goal that the Legislature and the State Board of Education could cooperate on to improve student achievement and how that goal could be measured. The Committee recommended the Legislature and the State Board of Education collaborate to ensure all Kansas children are able to read at grade level by the end of grade 3.

Proposed Legislation: None.

BACKGROUND

In 2021, the Legislative Coordinating Council (LCC) appointed the Special Committee on Education (Committee), composed of 11 members. The Committee was directed by the LCC to review school finance expenditures under *Gannon*; student achievement data since 2015; the particular needs of at-risk students; recent changes to the accreditation regulations; K-12 education priorities from the State Board of Education (State Board) and the Kansas State Department of Education (KSDE); and the constitutional role of the Legislature in K-12 education.

COMMITTEE ACTIVITIES

The LCC approved two meeting days for the Committee in 2021. The Committee met twice in 2021, on November 30 and December 1. Both meetings were held via in-person and virtual formats. The Committee heard testimony on several topics focused on improving student achievement.

November 30, 2021, Meeting

The Education Article: Constitutional Authority of the Legislature and State Board

Legislative Powers and Obligations

An Assistant Revisor of Statutes reviewed Article 6 of the *Kansas Constitution*, known as the

Education Article. He stated that similar language requiring the Legislature provide for “intellectual, educational, vocational and scientific improvement” has been a part of the *Kansas Constitution* since nearly the beginning of statehood and that it has been interpreted to require that education cannot be static or regressive.

Further, he said the Legislature must provide for the State Board, which it has done through various statutes. The revisor noted that a main obligation of the Legislature is providing suitable school finance. He stated that in its first decision under *Gannon v. State* (*Gannon I*), the Kansas Supreme Court (Court) interpreted Article 6, Section 1 to require the Legislature to provide an adequate and equitable school funding system. [Note: *Gannon* refers to a series of cases titled *Gannon v. State* in which plaintiffs challenged the Kansas school finance formula for elementary and secondary education. These cases are generally referred to individually by case order, *i.e.*, *Gannon I* is the first Court opinion and *Gannon IV* is the fourth Court opinion.]

Under the equity test, the Court would consider whether the system provides reasonable equal access. The revisor stated challenges to this requirement arise mostly through the equity provisions of school finance, such as the supplemental state aid. To comply with the adequacy component, the provisions must allow for all Kansas students to meet or exceed the *Rose* capacities, which are the minimum goals of the

education system. [Note: More information on the *Rose* capacities is provided below.] The Court would review both the implementation and structure of the school finance system. In *Gannon IV*, the Court found that the block grants of the Classroom Learning Assuring Student Success (CLASS) Act of 2015 failed the structure portion of the adequacy test. For implementation, the Court would review inputs and outputs. In *Gannon IV*, the Court considered inputs of state reductions of funding in 2009 that reduced programs, activities, and classes, and outputs that public schools were failing to provide necessary skills. Further, the revisor noted the Court focused on the decline of state assessment scores in those years and the significant achievement gaps between subgroups. The Court found similar gaps in other standardized test results such as ACT and National Assessment of Educational Progress (NAEP) scores, and graduation rates.

The revisor reported that in 2017 in *Gannon IV*, the Court found the CLASS Act was not reasonably calculated to meet the *Rose* capacities and therefore failed the adequacy component. He then outlined the steps the Legislature took to amend the school finance provisions, including funding the safe harbor provisions provided by Court decisions in *Montoy v. State*. He reported that the Court required a few additional adjustments, but the Legislature is currently in the sixth year of the *Montoy* plan, which was the last school funding plan deemed constitutional. He then noted the Court continues to maintain jurisdiction.

State Board and Local Board Authority

The revisor then reviewed the powers and duties of the State Board and local boards of education. The authority of these entities is derived from Article 6 of the *Kansas Constitution*. The revisor stated this requires a balancing of legislative authority with the authority of these other constitutionally derived entities. He reported the Court has held that the State Board's power of general supervision is self-executing, which means that additional legislation is not required. He stated the Court has held the scope of general supervision as being related to equalizing and promoting quality of education through accreditation and certification of teachers and schools. He stated Attorney General opinions have noted that graduation requirements and minimum curriculum

standards may also be included in the State Board's self-executing authority.

The revisor then noted that the constitutional authority of local boards has been held by the Court to not be self-executing. However, he stated, this does not mean that the local boards are wholly under the authority of the Legislature. He reported the Court has held that the duties of the Legislature and local boards must be read together and harmonized. He further noted the Legislature cannot pass legislation that would interfere with the constitutional duties of local boards.

Legal Challenges

Since 1966, there have been challenges to legislatively enacted provisions. The revisor stated the Office of the Revisor of Statutes is not aware of any successful challenges to legislation under Section 2 or Section 5 of Article 6. He then reviewed a few cases relating to the intersection of legislative authority and the constitutional authority of the State Board. The first case involved the State Board promulgating a regulation requiring all local boards to create student conduct policies, which the Court found the State Board could require. The second case involved legislation on collective bargaining procedures, which the Court commented on finding that it was not within the self-executing authority of the State Board. In the third and final case, the State Board suspended a teacher certificate relying on a statute rather than a regulation. The Court held that the reliance on the statute was not unconstitutional because it did not reduce the State Board's authority.

In response to questions from Committee members, he explained the *Montoy* funding scheme, branches of government, separation of powers, and what the Court considers harmonious.

Examining the Relationship Between School Finance and Student Achievement

Kansas Legislative Research Department

A Kansas Legislative Research Department (KLRD) Fiscal Analyst presented 10-year reviews of school finance expenditures for the State and student achievement data from 2015 to 2021, including state assessment scores, graduation rates, ACT scores, and NAEP scores. She noted total expenditures data from KSDE, including state aid,

local revenue, and federal aid from the 2011-2012 school year to the 2020-2021 school year. She then reviewed the major categories of state aid from FY 2015 to FY 2024, with total changes. The analyst noted that some changes would reflect new funds, such as the Mineral Production Fund, which began being included in the school finance formula in 2017. She then stated that, of the major categories of state aid, the State Foundation Aid and Supplemental State Aid are generally referred to as the *Gannon* increases. The analyst reported that the State Foundation Aid includes the Base Aid for Student Excellence (BASE) set in statute.

The analyst then reviewed the state assessment data for all students and all grades, graduation rates, and ACT scores for 2015 to 2021. She noted no 2020 data were included because the assessment did not occur due to the COVID-19 pandemic. The analyst then noted the performance level descriptors and minimum cut scores (performance thresholds) for the four assessment levels. The cut scores are different for math and English language arts (ELA). The analyst stated students are considered career- and college-ready or proficient if they score in either level 3 or level 4. The terms “career- and college-ready” and “proficient” are defined differently by the federal government and KSDE. She then reviewed the NAEP scores for 2015, 2017, and 2019 for math and reading. She also noted the descriptions of the different levels and cut scores for the NAEP information. She noted the state assessment data for Kansas students in grades 3 and 4 for 2015 to 2021.

The analyst reviewed total expenditures and assessment data for Unified School District (USD) 259 Wichita. She noted that the grade 3 math chart differs from the statewide charts because it follows a single cohort of students. She stated that, rather than compare one grade 3 class to another, it follows a grade 3 student into grade 4 then grade 5, and so forth. She noted that these student cohort groups, including all students, free- and reduced-price lunch students, African American students, Hispanic students, and paid lunch students, could be followed only to 2019 and grade 7. The students would have been in grade 8 in calendar year 2020 when no state assessment took place, and students in grade 9 do not have state assessment data. The analyst noted the cut scores were provided.

She reported the Kansas Assessment Program (KAP) did not design the data to be reviewed in this cohort manner; rather, the data were designed to compare one grade 3 class to another grade 3 class. She also stated a drop in scores does not reflect knowledge loss.

The analyst also reviewed the grade 4 scores for math, grade 4 scores for ELA, and math and ELA assessment scores for grades 3 and 4 by class, or year-over-year, which she reported was how the KAP designed the scores to be reviewed. The analyst stated similar information was provided for USD 308 Hutchinson, USD 443 Dodge City, and USD 500 Kansas City. She noted the same subgroups might not be included in each because there may have been no students from that subgroup taking the test that year and due to a lack of student enrollment data in some categories.

In responding to questions, the analyst clarified that the cohort data is following a specific group of students as they age, while the year-over-year data compares a single class of students to another class of students and does not include the exact same students. The analyst also responded to questions about the districts included in the assessment review, the variety of state assessments across the states and how cut scores were determined, funding shifts since 2009, and instruction-specific expenditures.

Kansas State Department of Education

The KSDE Deputy Commissioner of Fiscal and Administrative Services reported on changes to the BASE, general fund, and local option budget (LOB) since the state moved out of the block grants in the CLASS Act. He noted that all funding starts with the BASE and that the BASE was \$4,006 in the first year after the block grants. He stated the current year BASE is \$4,706 and that, per *Gannon*, it will increase to \$4,846 in the next year. The BASE was \$4,400 for 2009.

The Deputy Commissioner of Fiscal and Administrative Services noted school districts have used the increases to hire additional staff, including nearly 1,200 teachers, 392 counselors and social workers, and 112 administrators. He stated special education state aid has been increasing, but that costs are increasing faster. Due to the increased costs, the State would need to add \$105.0 million

in FY 2022 to meet the statutorily required 92.0 percent of excess costs for special education. Without this increase, school districts will transfer general fund dollars to make up that difference because they are required to provide special education services. He also noted that school districts have begun drawing down Elementary and Secondary School Emergency Relief (ESSER) Fund II dollars, including funding for COVID-19 pandemic learning loss.

The KSDE Deputy Commissioner for Learning Services reported that the 2021 assessment data should not be compared to data for prior years due to the COVID-19 pandemic: student enrollment decreased by 15,000, students were learning remotely, truancy doubled, and there were fluctuations in teaching staff. He noted the organization that develops the ACT has stated 2021 was the largest disturbance to learning in 50 years. He reported KSDE is focusing on how to obligate funds, especially ESSER moneys, to return to prior assessments, which were leveling out with subgroups closing gaps. He also noted that the ACT score drop was partially due to the Legislature expanding who could take the ACT. He stated the graduation rate was continuing to increase.

Both deputy commissioners responded to questions on how the general fund and LOB drive assessment scores, gifted student funding and programming, special education services, the higher requirements of Kansas assessments compared to those of other states, subgroup assessment scores gaps, Title I funding, and shifting proficiency scores.

Kansas Policy Institute

A representative of Kansas Policy Institute (KPI) stated the decline in state assessment scores cannot be wholly attributed to the COVID-19 pandemic. He noted there have been decreases for all students statewide in both math and ELA from 2016 to 2019. He stated there is a slide downward in high school student scores, with 47.0 below grade level in math and 45.0 percent below in ELA, which means students are graduating high school despite being below grade level. He noted that Montana, Nebraska, and North Dakota all reported increased ACT scores in 2021 over 2020, but Kansas scores declined. He stated other declines include that one-quarter of students were

below grade level in 2016 and one-third of students are now below grade level. He mentioned that shift is common across the nation, perhaps indicating that the student has not understood the basic skills and therefore cannot keep up as academics become more challenging. He reported many districts across the state have more students below grade level than are college- and career-ready. The KPI representative noted that the Court in *Gannon* had concerns with the number of students below grade level, but that more students are now below grade level despite increases in funding. He stated that some across the state argue that students in level 2 are college- and career-ready, but that is not true based on KSDE's definition and how the information is reported to the federal government. He then noted student achievement should be compared to funding.

The KPI representative stated the percentage of funding directed to instruction has decreased, even as total school funding increases. Reading proficiency in the NAEP scores has gone down even though the State is spending about \$5,000 per student above inflation. He noted that in a 50-state comparison he created, with adjustments for cost of living, Kansas was 13th in per pupil spending based on 2019 Census data and the state aid per student was 6th, but the State's NAEP composite score was 27th. He then compared eight states with the same NAEP composite score despite different per pupil funding and stated that he believes it is not the amount spent, but how it is spent. He stated Florida increased its scores without adding additional funding, while Kansas scores went down. He stated that no one has ever responded to his question on how long it would take to get students to grade level. The KPI representative responded to questions on postsecondary pathways and remediation.

Understanding the Needs of At-risk Students

Assistant Revisor on Recent Legislative Changes

The Assistant Revisor reviewed education funding for at-risk students and requirements for at-risk expenditures. The Kansas School Equity and Enhancement Act (KSEEA) provides for funding of additional programs and services for at-risk students. KSEEA sets at-risk funding using the proxy of free-lunch students and provides funding through the at-risk and high-density at-risk weightings. He noted that in HB 2134, enacted in 2021, the Legislature provided that the purpose of

these weightings is to provide those students who are identified as at-risk with evidence-based instructional services in addition to their regular instructional services. The at-risk weighting is a formula: enrollment multiplied by BASE multiplied by that weighting. The high-density at-risk weighting is based upon whether the school district has, or individual buildings of a district have, 35.0 percent or more free-lunch students. The cap on high-density at-risk weighting for those school districts or buildings with more than 50.0 percent of free-lunch students is 0.105. The revisor noted the Legislature has provided for a statutory expiration date for the high-density at-risk weighting, which is currently extended through July 1, 2024.

The revisor stated the expenditures are to provide additional opportunities for students identified as at risk. Under current law, students are identified as at risk based on academic need criteria, not free-lunch status. He reported that in HB 2134, the 2021 Legislature codified the 10 criteria from the State Board for students eligible for at-risk services and added the 11th criterion of students who have dyslexia or characteristics of dyslexia. To track these expenditures, he noted state law requires an at-risk fund in each school district and all expenditures for these services to be paid from this fund. School districts are required to transfer funding to the at-risk fund, and under the prior year's bill, and current law, the Legislature required that all funding from the two weightings be transferred to the at-risk fund. Per a 2018 amendment, school districts must transfer a proportional amount of the LOB raised due to the at-risk weighting to the at-risk fund.

He stated that the Legislature, first under KSEEA and then through further amendments, requires the at-risk fund may only be used for at-risk and provisional at-risk programs, the personnel for those programs, supports to provide training to those personnel, and contracted services providing those programs. Expenditures can be used only for those programs and services approved by the State Board and state law requires that the State Board publish this list on its website. He mentioned that HB 2134 authorizes use of at-risk funds for provisional evidence-based programs that are producing or likely to produce measurable success. However, he said, if a school district does make expenditures for a provisional program, it

can do so only for two years and must submit the program to the State Board. If the State Board finds it is an evidence-based practice, the State Board must place the program on its list. He noted that under HB 2134, school districts must repay any funds used not in accordance with these requirements and the State Board must notify the education committees of the Legislature of any school districts that do so. HB 2134 also provided examples of what at-risk programs may include, such as after-school, before-school, and class-within-a-class programs. He stated school districts must create reports on at-risk services, numbers of students, types of programs and services provided, and how the services were chosen.

The revisor reviewed a statutory change in HB 2134 requiring school districts to track the longitudinal performance of students continuously receiving at-risk services, including assessment scores, graduation rates, progress monitoring, and other test results. He also noted HB 2134 requires a performance audit by the Legislative Division of Post Audit in calendar year 2023 to evaluate how school districts are expending at-risk funds and whether the spending is in accordance with state law. He responded to questions on recommendations from cost studies on at-risk weightings.

KLRD Analyst on School Finance Formula

The KLRD Fiscal Analyst briefly reviewed the at-risk weighting and its history. She noted the weighting has changed from 0.05 in 1992 to the current weighting of 0.484. She then reviewed the BASE Aid, at-risk and high-density at-risk full-time equivalent (FTE) numbers of students, and at-risk and high-density at-risk funding from 2015 to 2022 and noted the 2022 information was pulled from the preliminary 2022 Legal Max documents produced by KSDE. The analyst also said the formula for calculating the at-risk weighting is the number of students multiplied by 0.484 and that there are multiple ways to calculate the high-density at-risk weighting. In response to a Committee question on the 20-year change of the at-risk weighting, she noted a chart in a KLRD memorandum provides that information.

KSDE Information

The KSDE Deputy Commissioner of Fiscal and Administrative Services reviewed the

qualifications of students for which a district may spend at-risk funds, including academic, social-emotional needs, and, most recently, dyslexia characteristics. He stated that students receiving services are not necessarily the students calculated for the funding, which is based on free-lunch status. The Deputy Commissioner noted the at-risk weighting has been declining, and there is a greater decline in the past few years because the federal government has provided free lunch to all students, which means people do not need to fill out free-lunch applications. Without the application, students do not meet the criteria to be considered at-risk students.

He stated that school districts do spend more than is provided for in state aid. In response to Committee questions, both KSDE deputy commissioners explained how teacher salaries are funded using at-risk fund moneys, reviewed additional COVID-19-related funding, and expanded on how KSDE is changing to meet new requirements. Committee members also asked questions about the extent to which teachers are aware of at-risk students and at-risk services in private schools.

Understanding the Student Needs Assessment and its Impact on Student Achievement

Budget Process

The KLRD Fiscal Analyst briefly reviewed the school district budget process. She noted that school districts finalize their budgets in August following summer budget trainings from KSDE. These budgets are then provided to KSDE, with certain documents posted online.

The Rose Capacities and Recent Legislation

The Assistant Revisor provided an overview of the history of the student needs assessment. KSA 72-1163, beginning in the 2006-2007 school year, required each school board to conduct a needs assessment for each attendance center and use that information when preparing its budget. He noted HB 2134 revised this statute to require each school district to use the needs assessment to prepare a budget that allocates sufficient moneys so that all students in the district may meet the seven *Rose* capacities used by the Court in *Gannon* as part of the adequacy test. He stated the capacities were codified into law (KSA 72-3218) in 2014 after the

Gannon I decision, which is when they were set as the constitutional standard for adequacy. He said the capacities originate from the decision in a 1989 Kentucky school finance case, *Rose v. Council for Better Education*. He stated the Court recognized that similar goals were codified in 1992 and then later removed and again codified into law in 2005. The revisor noted that the Court considered this an attempt to adopt the *Rose* capacities. He addressed a Committee question on how the *Rose* capacities and Quality Performance Accreditation standards compare.

Kansas Association of School Boards

A representative of the Kansas Association of School Boards (KASB) reviewed what information the organization provides to its members on provisions of HB 2134 and any trainings. He stated that KASB does not usually do training on the budget because KSDE does, but that KASB has provided information on *Rose* capacities. The KASB representative stated school boards have always considered the needs assessment, along with other data, when creating their budgets. He said he believes school districts have gone through four different phases of budgeting in the past couple of decades, with school districts currently budgeting in the sixth year of increases under *Gannon* while also in a health crisis. He stated there has been improvement in student achievement when funding is increased, and a decline when funding declined, along with the COVID-19 pandemic. He also noted how school districts have broadly used funding since *Gannon* was implemented, with targeting of instruction or special education. In response to Committee questions, he noted KASB provides information on the student needs assessment but does not provide training on the mechanics of the budget. He also responded to Committee questions on the difference between his funding testimony and staff testimony, the State Board's tour and vision, skills needed for business, the impact of legislative changes, the backgrounds of KASB staff, and feedback KASB receives.

KPI

A KPI representative reviewed the authority of the Legislature and State Board in the realm of education, stating the Court determines the extent of authority for each on a case-by-case basis. He noted that over the years much has been said of

Article 6 and the Court's interpretation of Article 6 to require adequacy to include structure and implementation. He stated the Legislature has never taken the role of allocation, but that the *Gannon* decision would allow the Legislature to do so. He said the way funds are used is more important than the total amount of funds.

He stated KPI has shown the history of increased funding and decreased student achievement scoring, making it critical to get to the allocation of funds. This, the KPI representative stated, gets to another part of Article 6—the constitutional duty of the local boards to control and maintain these schools. He stated that since at least 2006, state law has required the school boards to conduct needs assessments and use that information when preparing the budget. He stated that KPI believes this is not evidenced in school board budgets.

The KPI representative then commented on amendments to KSA 72-1163, noting the language added refers not to the use of the needs assessment when creating the budget, but its use when creating a budget focused on student improvement. He stated improvement is the constitutional expectation of Article 6 and that student academic performance is the expectation of the *Gannon* Court. He said KPI surveyed 25 large school districts and the majority of school board members did not know that the requirement exists or use it.

The KPI representative stated school boards need to act on the student needs assessment. He responded to Committee questions on the survey and whether the statute requires the documentation KPI was seeking.

Examining Skills for Student Success Post Graduation

Commissioner of Education

The Commissioner of Education (Commissioner) presented on the KSDE 50-stop success tour and the importance of soft skills as discussed on that tour. He stated the tour dated back to 2015, when he was hired and told to reach out to Kansans. There was a 20-city tour in 2015 asking what characteristics, attributes, and skills people thought a successful 24-year-old should have, and what Kansas public schools should do to form that person. He stated there was little

business input, so they reached out to the Kansas Chamber of Commerce for another seven locations and reached out to businesses for input. The skill set that both the Kansas public and business sectors said was needed included a combination of academic and non-academic skills. To determine whether this idea had changed, KSDE decided to do another tour in 2020, which was delayed by the COVID-19 pandemic until 2021. In this tour, KSDE asked if the competency wheel skills (a list of interpersonal and intrapersonal skills such as communication and task management) are still important and if Kansans wanted a personalized system with deeper engagement of parents and community and possible real-world situations. The Commissioner stated Kansas State University, the Regional Educational Laboratory in Colorado, and KSDE analysts are reviewing the data, but that there was overwhelming support for the skill sets and the generalization of how schools should go about doing that. He also noted there was an open-ended question about what schools needed for this system.

The Commissioner stated the 2015 tour ended with the State Board establishing a vision of leading the world in success. He stated that this included setting a high standard that a student could apply to their own pathway, such as a 95.0 percent graduation rate for the State (graduation has a high correlation with individuals becoming part of the middle class), and the success of each child to include academic skills, cognitive skills, employability skills, civic engagement, and technical skills so that the student can pursue their interests without remediation. He noted that the feedback received on the importance of soft skills, those that make a person a good employee, and hard skills, those needed for the job, made KSDE consider whether other data support these concerns with soft skills. He stated that KSDE reviewed a survey the U.S. Chamber of Commerce did on the missing skill sets of different education levels, and the top five across all levels include professionalism and work ethic, collaborating and working in teams, critical thinking and problem solving, and the ability to verbally communicate. He noted KSDE then considered whether the Kansas Chamber of Commerce had found any differences and that the recent survey noted 57.0 percent of respondents stated their greatest concern with their workforce was these employability skills.

Further, he stated, the organization that develops the ACT has also found that recent evidence shows academics alone do not prepare students for college. The Commissioner stated soft skills are important, so long as they are entwined with hard skills. In response to Committee questions, he noted there needs to be a balancing of the soft and hard skills, and that graduating seniors have not attended constitutionally funded schools. He also addressed Committee questions on the connection between school costs and inflation; the primary role of parents, rather than schools, in social-emotional learning; how test scores and graduation rates are connected; the involvement of parents with schools; the Individual Plans of Study process; and the discussion of early childhood education in the tour.

Associated General Contractors of Kansas, Inc. on Hard Skills

A representative of the Associated General Contractors of Kansas, Inc. (AGC) presented on the importance of hard skills, also known as technical skills. He stated 2012 SB 155 was the best legislation for Kansas. He noted technical skills are important for employment. He stated that the National Center for Construction Education Research curriculum is used in teaching hard skills and is used in 125 high schools, technical colleges, and community colleges, primarily in rural Kansas. This curriculum introduces basic safety, construction math, use of power tools and hand tools, construction blueprint reading, and basic communication skills, which is a soft skill. He said those communication skills, along with basic employment skills, are important to having people on job sites.

The AGC representative noted the Legislature is lobbied by industries, and those industries need workers and will leave the state if they do not get qualified workers. He stated candidates who have technical skills are more employable and that businesses expect soft skills to be taught in public schools. He noted states are recognizing that not all students can or should go to college, leading to a resurgence in technical programs. He said a blend of soft skill and hard skill training will only enhance technical skills, positioning Kansas to solve the skilled workforce issues. He stated this curriculum gives the students structure, which students have said they want from their employer. The AGC representative responded to Committee

questions on possible surveys of job employment opportunities and teacher criteria leeway for these programs.

KSDE Rules and Regulations

KLRD Review

The KLRD Fiscal Analyst provided summaries of the recently adopted KSDE accreditation regulations and the changes from the prior regulations. These changes primarily reflect the shift from the Quality Performance Accreditation model to the Kansas Education System Accreditation model, including changes to terminology, data collected, outside visitation teams and trainings, accreditation status and appeals process, sanctions, notification of longitudinal data, waiver requirements, and written policies for mandated reporting of child abuse.

State Board of Education Chairperson

The Chairperson of the State Board presented on the regulation changes and collaboration between the Legislature and the State Board. He stated that there are many ways the Legislature and State Board can work together. The Chairperson said the State Board is ready and willing to partner with the Legislature to ensure the success of every Kansas student, but that the goals must be created together, not from one entity or the other. He mentioned his role on the Legislative Task Force on Dyslexia and the recommendations that came from that task force.

On the rules and regulation changes, he stated that accreditation should consider academic skills, employability skills, and civic engagement and that Kansas, at the time, was the only state considering postsecondary success in accreditation. He noted graduation rates can be measured, but measuring whether graduation has prepared a student for postsecondary success is harder. He stated the current Kansas Education Systems Accreditation (KESA) process is an expansion of accountability and considers multiple measures with the focus on ensuring students leave schools with the skills to be successful. He responded to questions on what accreditation should signify to the average stakeholder, what it means to be in good standing, what is included in the accreditation process, and why the State Board believes some of the previous regulations were redundant.

Developmental Education

Legislative Division of Post Audit

A Post Auditor provided an overview of the upcoming limited-scope legislative post audit on the need for developmental education courses in Kansas. This would include surveys of stakeholders on their views of developmental education courses, which some students are required to take.

The auditor said the audit will be ready during the 2022 Session. The first survey is focused on the 284 school districts that offer these courses and asks why the courses are necessary if the goal is to have students college-ready. It will go to approximately 300 individuals. The second survey is at the collegiate level and focuses on what factors drive these students into needing developmental education courses. It will go to approximately 11,000 individuals. In response to Committee questions, he stated he would provide information on the survey construction.

Kansas State Board of Regents

The President of the Kansas State Board of Regents (KBOR) stated that, traditionally, developmental education, or remedial courses, may be for credit but not credit towards the degree. Previously, a test was used to place the student, but he noted that this has changed to consider multiple measures, such as high school grade point average and a test. This use of multiple measures can lead to fewer students in remedial courses. For example, he noted, a student may not do well on the test but works hard in class to keep their grade up. He stated that KBOR also considered sequences for developmental education. He reported that once a student gets into a developmental pathway, the likelihood of getting out declines. Success increases if the student enrolls in the class and receives supplemental tutoring, he stated.

He mentioned that schools are recognizing that students may need a few additional lessons, rather than the entire sequence. He encouraged the Legislature to look at a report from the Future of Higher Education Council that recommended math and English credited courses be taught alongside developmental education because the success rates are higher.

The President of KBOR stated college readiness has declined and that what concerns him is the decline in those attending an institution for a baccalaureate degree, a certificate, or a technical degree. He said he believes this is important because people earn more money with such a degree than with just a high school diploma. He said higher wages are correlated with better health outcomes, generational wealth, and a lower rate of incarceration. He noted it is not just that Kansas is economically better with a population that achieves a post-high school credential, but the costs of social impacts that come with lower education are carried by the State. He then stated that the cost of developmental education is almost \$10.0 million, based on average rates, with the majority going to community colleges. However, he noted, there has never been a study on the cost, and the \$10.0 million likely does not encompass the full cost. He briefly mentioned concurrent enrollment and HB 2134 allowing school districts to pay for concurrent enrollment, also called dual credit. He responded to Committee questions on the difference between college-going rate and college-readiness, the usefulness of ACT data, and the lack of economic efficiencies in concurrent enrollment.

Impact of the COVID-19 Pandemic

KLRD Presentation on Learning Loss Related to the COVID-19 Pandemic

The KLRD Fiscal Analyst reviewed learning loss and three studies that attempt to understand the impact of the COVID-19 pandemic on student learning loss. She explained that learning loss is reflective of the instruction time needed for a student to be at the expected level, rather than actual loss of knowledge. The analyst noted that the ACT study showed a decrease in scores for nearly every subject translating to one to three months of learning loss, with math scores dropping more significantly, which follows other assessment data. The ACT study stated that younger students appeared more affected than older students and that the gap between white and minority students stayed the same.

The analyst reported on a McKinsey study using Curriculum Associates iReady Assessment data to determine COVID-19 pandemic learning loss. This national study considered 1.6 million elementary students, but overweighted those schools providing in-person learning at the time of

the assessment. The analyst stated McKinsey found students were five months behind in math and four months behind in reading, which was at the lower end of McKinsey staff original predictions, without the discrepancy between ages. She noted the McKinsey study also found that students began the year behind in math and stayed behind, but students began the year on track in reading but fell behind with a slower learning pace. The McKinsey study also noted variety across location, grade level, and race and reviewed non-academic impacts on student mental health.

The analyst also reviewed an NWEA study, which, using MAP Growth data, found that students made gains but not at expected levels, particularly in math. Like the McKinsey study, the NWEA study found that students started the year behind in math and continued falling behind, but began the year on track in reading. The analyst reported that, per KSDE, Kansas State Assessment data showed a drop in the number of students in levels 3 and 4 (students who show an effective or excellent ability to use skills and knowledge needed for career readiness) from 2019 to 2021 and there was an increase of chronic absenteeism. The analyst briefly noted there are requirements under the federal American Rescue Plan Act that certain percentages of funding be expended on learning loss by both school districts (20.0 percent) and the State (5.0 percent), as well as a requirement the State expend 1.0 percent of its ESSER Fund moneys for both after school and summer school.

Representative Thomas for the Commissioner's Task Force

Representative Thomas, as a member of the Commissioner's ESSER Task Force, presented on ESSER funds. He noted there are 15 allowable uses according to federal regulations, including summer school. He stated federal funds continue to be drawn down, but that some school districts have no more federal funds but continue to accrue costs. He stated this is because the federal funds are more for reimbursement and are focused toward more impoverished school districts. Representative Thomas stated some districts have focused on funding summer school while others focused on computers; personal protective equipment; or heating, ventilation, and air conditioning systems. He said the expenditures must be related to COVID-19 pandemic response, so expenditures for

"technology" generally might not be acceptable, but "technology for Zoom meetings" would be acceptable. He said there will be a federal audit, and improperly expended funds must be repaid. In response to Committee questions on the transparency of the application process and after-school expenditures, he stated that all this information is published on the KSDE website.

December 1, 2021

Improving Student Achievement and Outcomes

School Districts

The Committee heard testimony from representatives of USD 259 Wichita, USD 409 Atchison, and USD 500 Kansas City related to improving student achievement.

The representative of USD 259 said state assessment data do not sufficiently reflect the complexity of school districts and the education system, particularly for those districts with high poverty. He noted poverty makes addressing student achievement more complex, and there is no uniform solution. He responded to Committee member questions on topics including universal screeners (assessments given to all students), practice assessments, increased school funding, strategy to get students to achieve the *Rose* capacities, graduation rates versus other measures, hiring qualified staff and future educator programs, measuring student achievement in ways other than state assessments, what the response of the Legislature should be to declining state assessment scores, use of ESSER funds, and what could be incorporated into the accreditation process.

The representative of USD 409 presented on the assessments the school district uses to track student growth, including iReady screeners, state interim assessments, ACT scores, Kansas assessment scores, graduation rates, and postsecondary data.

She noted the school district added a school capability assessment to increase learning at a faster rate. The school district also participates in the Literacy Network of Kansas (LiNK) grant, which supports teacher training for literacy and reading. The representative of USD 409 also mentioned that special education plays a role in achievement, with the percentage of special

education students in USD 409 nearly double the state average, and services nearly always exceeding the state funding.

She noted that using multiple measures reflects student growth better than a single score. She reviewed the use of ESSER funds for summer school, filling teacher positions, and other costs, but stated that she is concerned with what will happen when this funding ends. She addressed Committee member questions on the at-risk student population and funding, federal ESSER funds, the diversity of the district both ethnically and socioeconomically, the possible use of universal screeners for measuring growth, summer slide, and the interaction with private schools.

The representative of USD 500 presented on the diversity and special needs of the USD 500 student population, particularly noting the high level of poverty in the community and the high COVID-19 infection rate. She stated there are proficiency rate increases across the schools in the district for both ELA and math. She mentioned that there are pockets of high achievement in USD 500, although improvement is needed in the school district. She stated USD 500 focuses on meeting the needs of the students and their parents through trauma-informed learning, social-emotional learning, and parent engagement. She presented data on the school district's graduating class diploma-plus data, including number of college credit hours, internships, and industry certificates, and outlined changes in the elementary schools with the goal of 100.0 percent of students graduating with a diploma plus. She stated ESSER Fund moneys are going to four broad areas: social-emotional wellbeing, academic acceleration, real-world experience, and infrastructure.

The representative also reported that the district had partnered with the University of Kansas to complete an academic scan to create a transparent plan leading to all students graduating with a diploma plus endorsement. She responded to Committee member questions on topics including the school district's recruitment and retention strategy, at-risk students and funding, measuring student growth, use of ESSER funds, factors impacting student achievement, the diploma plus program, and expanding the Jobs for America's Graduates-Kansas (JAG-K) program.

JAG-K Written Testimony

The President and Chief Executive Officer of JAG-K submitted written testimony on the JAG-K program's history, evidence-based model, and outcomes. JAG-K serves approximately 4,000 students in 79 programs in 63 schools in 43 USDs. JAG-K has different programs, including multi-year programs, that are provided to eligible students as an elective class in school. JAG-K students must master 37 of 87 core competencies, invest at least 10 hours in community service, and spend at least 8 hours on academic remediation. Per the testimony, Drexel University's Center for Labor Markets and Policy reported several findings on the differences between the JAG population and the general population regarding post-high school employment outcomes. These findings included that JAG graduates realize significant gains in weekly earnings, higher hourly wages, and better non-wage compensation.

Contributing Factors Influencing Student Achievement

Determining Whether Concepts of Critical Race Theory are Being Taught

State Board of Education member. A member of the State Board stated that critical race theory (CRT), a framework of analysis on racism in legal institutions primarily taught in graduate and law school, is not in any assessments or curriculum standards of the State Board. She stated parent complaints should be listened to, welcomed, and dealt with at the local level. She provided the foundational structures from KESA, noting that student achievement is the number one goal. She furthered noted that student achievement is reflected in the KESA accreditation, but that accreditation does not include state assessments because that is not the only measure. She stated the *Gannon* Court did not use state assessments, instead referring to the *Rose* capacities, which the Legislature codified. She also reviewed recent implementations of Legislative Task Force on Dyslexia recommendations.

The State Board member presented on the rubrics for academics and DEI (diversity, equity, and inclusion) and the interplay between the *Rose* standards and those rubrics. She concluded that discussions of racism are not CRT and that parent concerns with instruction should be handled at the local level. She stated the Legislature could pass

legislation so all students could get free college credits, further the recommendations of the Dyslexia Task Force to the Legislature, expand computer science courses beyond 170-some districts, and waive the Kansas Public Employees Retirement System assessment and waiting periods until teacher positions can be filled. She addressed Committee member questions on topics including financial literacy, teacher due process rights, the shift to class-based history assessments, collaboration suggestions, mental health programs, and the importance of social emotional learning. In response to additional questions, she stated she believes there is systemic racism in education and again stated CRT, a graduate level course, is not taught in K-12, based on conversations with superintendents.

Representative Penn. Representative Penn presented on the history of CRT and its origins in other theories. He elaborated on the four presuppositions of CRT, including that racism is normal, convergence theory, anti-liberalism, and that storytelling is how knowledge is forwarded. He said that he believes intersectionality, which regards multiple layers of oppression, arises from CRT. He stated that DEI and SEL (social emotional learning) are the channels for introducing CRT and that the focus on these concepts leads to a lack of focus on student achievement and instruction that matters. He stated CRT also introduces negative behavioral and emotional challenges to vulnerable children, which is seen at USD 402 Augusta and in USD 259 Wichita. He stated it is settled law, under *Brown v. Board of Education*, that state-sponsored racism is not allowed in schools. He stated CRT is pushed onto teachers as they are hired and trained. He stated that while CRT may not be a direct course of curricula, USD 259's equity, diversity, and accountability material includes a culturally responsive scorecard, culturally relevant resources, a document stating teachers should better emphasize the importance of Black power in the Civil Rights movement, a document arguing that high school teachers should use the Black Lives Matter movement to question how resistance movements are treated in history, and a document titled "It's Never Too Young to Learn About Race." Committee members asked questions on what CRT advocates argue should be done to address their concerns and how to acknowledge and learn from the challenging parts of history.

Parent testimony. The Committee heard testimony from three parents. The first parent conferee testified that she found her children's school focused more on social activism than academics. She stated that schools have moved to the belief that children must feel safe and welcome before they learn, which puts academics second. She criticized Deep Equity (a training model with the stated goal of implementing culturally responsive practices) and its inclusion of teacher-led discussions on sensitive topics, including bullying, sexuality, and race in elementary school.

She stated the school gave her child a social-emotional survey despite notification the parents did not want the child to be included and then attempted interventions without parental knowledge. She stated the social-emotional growth of her child is her role, not the school's.

The second parent conferee provided documents, which she stated prove CRT is in schools and teacher trainings, including a Shawnee Mission contract for Deep Equity and the Yes! Program for professional development for teachers; Lawrence school district documents on anti-racist conversations with families; portions of the Deep Equity training that she said highlight racist, sexist, and religious oppression; and excerpts from various books. She stated that videos in diversity club assemblies at USD 229 Blue Valley included questioning whether Christians respect the beliefs of others and whether Republicans try to empathize with Democrats, which she stated caused students to leave the classroom.

The third parent conferee criticized Deep Equity and DEI. He said Deep Equity has a focus on race and gender, which hinders social-emotional learning. He said the concept of implicit biases had a negative effective on the self-esteem of students. He said schools should instead teach concepts that build work ethic and strength of character. He concluded by stating that the ending of multi-tier system of supports (MTSS) and labeling all behavioral issues as special education issues means that students who do not need additional assistance are neglected and students who need assistance do not get the same level of focus. This, he stated, has led to a decrease in academic scores.

KPI testimony. The Committee received written testimony from KPI. This testimony stated KPI found several examples of CRT in USDs under DEI. The testimony stated that while certain concepts about race, gender, and sexuality may not be part of the official curricula, it is in training materials, libraries, DEI, and classroom situations. The testimony outlined different books and videos available in school libraries or taught in schools, as well as classroom activities such as “culture toss” (an activity in which students list their personal values and cultural identities), and the testimony noted these elements are evidence of CRT in the classroom.

Improving Parent Partnerships

The Committee heard testimony on improving parent partnerships in Kansas. A representative of KASB responded to questions on KASB dues to the National School Boards Association (NSBA); his understanding that the KASB Board has opted to stay in the NSBA to make changes from within the organization; and trainings and activities the KASB does to encourage parental engagement.

A parent conferee stated that school libraries needed stricter guidelines on books and stated she had found books that would fit the statutory definition of obscene, violate student conduct guidelines, suggest pedophilia, “call whiteness the work of the Devil,” and involve the abduction and rape of a young girl. She stated that the reliance on third-party vendors for the laudable goal of a diverse book collection has led to what she described as degraded and divisive resources for students and the alienation of parents. She stated continuation of this will result in less student success and students leaving schools.

Mental Health

Parent conferees. The Committee heard testimony from two parent conferees on student mental health. The first parent conferee reported on several student suicides in the past year, but noted that there is no tracking on a local, county, state, or national level. She stated little data supports SEL as improving student achievement. She mentioned several topics that students are asked about in assignments to promote activism, including policing in America, racism, and Black Lives Matter. The conferee stated instead of seeing an increase in student achievement, the state is seeing

a decline in student mental health. In response to a question on the role of schools in mental health, the conferee stated schools are not responsible for mental health, that schools should be wary of what ideology is pushed in classrooms, and that schools should instead focus on academics.

The second parent conferee commented on the focus and use of SEL surveys in schools. She reviewed data collection surveys, stating that some included leading questions, violate student privacy by asking personal questions, and place dangerous suggestions in the minds of students. She noted this survey is anonymous, but if a student responds yes to a question on suicide, she would hope it would be followed up on. The conferee then presented on the Kansas Communities That Care (KCTC) survey distributed to students, including its history and origin, and stated it asks questions on alcohol and drugs she believes are inappropriate. In response to a Committee question, the Assistant Revisor noted the statute on surveys requires written permission from parents.

KSDE representative. The KSDE Deputy Commissioner of Fiscal and Administrative Services stated KSDE does not collect any of the SEL data at the state level, rather the data stays at the local level where it can best be used. He noted that the SEL surveys are optional for districts. In response to questions from Committee members, he stated his understanding is that the survey data does not come to KSDE, but it may go beyond the school districts. The Deputy Commissioner agreed to provide further information to answer additional Committee questions.

The Deputy Commissioner then reviewed the Mental Health Intervention Team Pilot Program (Program), which is in its fourth year. The Program has expanded from 9 districts in its first year to 55 districts currently. The Program is funded by the Legislature and the funding is split 75.0 percent to cover the liaison’s salary and 25.0 percent to cover community mental health center (CMHC) costs. The purpose is to eliminate barriers for student access to mental health services. There is a memorandum of understanding, and services may be provided at the school or CMHC. He stated he has heard that suicides were prevented due to the relationships in this program. School districts in particular focus on foster children. Some school districts are working with other service providers

that are not CMHCs. He noted that in the data provided by KSDE, the number of students in improvement areas might not be out of the total number of students served, as not all students have the same areas of improvement. The Deputy Commissioner, in response to a question, stated staffing issues persist for school districts and CMHCs.

Impact of Masks on Student Achievement

A graduate student from Wichita State University reviewed several studies, including her own, on the impact of masks on listeners with normal hearing. She noted that masks impact consonant sounds, particularly f, s, and th sounds, which can already be challenging for people with hearing loss. She stated that surgical masks attenuate sound the least, clear or plastic masks distort sound the most, and face shields actually reflect sound behind the speaker.

She mentioned a study that included a speaker six feet away from a normal hearing adult listener with the speaker looking away in a classroom wearing different masks and with or without a remote speaker. She noted the error rate compared to the base of no mask and no microphone. The error rate when a face shield and microphone were used was nearly identical to the baseline, and the highest error rate was when a clear mask and remote microphone were used. She noted the authors mentioned some challenges for students might include hearing levels, distance from the speaker, and introduction of new vocabulary.

The graduate student then reviewed her study, which included a recording of her speaking with no mask and six commonly used masks. This recording was listened to by 15 adults with normal hearing in a sound booth at a normal conversation level. She noted that no words were missed with the surgical mask and the worst option, a clear mask, allowed 97.0 percent of words to be heard. She stated the three lowest scores were when plastic coverings were used.

She mentioned participants noted that they were working harder to listen in some cases and guessed on some words. She responded to Committee questions on the populations studied and whether the studies have been peer reviewed.

Remote Learning and Quarantine

Assistant Revisor Testimony on Definitions

An Assistant Revisor submitted testimony distinguishing remote learning and virtual school and outlining the changes to remote learning in 2021 HB 2134. The Assistant Revisor noted the primary difference between remote and virtual learning is that virtual school provides asynchronous instruction. The 2021 Legislature provided for the regulation of remote learning in HB 2134: school districts may not provide more than 40 hours of school term remote learning, with 2 exceptions (KSA 2021 Supp. 72-5180). The first exception is for a particular student with extraordinary circumstances as approved by the board of education of that student's school district. The second exception is for a school district as authorized by the State Board due to a disaster as defined in KSA 2021 Supp. 72-5180. If a school district provides remote learning in excess of the 40 hours without meeting an exception, the student receiving remote learning is deemed remotely enrolled and funded at a flat \$5,000 under the school finance formula, with no weightings.

KSDE: Impact on School Districts

The Deputy Commissioner of Fiscal and Administrative Services provided written testimony on the impact of HB 2134. He also noted the definitions outlined in HB 2134. He further stated that part-time remote learning students may be funded for the portion of time they are in a traditional learning environment. He also stated that quarantines have been interpreted to be extraordinary circumstances under the exception for individual students outlined in HB 2134. School districts are required to report this information to the State Board and will do so through a secure online application to protect student privacy.

Recent Shifts in Educational Delivery Methods

The KLRD Fiscal Analyst provided enrollment data for the past five years, including FTE enrollment, virtual school enrollment, and special education FTE. She then presented on home schooling in Kansas and recent nationwide trends. She provided the home school requirements and noted that there is a difference between home schools, which are considered non-accredited private schools in Kansas, and accredited non-

public schools. She then reviewed recent trends in home schooling, noting that the COVID-19 pandemic appears to have led to an increase in home schooling, whereas home schooling had seemed to stagnate in 2016 at around 3.3 percent of all students. The analyst then provided background on new “pandemic pods” as a type of home school and stated that approximately 5.0 percent of EdChoice survey respondents use these small groups as school. She responded to questions on home school funding in Kansas. The analyst also provided information on school choice legislation and virtual schools.

Virtual Schools

Insight School of Kansas.

The Insight School Head of School presented on the two full-time virtual schools she serves, which are part of the Spring Hill USD 230. She provided student demographic information, including that the population is roughly 50.0 percent students who qualify for free- or reduced-price lunch, around 20.0 percent are identified as needing a special program, and includes both foster care students and students who meet certain definitions of homeless under the McKinney-Vento Homeless Assistance Act. Further, she noted that about 50.0 percent of the students are new at the school year. She provided reasons for parents sending their students to virtual schools. The Head of School provided information on the school model, noting that school includes live session with live attendance expected, although sessions are recorded for the students to review. She also spoke on the role of live coaches, who assist students. The representative noted the COVID-19 pandemic did not substantially disrupt the school model, but students did experience disruptions outside of school, and she reported there was a significant increase in enrollment.

She reported the biggest challenge is funding, which has been stagnant for several years and does not include weighting. The Head of School stated the graduation rate has been a challenge because students attending the school have gaps in education, come with fewer credits, or are part of a transient population, but she reported improvement of about 34.0 percent since 2017. She responded to

questions on graduation rates, state funding and federal funding, how the virtual schools address the same issues as brick-and-mortar schools, and how students are factored into the virtual school data and funding.

KSDE

The KSDE Deputy Commissioner of Fiscal and Administrative Services noted that enrollment has increased in the past year. In response to a question, he stated that ESSER funds were distributed based on Title I so the money goes to the school district and the district can choose how to spend it based on COVID-19 factors. He stated he does not believe anyone made a case for virtual schools or whether that funding could be provided to virtual schools. In response to questions on funding, he stated any students in the virtual school are not counted in the school district weightings and that most likely a student who moves from a school district to a virtual school is being double-counted due to the structure of school finance.

CONCLUSIONS AND RECOMMENDATIONS

At its December 1 meeting, the Committee discussed what one goal the Legislature and State Board could work towards together to ensure the success of all students. Several topics were discussed, including the liability issue arising from private partnerships with students interning at businesses; changes to school finance to allow for school choice and the option to have funding follow a student; listening to parent complaints regarding their child’s education; greater participation in the Mental Health Intervention Team Pilot Program; updating bullying policies with the State Board; and changing virtual school funding.

Committee members agreed by consensus to recommend to the 2022 Legislature a goal of considering what elements are needed to ensure all students are reading at grade level by the end of grade 3. The Committee noted this may involve reviewing different measures for each student and determining what issues prevent the student successfully reading at grade level by the end of grade 3.

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Minority Report – 2021 Special Committee on Education

Introduction

Below we have outlined specific concerns about some of the major conclusions advanced by the majority membership of the Committee.

There are certainly challenges in our K-12 education system and like all human endeavors there will always be flaws and areas for improvement. The minority members of this Committee stand ready to help address those challenges. Ultimately, what we heard from the majority membership were not good faith efforts to address these challenges but more of the same: red herrings such as Critical Race Theory, a continued lack of understanding of constitutional requirements, and veiled attempts to defund our education system yet again.

The disconnect between the majority and minority members of this committee should not come as a surprise. At no point were members of the minority party asked or encouraged to suggest agenda items or even invite conferees to the two-day meeting. Topics and conferees were selected by the Chair and a small group of confidants. It appears this was done to restrict the topics and the dialogue. On several occasions conferees were asked questions that they could not or were not prepared to answer, politely suggested someone else from the agency be asked to answer the question, and were denied that opportunity. It was more important to get the answer from the majority's pre-selected conferees than receive a response informed by the present-day challenges in providing quality educational opportunities faced by Kansas students, their families, educators, and board of education members.

Finally, we would like to applaud the efforts of the education community – from the State Board of Education to the school districts, administrators, and teachers. COVID has had an immeasurable impact on our education system and has been difficult for everyone involved. Nearly 500,000 students face learning challenges in a second consecutive school year hindered by a worldwide pandemic. We can certainly debate the impact of decisions made to keep students, families and staff safe; what is not debatable is that the pandemic is unprecedented and that there is no individual nor manual available that can guarantee safety while providing the best educational instruction. The minority understands the best path forward requires the legislature to collaborate with the state school board, teachers, students, parents and the entire education community to identify solutions together.

Governance

Article 6 of the Kansas Constitution directs the Legislature to provide for “intellectual, educational, vocational and scientific improvement through a system of public schools and other institutions.” The constitution also provides for a State Board of Education to have

“general supervision” of public schools (and a State Board of Regents to oversee postsecondary education); says public schools are to be “maintained, developed and operated” by locally elected school boards; and directs the Legislature to provide “suitable provision for finance” of educational interests, as well as its general authority to make laws for the state. The specific meaning of each of those provisions has been debated and interpreted by the courts since the article was adopted in 1966.

The Kansas Supreme Court has held the constitution gives the State Board certain “self-executing” powers which means that it can take action in some areas without Legislative authorization or interference, but the exact boundaries of those areas have not been clearly established. The Board has resisted Legislative efforts to add requirements for graduation, courses, and program standards, including a proposal last session to require students to pass a civics test and financial literacy course to graduate. These courses are great opportunities for students, but increasing mandated curriculum limits the choices available to students when making decisions on their course schedules.

Local school boards do not have self-executing authority, so boards are generally controlled by laws passed by the Legislature or regulations passed by the State Board. However, the courts have said the constitutional authority of boards means the Legislature does not possess complete authority over local school boards and that the constitutional duties and obligations of the Legislature and local boards “must be read together and harmonized so both entities may carry out their respective obligations”. In the past session, the Legislature has dealt with issues of school board authority over COVID responses and curriculum requirements, and next session could present issues concerning curriculum, programs, materials, and censorship.

The constitutional balance of powers allows each body, accountable directly to voters, to carry out responsibilities most appropriate to its station. The Legislature has general powers to legislate and the responsibility to provide suitable funding because only the state as a whole can provide adequate and equitable funding for the state’s educational interests. The State Board is elected with unique responsibilities for overseeing public education on behalf of the entire state. Local boards are created to respond to local needs and circumstances but are still accountable to the State Board for meeting statewide standards for all students.

School Funding and Student Achievement

Changes in School Funding

In several school finance cases reaching back to the 1970s, the Kansas Supreme Court has ruled that the Kansas Legislature must provide school funding (both direct state aid and local revenues) through a system that is both equitable and adequate. Equitable means all districts are able to raise similar funding through similar tax efforts, usually achieved by giving state equalization aid to districts with lower taxable wealth. Adequate means that the amount of funding provided to districts allows all students to achieve certain educational standards.

Over the two most recent cases (Montoy in the 2000s and Gannon in the 2010s), the Kansas Supreme Court found that school funding was not adequate because a significant percentage of Kansas students were not performing at what the state defined as minimum standards on state assessments; and these students were disproportionately in certain groups such as low-income, disabled, minority, etc. The court further found a link between funding and achievement, based primarily on test scores, and said the Legislature must have some “rational” educational basis or evidence for funding levels.

In the Montoy case, the Legislature directed the Legislative Post Audit Division to conduct a cost study of meeting “input” and “outcome” requirements based on the now-repealed federal “adequate yearly progress” requirements of the No Child Left Behind Act. Based on the study, the Legislature substantially increased both base state aid for every student and weightings for at-risk and bilingual education, and increased local option budget limits over a three-year period to be completed in 2009. The Kansas Supreme Court accepted that plan and dismissed the case.

Due to the recession of 2008-09, the plan was not fully implemented in 2009, but that year was the highest level of total and per pupil funding (in both current and inflation adjusted dollars) in state history. However, deeper funding cuts occurred over the next several years and school funding fell hundreds of millions of dollars below 2009 levels. The state also failed to fund equalization aid for local option budgets and capital outlay aid, widening property tax disparity among districts based on local property valuation.

Responding to a series of Gannon decisions, the Kansas Legislature first agreed to restore full funding to equalization programs and then agreed to increases in base state aid designed to restore base operating aid to the inflation-adjusted 2009 level over a six-year period, from 2018 to 2023. The court accepted this plan, called the “Montoy safe harbor” because it would restore “real” (inflation adjusted) funding to a level previously presumed to be constitutionally adequate. The Legislature has already appropriated funding for the final years of that plan.

As stated in committee, current graduating seniors in Kansas have never attended school while the K-12 budget was constitutionally funded. They started school in 2009.

Changes in Student Achievement Measures

The Special Committee received information from its Legislative Research Department and from the Kansas Policy Institute that the current version of Kansas state student assessments (given to all students grades 3-8 and grade 10) has been declining since it began in 2015, a decline that began before the COVID pandemic in 2020, which influenced scores in 2021. Declines in Kansas scores on the National Assessment of Educational Progress were also noted.

Likewise, the committee received information that Kansas ACT scores began declining in 2013, before an increase in student participation when the state made the test available at no cost

beginning in 2020 (higher participation usually results in lower results because less prepared and motivated students are taking the test).

Several points must be made.

Prior to the early 2010s, student outcomes on the previous state assessments, NAEP scores and ACT scores were increasing, at a time when “real” (over inflation) funding increases were occurring. The declines began after state funding reductions occurred in 2009-11 and funding failed to keep up with inflation through 2017. This resulted in the elimination of 2,000 school positions, fewer teachers, reduced support services, and falling behind funding in other states.

The Gannon school finance plan was developed by the Legislature specifically to acknowledge and restore inflation-adjusted funding to the 2009 level.

Gannon funding did not begin until the 2017-18 school year, and “pre-COVID” assessments in 2018 and 2019 reflected only the first two years of a six-year funding plan of roughly equal installments. Tests given in the Spring of 2019 occurred less than two years after Gannon funding began, following eight years of declining funding, adjusted for inflation.

Test scores and other measures did not immediately decline after funding was cut and should not be expected to increase immediately when funding is increased because educational benefits are cumulative and some investments, such as early education, are not reflected in test scores for several years.

Test scores are only part of the way to measure the “Rose Capacities” adopted by the Kansas Supreme Court and Legislature. Other measures, such as high school graduation rates and postsecondary achievement have been increasing up until COVID. Other areas, such as mental health services and school safety (both of which have been funded by the Legislature) are unlikely to have an immediate impact on tests scores but are critically important to students.

COVID has had a profound impact on student learning and social-emotional health in Kansas and all other states. It will take time to help students recover.

KESA Accreditation

The questions raised during committee hearings about changes to rules and regulations related to the Kansas Education Systems Accreditation (KESA) process were among some of the most egregious examples of a willful decision to avoid the facts. We feel compelled to correct the record.

First, the Kansas State Board of Education adopted the most rigorous standards and cut scores in the country, setting aspirational goals for having 75% academically at the highest academic standards in the country, a 95% statewide graduation rate, and 70% of students completing postsecondary education. This is all to be achieved by 2030. The State Board of Education

defines a successful Kansas high school graduate as having “the academic preparation, cognitive preparation, technical skills, employability skills and civic engagement to be successful in postsecondary education, in attainment of an industry recognized certification or in the workforce, without the need for remediation.” To achieve these goals, the State Board adopted the Kansans Can vision for public education, which includes five key goals: kindergarten readiness, social-emotional learning, individual plans of study, graduation rates, and postsecondary success. This vision is a direct response to the legislative adoption of the Rose Capacities and the Gannon court’s embrace of these standards. A visual representation of KESA is attached. (orange/blue chart).

Second, the question of whether our accreditation system is appropriately centering student achievement in the process disregards the steps in the process itself. KESA is designed as a five-year cycle of improvement. We are in the first five-year cycle, as the rules and regulations were not formally approved by the state until 2021 (coincidentally a five-year journey through the state’s vetting process). The question of whether school districts are appropriately achieving the levels of success expected is being asked before this first five-year cycle is complete. It should also be noted that the restoration of funding for our schools is also incomplete, and schools are dealing with the unprecedented challenges of the COVID pandemic.

The previous accreditation model was responsive to federal requirements under “No Child Left Behind” which had detailed annual performance metrics. Our new KESA accreditation model is responsive to current federal requirements under the “Every Student Succeeds Act” which removed those performance targets and replaced them with a requirement to show growth in student performance.

It is understood that requirements spelled out in state or federal statute must be complied with – this is the meaning of “in good standing.” This language is intentional – rather than repeat laws to which schools are already expected to be in compliance, the State Board just reminds/refers that not only must a district be in compliance with the law for the sake of that law but for the sake of their accreditation as well (so in some cases it is a double-hammer).

By leaving the language broad rather than identifying every single law, the State Board can hold districts accountable for any internal policy changes by the State Board and any legislative changes which may occur without having to re-write the regulations every time such a change occurs, given that laws are much faster to enact than regulations.

KESA relies heavily on data to document compliance. The definition of “accredited” means “the system is in good standing (compliance) with the State Board, and that they have provided conclusive evidence of growth in student performance. In addition, the system has provided conclusive evidence of an intentional, quality growth process.” The definition of “conditionally accredited” means “the system is in good standing (compliance) with the State Board, and either did not provide conclusive evidence of growth in student performance or was not able to provide conclusive evidence of an intentional, quality growth process.” The definition of “Not Accredited” means “one of two things, the system is not in good standing (compliance) with the

State Board, or the system did not provide conclusive evidence of growth in student performance; and the system was not able to provide conclusive evidence of an intentional, quality growth process.”

“Conclusive evidence” means data that is sufficient to the accreditation review council to justify its recommendation of accredited to the State Board. What does that evidence look like? We have attached a series of exhibits to illustrate the reporting templates that districts must use to provide the Accreditation Review Council sufficient data. We have also provided an example of the report received from the ARC by the State Board to further illustrate the central role student assessment metrics play in the process.

Far from ignoring student performance measures, the KESA process requires multiple forms of measurement beyond one set of test scores. Information used to evaluate school systems is quantifiable now more than ever. Systems already have their own data in real-time, and KSDE provides summaries of the data by way of annual accountability reports. Those reports are published via the KSDE website which is linked to by each education system’s website. Data made available to the public includes assessment scores, attendance rates, chronic absenteeism rates, and post-secondary success rates. Other factors include the district’s plans to improve student assessment scores, proof of foundational structures, and probably most importantly proof that schools offer students the opportunity to attain the Rose Capacities.

KESA represents a system of continuous improvement that aligns with the constitutional directive embedded in Article 6. By focusing on growth and improvement, the State Board is committed to ensuring every Kansas student has the access to high-quality educational opportunities. We affirm our support for this approach. A system designed to punish shortcomings by stripping accreditation status would leave our students to suffer the consequences. We would consider that approach to be a dereliction of our duties under the Kansas Constitution.

Critical Race Theory

Critical Race Theory is NOT in our K-12 curriculum.

It was NOT used to influence the state history, government, and social studies standards.

It is a research construct developed in some American law schools in the 1970s as a way of examining the impact of statutes, ordinances, and practices within various systems (the legal system, justice system, economic system, health care system, etc.) on the lives of persons of color. When looking at a practice applied within a system, it asks if that practice has a negative impact on certain groups. For example, did the practice of “redlining” have a negative impact on the lives of Black Americans? Did this practice contribute to housing inequity based on race?

Nothing within this construct assigns blame or guilt. To use the example of redlining – by examining the impact of redlining on the African American community we can see that the

practice led to segregated neighborhoods including relegating Black people to less desirable tracts. Instead of blaming white people for this situation, we can now acknowledge an historical wrong, address it, and thus move toward a more just and equitable society.

Any teaching of history, government, and social studies must consider the full story, including the atrocities - if we want to make a better world for all people. This demands an honest exploration of both the great things Americans have accomplished and our shared dreams but also a critical examination of those times when we have strayed from our belief that “all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.” Note that three women are writing this, and our belief extends freedom of equality to all individuals, not just men.

Kansas teachers of history, government, and social studies focus instruction on five Kansas-specific standards under the following mission statement:

“The Kansas standards for history, government, and social studies prepare students to be informed, thoughtful, engaged citizens as they enrich their communities, state, nation, world and themselves.”

These are the Kansas History, Government, and Social Studies Standards:

1. Choices have consequences
2. Individuals have rights and responsibilities
3. Societies are shaped by identities, beliefs, and practices of individuals and groups
4. Societies experience continuity and change over time
5. Relationships among people, places, ideas, and environments are dynamic

Each standard is further defined and benchmarks have been established for each. One can read the explanations and benchmarks on the KSDE website at the following link:

<https://www.ksde.org/LinkClick.aspx?fileticket=4TJXZgAyals%3d&tabid=472&portalid=0&mid=4744>

It is inappropriate to mix the honest teaching of racism in America with efforts to remove books from libraries or enact policies that marginalize women or LGBTQ Kansans. Yet this is exactly what happened during the interim committee meeting, and we fully expect to encounter proposals for disturbing legislation during the 2022 session.

The Kansas Legislature has no business drumming up hysteria over library books. Each local school district has procedures in place to review books and materials that are available to students in our public schools. These procedures allow for concerns to be brought forward and ensure that literature is not removed based on an individual concern. Librarians work hard to provide materials that meet community needs and standards. We have a duty to protect the

First Amendment rights of students. Library books are not curriculum. Once a book is in the library collection, there are appropriate procedures in place requiring a full committee to review the complaint. Books cannot be removed from circulation while under review.

Our students need access to works that explore the entirety of our society. If there are questionable issues in a work, then the procedures established in a school district must be followed. There is a clear attempt to harness anti-LGBTQIA+ and transphobic sentiments, and we must not let fear guide our decisions. Banning books isn't the answer. We believe that it's important for students to have the option to explore contemporary issues.

The Rose Capacities

The addition of the Rose Capacities to Kansas education law in 2016 was the clearest statement from the Legislature and the Executive Branch about how they wanted to see Kansas students to be educated. The Republican leadership strongly supported the Rose Capacities as the guidelines for what they wanted public school students to learn. More importantly, it clearly asserted what these Legislators wanted to pay for: ensure students learned the Rose Capacities, not in any hierarchy or ranked order, but all of them equally.

The Rose Capacities articulated those goals clearly. The Kansas Legislature adopted those Rose Capacities as education goals, which are much broader than mastery of academic subjects. In **KSA 72-3218**, the Legislature adopted the goal of *“providing each and every child with at least the following capacities:*

- (1) Sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization;*
- (2) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices;*
- (3) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation;*
- (4) sufficient self-knowledge and knowledge of his or her mental and physical wellness;*
- (5) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;*
- (6) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently;*
and
- (7) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.”*

The impact of the Rose Capacities on the skills and abilities Kansas wanted its young people to learn began in the 2017-18 school year. At the same time, as recounted in other sections of this report, public school funding was stagnant in the “block grant” period while the State Supreme Court had just asserted that the inequity in student funding would only achieve the minimum

level adequacy with additional funding completed during the 2022-23 school year. This report also identifies the deep public school funding deficit from the 2008-09 school year.

The Rose Capacities in their totality became the focus of standards and curriculum changes at the Kansas State Board of Education, at individual school districts, and in school buildings across Kansas. The State Board of Education undertook repeated conversations with the Kansas business community to determine what they needed from the public school system. The education system redesign program embraced the Rose Capacities and Kansas consensus on the need for college and career ready students.

The Rose Capacities are an excellent set of standards to accomplish the mission the Legislature set forth in 2016 and they are reaping benefits as students in

- individual growth.
- social and emotional growth.
- civic awareness.
- graduation rates.
- college course work in high school.
- countless other measures show fulfillment.

The established measures of student achievement in some instances do not show progress, improvement, or achievement that can be improved and there is work to be done. Further, some critics seized upon measures of “proficiency” to prove failure when in reality there are many examples of students testing at a “non-proficient” test score level actually excelling in other skill areas that make them “college and career ready.”

However, the Legislature set the path and the funding in response to the Gannon decision that changed the measures, the goals, the outcomes, and the expectations for student achievement. The structured achievement testing based on cohort groups tested at various grade levels do not measure all indicators of satisfying the Rose Capacities. They do not measure individual improvement. They do not measure all the co-equal Rose Capacities fairly.

The fetish for manipulation of assessment scores of definitions of proficiency may score points in some circles, but it does not reveal failure or weakness in our overall ability to help prepare our young Kansans to be college and career ready. Many of the critics of perceived and false notions of “public school failure” share the proclivities of those who only wanted to fully fund K-12 public education if and only if the Rose Capacities were put into the Kansas law. Their criticism now ignores the entire public education system built around the principles of the Rose Capacities where real success is measured in so many more ways than in student assessments.

These issues have been exacerbated since March 2020 and COVID battles in classrooms, school boards, and in our society over the pandemic. In a school system that still has not achieved the minimum standard “safe harbor” of adequate funding, we take pride, despite stumbles and challenges, in the persistence of our efforts to support and fund our public education system

that continues to produce our next generations ready for college, the workforce, and to become engaged citizens.

Developmental or Remedial Coursework at the Post-secondary Level

There have been repeated calls for the elimination of developmental courses - often called “remedial courses” - in our community colleges and universities.

Kansas has not adopted a K-12 education system that guarantees every graduate will be successful in every course at the post-secondary level. This is reflected in the fact that we have multiple graduation requirements or curricula for high school students to follow.

While there is a graduation requirement for all students, Kansas also offers an alternative college preparatory program which is more rigorous. This assumes that students have different interests and intend to pursue different paths upon graduation from high school.

The Regents Universities have a qualified admissions program intended to ensure that incoming students are fully prepared for the rigors of university work. However, the institutions are permitted to admit up to 10% of a class that has not completed the high school college preparatory program. These students may have chosen one future path as high school students and then changed their mind, intending instead to pursue a four-year degree. They may have chosen lower-level mathematics classes in high school and, as a result, now need extra help in order to be successful in college algebra.

Our community colleges do not operate under a qualified admissions program. By admitting all applicants who have graduated from high school, it is not unexpected that some of them will not be fully prepared for advanced coursework. For these students, the extra help provided by developmental courses allows them to develop the capacity for success. Further, our community colleges and technical colleges are where individuals turn later in life when they have been laid off a job or decide they wish to pursue a different path. A 30-year-old returning to college may find their math skills to have diminished in the 12 years that elapsed from high school graduation.

Dr. Flanders of the Kansas Board of Regents rightfully asserted in his testimony that completion of a post-secondary program leads to significantly higher lifetime earnings and reductions in many social ills including a lack of health insurance, homelessness, and even incarceration.

The elimination of developmental courses in our post-secondary institutions will mean either far more failure - students dropping out and failing to complete a degree - or require changes to our K-12 system that do not allow flexibility for students and their families to pursue their own individual plans of study. We do not believe that such a system is in the best interests of Kansas or Kansas students and families.

We support the provision of development courses and other alternatives such as the assigning of special tutors for students hoping to earn a certificate or degree as part of our effort to move every person to their highest potential.

Conclusion

The minority members reiterate there are certainly challenges in our K-12 education system especially as we are recovering from a global pandemic and from over a decade of underfunded schools. We stand ready to find solutions that address those challenges and hope our colleagues from across the aisle will take up the olive branch and let us have truthful discussions and debate about remedies. This takes bringing all groups to the table – not just the ones that agree with our predetermined ideas.

Senator Dinah Sykes
Representative Jo Ella Hoyer
Representative Valdenia Winn

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Report of the Special Committee on Federal 340B Drug Program to the 2022 Kansas Legislature

CHAIRPERSON: Representative Susan Concannon

VICE-CHAIRPERSON: Senator Renee Erickson

OTHER MEMBERS: Senators Beverly Gossage, Richard Hilderbrand, Kristen O'Shea, Jeff Pittman, and Mary Ware; and Representatives John Barker, Will Carpenter, Brenda Landwehr, Vic Miller, Sean Tarwater, and Kathy Wolfe Moore

CHARGE

The Committee is directed to review the federal 340B Drug Pricing Program, with the objective of gaining a better understanding of how the program is implemented in Kansas and the experience of participating entities.

Topics for review should include:

- Federal requirements of the program;
- The role qualifying 340B providers, pharmacies, and pharmacy benefit managers play in the program;
- The fiscal impact of such program on all participants;
- Any federal or state law changes affecting such program;
- Any recent marketplace developments of interest; and
- The impact of such program on health care payers.

[*Note:* Provisions in 2021 SB 159 [Section 20 (c)] directed the Legislature to create an interim study committee on the federal 340B program. The law specified the Legislative Coordinating Council would appoint a special committee composed of 13 members, with its chairperson appointed by the Speaker of the House of Representatives.]

December 2021

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Special Committee on Federal 340B Drug Program

REPORT

Conclusions and Recommendations

The Special Committee on Federal 340B Drug Program (Committee) recognizes the complexity of this topic and the varied ways legislation affecting the program could impact stakeholders, including 340B covered entities, pharmacies, pharmacy benefit managers (PBMs), drug manufacturers, and the communities in which covered entities operate. The Committee also notes the importance of ensuring the program and any related legislation direct resources in a way that supports the program's intended outcome of increasing the availability and accessibility of care for uninsured and underinsured individuals and communities.

To enhance the understanding of how this program impacts Kansans, the Committee recommends the following requested information be presented to any standing committees in which 340B legislation may be scheduled for hearing:

- A comparison of outcomes for providers in 340B covered entities prior to the start of the 340B program and currently;
- A comparison of prescription drug costs prior to the start of the 340B program and currently;
- A summary of legislation passed by other states concerning the 340B program; and
- Updated fiscal notes for pending Kansas legislation relating to the 340B program (2021 HB 2260) and, more generally, the licensure of PBMs (2021 HB 2383).

The Committee recommends that its chairperson submit a request to the Legislative Post Audit Committee for the Legislative Division of Post Audit (LPA) to perform an audit to better understand the impact of the 340B program in Kansas and on Kansas hospitals. Suggested topics include:

- The number of prescriptions prescribed by 340B covered entities;
- Whether patients served by these entities are receiving prescriptions at a discounted price; and
- How hospitals are using their 340B savings.
 - The Committee also suggests LPA could work with the University of Kansas Medical Center to learn more about how the 340B program works in a hospital system.

The Committee does not make a specific recommendation on the 2021 legislation it reviewed: HB 2260, currently assigned to the House Committee on Health and Human Services (mirror bill, SB 128), and HB 2383, currently assigned to the House Committee on Insurance and Pensions (mirror bill, SB 244).

Proposed Legislation: None.

BACKGROUND

The Special Committee on Federal 340B Drug Program (Committee) was established by provisions in 2021 SB 159, the 2021 omnibus appropriations bill, Section 20. The Legislative Coordinating Council later affirmed its establishment and appointed the Committee members, with the Speaker of the House of Representatives designating the chairperson. The stated purpose of the Committee is to review the federal 340B Drug Pricing Program (generally referred to as 340B or Program). This review must include:

- Requirements of the federal law;
- The role of qualifying 340B providers, pharmacies, pharmacy benefit managers (PBMs), and pharmaceutical drug manufacturers in such program;
- The fiscal impact of such program on all participants;
- Any recent federal or state law changes affecting such program;
- Any recent marketplace developments of interest; and
- The impact of such program on health care payers, including insureds, self-insureds, and government programs.

COMMITTEE ACTIVITIES

The Committee met October 20 and December 9, 2021. During these meetings, the Committee received testimony on the background and history of the 340B, including how stakeholders such as participating medical facilities (covered entities), pharmacies, PBMs, and drug manufacturers work together under this program. Representatives of these stakeholders presented testimony on their experience with 340B, and legislators from two other states provided information on their experience passing 340B-related legislation in their respective states. In addition, the Committee

received information about pertinent federal legislation and the relationship between Medicaid and the 340B program and a briefing on 2021 HB 2260 and 2021 HB 2383.

Overview of 340B

Analysts from the Kansas Legislative Research Department provided resource documents including an overview memorandum of 340B, a summary spreadsheet detailing recent 340B pricing and reimbursement laws in other states, and a chart outlining the 340B process and flow of revenue.

On October 20, 2021, a doctor of pharmacy (Pharm.D.) from Sentry Data Systems (Sentry) and a lawyer from the law firm of Powers, Pyles, Sutter, and Verville PC (Powers) presented information on a range of topics to provide the Committee with a foundational knowledge of 340B. Topics addressed included program intent, program history, key stakeholders, federal requirements, and challenges facing the program, such as discriminatory reimbursement rates and duplicate discounts. On December 9, the Sentry representative provided additional requested information about the program's history.

340B Process and Key Stakeholders

The Sentry representative noted 340B was established by 1992 law (the Veterans Health Care Act of 1992, adding section 340B to the Public Health Service Act) with a stated purpose to “stretch scarce federal resources as far as possible, reaching more eligible patients and providing more comprehensive services” by reducing the amount covered entities spend on outpatient drugs. The presentation outlined the roles key stakeholders (*e.g.*, covered entities, drug manufacturers, insurers, pharmacies, and drug wholesalers) play in the 340B process, the flow of revenue to the covered entities, and the ways this revenue may be used to increase the accessibility of health care in their communities.

The Sentry representative described the federal requirements to qualify as a 340B covered entity and provided a list of covered entity types, which include federally qualified health centers, state AIDS drug assistance programs, critical access hospitals, and disproportionate share

hospitals. The representative noted the role of PBMs is not addressed in the statutes that established 340B.

340B Timeline

The Sentry representative provided a historical timeline outlining the key developments in the evolution of the 340B program. Two highlighted events were the enactment of the Affordable Care Act in 2010, which expanded the definition of covered entities to include more programs (*e.g.*, certain children’s hospitals and rural referral centers); and the addition of Health Resources and Services Administration (HRSA) audits in 2012.

At the December meeting, the Sentry representative provided a more detailed timeline outlining key events by decade. She noted 340B-related events in the 1990s included the creation of important guidance such as eligibility criteria for covered entities and audit guidelines for both drug manufacturers and the federal government. The representative noted that, in order to be considered an eligible patient, an individual must meet three criteria: receive services from an eligible location, receive services from an eligible provider, and receive services from a covered entity with responsibility for their care. Other noted events were the increase of educational activities and a new requirement that child sites be registered separately (early 2000s), the start of HRSA audits (2012), and increased regulatory authority by HRSA over civil monetary penalties (2019) and alternative dispute resolution (2020).

Discriminatory Reimbursement and Duplicate Discounts

The Powers representative also noted the purpose of 340B is to help covered entities stretch scarce resources to reach more patients and provide more comprehensive care. This is accomplished through the provision of discounted prescription drugs. The discounted drugs allow covered entities to lose less money when providing care to under- or uninsured patients and generate revenue through third-party reimbursement of outpatient drugs for insured patients (revenue often referred to as “340B savings”). The representative commented this process is disrupted if PBMs or other third-party payers reimburse covered entities at a rate lower

than a rate offered to non-covered entities, a practice the representative labeled as “discriminatory reimbursement.”

The Powers representative provided information on legislation created by other states to prohibit discriminatory reimbursement practices in state 340B programs. Legislation enacted in Arkansas and Tennessee was highlighted, as well as the proposed federal PROTECT 340B Act (described later in this report). The representative also noted the challenge of “duplicate discounts” for drugs prescribed to Medicaid patients. This refers to cases when a state Medicaid program receives a rebate for a drug that a covered entity received at the 340B discount price. The representative noted that while covered entities are responsible for protecting manufacturers from duplicate discounts for fee-for-service drugs, states are responsible for ensuring duplicate discounts are not being taken for drugs paid for by a managed care organization.

Rutledge v. Pharmaceutical Care Management Association, 141 S. Ct. 474 (2020) (Rutledge)

The Powers representative described *Rutledge* and the decision’s implications for 340B at the October 20 meeting. The representative called this an important ruling for states that are considering legislation to prevent discriminatory pricing because it supports the states’ rights to legislate in the area of PBM regulation.

The decision was formally reviewed by staff from the Office of the Revisor of Statutes at the December 9 meeting. The Assistant Revisor noted the *Rutledge* opinion issued by the U.S. Supreme Court on December 10, 2020, considered an Arkansas law that regulates the price at which PBMs reimburse pharmacies for drugs covered by prescription drug plans. Among the findings highlighted was that the Court determined the Arkansas law merely sets minimum prices and “does not require plans to provide any particular benefit to any particular beneficiary in any particular way.” Also, the court found the Arkansas law has no impermissible connection to an Employee Retirement Income Security Act of 1974 (ERISA) plan and does not preempt increased costs associated with state-specific enforcement mechanisms, even if an ERISA plan

chooses to limit benefits in response to increased costs.

Actions of Kansas Officials

Representatives from the offices of U.S. Representative Jake LaTurner and the Kansas Attorney General provided information on how their offices have been active in 340B legislation and oversight at the October 20 meeting. Communication with HRSA was provided by the office of U.S. Senator Jerry Moran.

PROTECT 340B Act of 2021; Communication with HRSA

The representative of Congressman LaTurner's office addressed H.R. 4390, the PROTECT (Preserving Rules Ordered for The Entities Covered Through) 340B Act of 2021. He noted the PROTECT 340B Act (Act) was a response to concerns expressed by safety-net providers, particularly those in rural areas, that their 340B savings are being put at risk through discriminatory reimbursement practices. The Act would prohibit health insurers and PBMs from treating 340B providers and their contract pharmacies in a manner that differs from the way health insurers and PBMs would treat a non-340B entity. This prohibition would apply to reimbursement terms and fees, dispensing fees, audits, and inventory management systems. Other provisions in the Act include civil monetary penalties for PBMs that violate the Act and increased data collection to help reduce the opportunity for duplicate discounts. [Note: At the time of this report, H.R. 4390 was assigned to the Subcommittees on Health of the House Committee on Energy and Commerce and the House Committee on Ways and Means, to which it was separately referred.]

A September 17, 2020, jointly-signed letter from 28 U.S. senators, including Senator Moran, to the Secretary of Health and Human Services (HHS) submitted by the office of Senator Moran was distributed to the Committee. The letter called on HRSA (an agency within HHS) to "take appropriate, prompt enforcement action to address violations of the Public Health Service Act." This action is needed, the letter continued, "to ensure the 340B program continues to support access to

quality health services with proper oversight and transparency."

Multistate Letter Signed by State Attorneys General

The Medicaid Inspector General, from the office of the Kansas Attorney General, provided information on the efforts of a bipartisan coalition of attorneys general of 27 states and the District of Columbia. This group produced a letter, dated December 14, 2020, urging HHS to "hold accountable drug manufacturers that are unlawfully refusing to provide discounts to federally qualified health centers, hospitals, and other providers that serve vulnerable patient populations through the 340B Drug Pricing Program." It was noted that the attorneys general argue, in the letter, that by withholding or threatening to withhold 340B discounts, drug manufacturers put low-income patients at risk of losing access to affordable medications while communities continue to battle the COVID-19 pandemic.

Stakeholder Experiences

Representatives of various stakeholders provided their perspectives at the October 20 and December 9 meetings.

Hospitals

The 340B Program Director from Ascension Via Christi and the 340B specialist from Labette Health provided testimony on the experience of hospitals with 340B. The testimony described how hospitals use their 340B savings to offer charity care for uninsured patients, for community health improvement services, and to expand access to care in underserved areas.

The representative from Ascension Via Christi highlighted a concern regarding PBM efforts to lower reimbursement rates and require additional reporting requirements that apply only to 340B providers and pharmacies, which she said hurt hospitals by reducing the 340B savings hospitals receive. Both representatives requested consideration of legislation that would protect Kansas hospitals and pharmacies from PBM practices that are discriminatory to 340B providers.

Safety-net Clinics

Representatives from Community Care Network of Kansas and Health Ministries Clinic and the Director of Pharmacy Services at Salina Family Healthcare Center provided testimony on the experience of safety-net clinics with 340B. The representatives each noted concerns about discriminatory practices on behalf of PBMs that hurt safety-net clinics by diverting 340B savings away from clinics and toward out-of-state entities. This results, the representatives noted, in an increase in health care costs and a decrease in available health care services, particularly in rural communities. The representatives encouraged the Legislature to pass legislation that would prohibit discriminatory contract practices with 340B entities and thus protect Kansans' access to care and ensure the original intent of 340B.

Rural Providers

A pharmacist from Community Health Care System (CHCS) and the Senior Vice President of Community Health Center of Southeast Kansas (CHCSEK) commented on the experience of 340B providers in rural communities. The CHCS representative noted that the counties served by their clinic have been designated as a Health Professional Shortage Area by HRSA and have some of the lowest health outcomes of all Kansas counties. Both conferees noted 340B allows them, in practice, to stretch limited resources to increase access to care in their communities and sustain providers in areas where there is a provider shortage. The representatives stated the discriminatory practices of PBMs are putting their programming at risk, and they urged the Legislature to follow other states in enacting legislation to protect 340B.

Pharmacists

Testimony was provided by a representative of the Kansas Pharmacists Association (KPhA) and a Kansas pharmacist who co-owns several pharmacies in Kansas and provides contracted 340B services for eight 340B entities. The pharmacist noted that community pharmacies establish relationships within their communities and become familiar locations where community members are comfortable receiving their outpatient medication. In this respect, it was noted, pharmacists play an important role as 340B

covered entities. The KPhA representative noted that in recent years, there have been several attempts by PBMs and pharmaceutical companies to reduce payments to pharmacies that contract with 340B covered entities or reduce access for patients receiving 340B medications.

Pharmacy Benefit Managers

The Government Affairs Principal for Prime Therapeutics provided testimony on the experience of PBMs with 340B. It was noted that drug manufacturers must agree to participate in 340B for their drugs to be covered by Medicaid and Medicare Part B. The representative reviewed recent federal activity and noted that the biggest pharmacy beneficiaries of 340B are large pharmacy chains (e.g., Walgreens, CVS Caremark, and Walmart) rather than small community pharmacies. In addition, the Prime Therapeutics representative noted the number of unique covered entity sites and unique contract pharmacies has significantly increased since 2010.

State regulation of PBMs. Information submitted by a representative of the Kansas Insurance Department outlined the current statutes governing PBMs in Kansas and the role of the Department plays in enforcing those statutes. The Kansas Pharmacy Benefit Manager Registration Act (KSA 2020 Supp. 40-3821 through KSA 40-3828) requires each PBM to register with the Department by paying an application fee of \$140 and subsequently renewing every March 31 by paying a \$140 renewal fee. The testimony stated 49 PBMs are currently registered in Kansas. The testimony also noted that any PBM that holds a certificate of registration as an “administrator” as outlined under KSA 2020 Supp. 40-3810 is not required to register (and, therefore, not included in the 49 registered PBMs). It was further noted that under KSA 2020 Supp. 40-3826, a fine of \$500 per violation may be levied on a PBM found to be in violation of KSA 2020 Supp. 40-3821.

Drug Manufacturers

A pharmacist from PhRMA reviewed the changing purpose of the 340B program from 1992 when it was envisioned as a safety-net program to more recent times, stating that “overly broad guidance, historically weak oversight, and a lack of transparency have contributed to the program

often failing patients most in need.” The representative indicated that discounted 340B purchases have grown dramatically since 1992 and noted the number of contract pharmacy arrangements has grown more than 4,000 percent since new guidance was issued in 2010. It was also noted that discounted 340B purchases in 2020 amounted to \$38 billion, an increase of 27 percent over 2019. In addition, the representative provided information on the contract pharmacies for Kansas, stating there are 489 contract pharmacies, of which 347 are in state (71 percent) and 142 are out of state (29 percent).

Relationship of Medicaid and 340B

At the December 9 meeting, the State Medicaid Director, Kansas Department of Health and Environment, described how a 1990 federal law requires drug manufacturers to pay states a mandatory rebate for each prescription issued to a Medicaid beneficiary. Additionally, the 340B law includes language that prohibits duplicate discounts (both a 340B discount and a Medicaid rebate) for one prescription. At this time, Kansas excludes covered entity-owned pharmacy claims and physician-administered drug claims from rebate invoicing. This practice resulted in a rebate loss of approximately \$8.0 million in 2020.

The Medicaid Director also noted that changes negatively impacting the State’s ability to collect rebates on 340B drugs could have a “significant fiscal impact.” For example, the conferee noted, using 2020 data, a 10.0 percent decrease in rebates would result in a \$21.1 million loss in revenue for that year. The Medicaid Director estimated that while the amount of drug rebates coming into the Medicaid program differs each year, it is generally around \$200.0 million.

Experience of Other States in Creating and Passing Legislation

A state representative from Indiana and the Utah Senate Majority Leader provided testimony on their states’ experiences passing 340B-related legislation at the December 9 meeting.

Indiana

The State Representative from Indiana provided information about 2021 HB 1405, a bill

that, among other things, included language to prevent discriminatory reimbursement rates, fees, or limiting an individuals’ choice of drug in contracts between PBMs and 340B covered entities. He indicated the bill was intended to refocus 340B savings on uninsured and under-insured populations and that it received broad bipartisan support. The representative provided fiscal information associated with the bill during Committee discussion.

Utah

The Senate Majority Leader from Utah described his experience with 340B both as a pharmacist and as a legislator. The Majority Leader noted health clinics in his state had recently received notice from CVS/Caremark that it was no longer going to reimburse the clinic on the full amount of the prescription drug. He noted the responding legislation was passed in Utah to protect the ability of the clinics to be reimbursed at the full rate. The Majority Leader noted the Utah legislation excludes drugs that are reimbursed by the state Medicaid program.

Review of Kansas Legislation

Staff from the Office of the Revisor of Statutes provided a briefing on two bills that relate to the 340B program and, more broadly, the regulation of PBMs. Both bills were introduced during the 2021 Legislative Session and remain active for consideration by the 2022 Legislature. Neither bill received a formal hearing during the 2021 Session.

HB 2260 (Short Title: Prohibiting disparate treatment by pharmacy benefits managers of certain pharmacies and pharmaceutical services providers.)

HB 2260 was introduced by the House Committee on Health and Human Services and referred to the same committee. The bill would prohibit a PBM from disparately treating any pharmacy or pharmaceutical services provider based on the pharmacy or provider’s designation as a 340B covered entity. PBMs would be prohibited from imposing or requiring different terms for 340B covered entities than those imposed or required for other pharmacies or providers. Additionally, the bill would prohibit a PBM from discriminating against a 340B covered entity in any way that interferes with a person’s

choice to receive a covered drug from the 340B covered entity. Under the bill, a PBM would be limited in the amount that it could collect as a cost-share amount from a pharmacy, pharmacist, or covered person. [Note: Mirror legislation, SB 128, has been referred to the Senate Committee on Financial Institutions and Insurance.]

HB 2383 (Short title: Providing for enhanced regulation of pharmacy benefits managers and requiring licensure rather than registration of such entities.)

HB 2383 was introduced by the House Committee on Insurance and Pensions and referred to the same committee. The topic of the bill, the Assistant Revisor noted, extends beyond the 340B program and would restructure the legal environment governing PBMs in Kansas. The bill would, among other things, require PBMs to apply for and receive licensure. A PBM license could be revoked, suspended, or limited; a licensee could be censured or placed under probationary conditions; or an application for licensure or renewal could be denied for a variety of conduct relating to fraud, misrepresentation, violation of state or federal statutes or rules and regulations, consumer complaints, and failure to provide required information to the Commissioner of Insurance. The bill also includes anti-retaliation provisions that would protect any pharmacy or pharmacist who provides information requested by the Commissioner related to any complaint or concern. The Commissioner of Insurance would be authorized to establish fines and other penalties as enforcement. The bill also would require PBMs to annually submit transparency reports to the Commissioner containing data from the prior calendar year relating to covered entities and plan sponsors doing business in Kansas. [Note: Mirror legislation, SB 244, has been referred to the Senate Committee on Financial Institutions and Insurance.]

CONCLUSION AND RECOMMENDATIONS

Following discussion, the Committee made the following conclusions and recommendations:

- To enhance the understanding of how this program impacts Kansans, the Committee recommends the following requested

information be presented to any standing committees in which 340B legislation may be scheduled for hearing:

- A comparison of outcomes for providers in 340B covered entities prior to the start of the 340B program and currently;
- A comparison of prescription drug costs prior to the start of the 340B program and currently;
- A summary of legislation passed by other states concerning the 340B program; and
- Updated fiscal notes for pending Kansas legislation relating to the 340B program (HB 2260) and, more generally, the licensure of PBMs (HB 2383).
- The Committee recommends its chairperson submit an audit request to the Legislative Post Audit Committee for the Legislative Division of Post Audit (LPA) to perform an audit to better understand the impact of 340B in Kansas and on Kansas hospitals. Suggested topics include:
 - The number of prescriptions prescribed by 340B covered entities;
 - Whether patients served by these entities are receiving prescriptions at a discounted price; and
 - How hospitals are using their 340B savings.

The Committee also suggests LPA could work with the University of Kansas Medical Center to learn more about how the 340B program works in a hospital system.

- The Committee did not make a specific recommendation on the 2021 legislation it reviewed: HB 2260, currently assigned to the

House Committee on Health and Human Services (mirror bill, SB 128); and HB 2383, currently assigned to the House Committee on Insurance and Pensions (mirror bill, SB 244). The Committee

noted it would like to leave the decision on whether a bill receives a hearing in the hands of the chairperson of each standing committee.

Report of the Special Committee on Government Overreach and the Impact of COVID-19 Mandates to the 2022 Kansas Legislature

CHAIRPERSON: Senator Renee Erickson

VICE-CHAIRPERSON: Representative Brenda Landwehr

OTHER MEMBERS: Senators Ty Masterson, Pat Pettey, Mike Thompson, and Kellie Warren; Representatives John Barker, John Carmichael, Vic Miller, Stephen Owens, and Sean Tarwater

STUDY TOPICS

The Committee is directed to:

- Review and examine potentially unconstitutional federal mandates including, but not limited to, the employer, federal contractor, and health care worker vaccine mandates; masking; and mandates requiring proof of vaccination status; and
- Provide recommendations for constitutionally proper responses to the mandates that would preserve local control and state autonomy, and ensure adequate safeguards for the freedom of all Kansans.

December 2021

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Special Committee on Government Overreach and the Impact of COVID-19 Mandates

REPORT

Recommendation

The Special Committee on Government Overreach and the Impact of COVID-19 Mandates recommends the Legislature call a Special Session by petition for consideration of the three bill drafts listed below.

Proposed Legislation: Three bills (designated for a potential 2021 Special Session.)

22rs2356. Requiring Exemptions from Employer COVID-19 Vaccine Requirements and Providing for Waiver Requests and a Civil Action for Violations Related to Exemptions (as modified by the Committee);

22rs2357. Providing Exceptions to Unemployment Benefit Eligibility Rules for Otherwise Eligible Claimants Who Left Work or Were Discharged for Refusing to Comply with a COVID-19 Vaccine Requirement after Being Denied an Exemption and Retroactively Providing Benefits for Such Claimants Who Were Denied Benefits; and

22rs2384. Authorizing a Civil Action for Damages Caused by an Adverse Reaction or Injury Related to a COVID-19 Vaccine.

BACKGROUND

On September 9, 2021, President Biden announced four federal actions regarding COVID-19 mandates:

- Issuance of Executive Order 14042, requiring COVID-19 vaccination for employees of contractors with federal executive departments and agencies (contractor mandate);
- Issuance of Executive Order 14043, ordering each federal executive branch agency to implement COVID-19 vaccination requirements for all federal employees (federal employee mandate);
- Development of an emergency standard by the U.S. Department of Labor's

Occupational Safety and Health Administration (OSHA) requiring employers with 100 or more employees to mandate each employee be vaccinated or submit to weekly testing (OSHA mandate); and

- Expansion of a prior COVID-19 vaccination requirement by the U.S. Centers for Medicare and Medicaid Services (CMS) to require such vaccinations for workers in most health care settings receiving Medicare or Medicaid reimbursement (CMS mandate).

Subsequent to the announcement and pursuant to KSA 46-1205, the Legislative Coordinating Council (LCC) appointed 11 members of the Legislature to serve as members of the Special Committee on Government Overreach and the Impact of COVID-19 Mandates (Committee). The

LCC directed the Committee to review and examine federal mandates including, but not limited to, the OSHA, contractor, and CMS mandates; masking; and mandates requiring proof of vaccination status. The LCC also directed the Committee to provide recommendations for responses to the mandates. The LCC granted the Committee five meeting days to complete this task.

COMMITTEE ACTIVITIES

The Committee met four times, on October 29 and 30 and November 9 and 12, 2021. Documents and testimony from those meetings may be viewed via the Committee's page of the Legislature's website, www.kslegislature.org/li/b2021_22/committees/ctte_spc_2021_gov_ovrrch_and_covid19_1/.

October 29 Meeting

On October 29, the Committee received an overview from staff of the Office of the Revisor of Statutes (Revisors) regarding the four federal actions regarding COVID-19 mandates announced by President Biden on September 9, 2021: two federal executive orders and two proposed federal agency actions. The information provided by the Revisors included the following: the contractor mandate is generally effective immediately and requires full vaccination of covered contractor employees no later than December 8, 2021; the federal employee mandate requires full vaccination of federal executive branch employees no later than November 22, 2021; the proposed OSHA action will be implemented by an emergency temporary standard, which can remain in effect for up to six months before OSHA must either adopt a permanent standard or discontinue the standard; and the CMS mandate will be implemented by an interim final rule by CMS, which the agency indicated would be issued in October. Neither the emergency temporary standard nor CMS interim final rule had been made public or published as of October 28.

In response to Committee questions, the Revisors indicated the CMS rule was expected to cover facilities participating in Medicare and Medicaid; the Supremacy Clause of the *U.S. Constitution* could limit the effectiveness of a Kansas statute attempting to limit the application

of the federal mandates, although this would likely be a fact-specific question that would require litigation to resolve; and the Executive Orders implementing the contractor mandate and federal employee mandate are worded carefully to try to fall within the authority and powers provided to the President over executive branch matters.

The Attorney General and the Solicitor General updated the Committee on pending and anticipated litigation by Kansas, other states, individuals, and other entities to challenge the OSHA, contractor, and CMS mandates. The Attorney General said he anticipates filing litigation, or joining other states in filing litigation, challenging these three mandates, while the federal employee mandate will likely be an issue left for resolution between federal employees and the federal government.

The Attorney General stated Supremacy Clause issues usually come down to two questions: is the federal action a valid exercise of federal power, and if so, is the state action actually contrary to, or in some manner in conflict with, the federal action? The Solicitor General stated the federal mandates may be challenged by individuals based on legal exceptions for sincerely held religious beliefs or medical circumstances and disabilities, and noted a budget proviso in 2021 SB 159 prohibiting the use of state funds to require an individual to use a COVID-19 vaccination passport within Kansas for any purpose.

In response to Committee questions, the Solicitor General provided additional detail regarding the OSHA emergency temporary standard process and stated that, in addition to litigation brought by the State challenging federal authority to issue the mandates, individuals also may be able to challenge the mandates on additional constitutional grounds.

The President and Chief Executive Officer of the Kansas Board of Regents addressed the Committee regarding the effect of the contractor mandate on state universities with federal contracts, including the following information. Based on the contractor mandate and guidance issued by the Safer Federal Workforce Task Force led by the White House COVID-19 Response Team, he issued a memorandum to state

universities instructing them to identify their contracts impacted by the contractor mandate.

It was noted state universities in Kansas have hundreds of contracts with a variety of federal agencies, and subcontracts with large private companies acting as federal contractors. These contracts and subcontracts involve thousands of jobs and hundreds of millions of dollars, and failure to adhere to the contractor mandate and guidance could jeopardize the contracts. In response to questions, he provided information regarding the vaccination exemption forms used by the University of Kansas, Kansas State University, and Wichita State University.

The Revisors then presented an overview of the legal framework governing exemptions from employer vaccination requirements for religious or medical reasons, including religious exemptions under Title VII of the federal Civil Rights Act of 1964 and the Kansas Act Against Discrimination, and medical exemptions under the Americans with Disabilities Act and the Kansas Act Against Discrimination.

A representative of the Kansas Chamber of Commerce expressed his organization's concerns with mandates regarding the COVID-19 vaccine that impact businesses, regardless of whether the mandate is issued by the federal or state government and regardless of the purpose of the mandate.

A representative of the International Association of Machinists and Aerospace Workers, Wichita, District 70, expressed his organization's opposition to the federal COVID-19 vaccine mandates.

The Kansas Department of Health and Environment and Kansas Department for Aging and Disability Services provided written-only joint informational testimony regarding the four federal actions regarding COVID-19 mandates.

The remainder of the October 29 meeting consisted of public comment by Senators Tyson and Straub, as well as by multiple private citizens, regarding the personal or business impact of COVID-19 mandates and the related federal actions.

October 30 Meeting

On October 30, the public comment period that began during the October 29 meeting continued, with Senator Steffen, Representative Jacobs, and additional private citizens providing testimony. Most conferees expressed support for state or legislative action in response to the federal COVID-19 mandates to reduce or eliminate the application of the mandates in Kansas.

Multiple private citizens and representatives of various businesses and organizations submitted written-only public comment.

November 9 Meeting

On November 9, the Committee received an overview from Revisors of two federal agency actions published in the *Federal Register* on November 5, 2021: the OSHA emergency temporary standard implementing the OSHA mandate, and the CMS interim final rule with comment period implementing the CMS mandate. The OSHA mandate covers all private employers with a total of 100 or more employees, subject to a few exceptions, and requires these employers to implement a mandatory COVID-19 vaccination policy or a policy requiring either vaccination or regular testing and face coverings. The Revisors stated covered employers must comply with most provisions of the OSHA emergency temporary standard by December 6, 2021, and the testing alternative must be completed by January 4, 2022. The CMS mandate requires staff at most Medicare-certified and Medicaid-certified health care providers and suppliers to be vaccinated against COVID-19. Compliance with most provisions of the CMS mandate interim final rule is required by December 6, 2021, and compliance with the requirement that all covered, non-exempt staff are fully vaccinated for COVID-19 must be completed by January 4, 2022. The Revisors provided additional details regarding the requirements of both the OSHA mandate and the CMS mandate.

The Revisors responded to Committee member questions regarding application of the mandates to employees working from home and telehealth employees; determination of covered employees to reach the minimum of 100 for the OSHA mandate to apply; the two lawsuits joined by the Kansas Attorney General against the mandates; federal

preemption arguments regarding the mandates; an injunction by the federal Fifth Circuit staying the OSHA mandate; OSHA enforcement of the OSHA mandate; and possible procedures and timelines for the litigation regarding the mandates.

An attorney planning to file litigation challenging the federal mandates provided an overview of the claims he planned to raise against the OSHA mandate, including arguments that the mandate expands OSHA powers beyond the limits of the interstate commerce clause; fails to meet the statutory standards for an emergency temporary standard; violates the First Amendment rights of employees because it effectively implements a tax for religious beliefs; and violates Fifth Amendment substantive liberty rights. He stated a federal regulation can preempt a state constitution or statute, but the regulation must be authorized by a federal act or else is null and void.

He said there should be legislation prohibiting state or private employers from imposing vaccine mandates on employees, but stated such legislation would probably need an exemption for the federal government as an employer to avoid possible constitutional issues that could result in the legislation being struck down by a court. He also suggested imposing liability on employers for any consequences to employees from taking a vaccine and that a bill require all employers to offer religious exemptions without second-guessing the request for exemption. In response to Committee questions, the attorney stated that federal employees and military members likely would have constitutional issues they could raise regarding the mandates in litigation, even though they should not be included in the state legislation; and enactment of state legislation could allow the Kansas Attorney General to raise any additional arguments regarding the mandates that might not have been included in existing litigation, should the state legislation be challenged in court.

A representative of the New Civil Liberties Alliance urged the Legislature to consider two things as it considered its options for legislation in response to the federal mandates: that the federal statute governing emergency use authorization of vaccines should be read to forbid federal mandates and constrain state and local mandates, and that the U.S. Supreme Court case *Jacobson v. Massachusetts*, frequently cited in support of

vaccine mandates, can be distinguished from the current mandate situation in several crucial respects.

A representative of the Kansas Justice Institute submitted written-only testimony regarding possible actions the State and Legislature could take in response to the federal mandates.

The Revisors explained two bill drafts developed at the request of Senator Masterson: 22rs2356, regarding exemptions from employer COVID-19 vaccine requirements, and 22rs2357, providing exceptions to unemployment benefit eligibility rules related to compliance with a COVID-19 vaccine requirement. [Note: Briefs of these bill drafts may be found in the final section of this report, and the bill drafts are attached.]

Following discussion, the Committee voted to conduct informational hearings on both bill drafts on November 12, with the bill drafts being subject to additional modifications by the Committee.

The Committee also voted to recommend the Legislature call a Special Session by petition for consideration of the two bill drafts. Senator Masterson announced the tentative date for such Special Session would be November 22, 2021.

November 12 Meeting

On November 12, the Committee received an overview from the Revisors regarding exemptions from vaccination requirements for K-12 schools or colleges and universities in Kansas. Under Kansas statutes, children enrolling in K-12 schools and preschool or day care programs operated by schools are required to receive tests and inoculations deemed necessary by the Secretary of Health and Environment. The statutes provide for exemptions if the required test or inoculation would seriously endanger the life or health of the student or if the student is an adherent of a religious denomination whose religious teachings oppose such tests or inoculation. The Kansas Department of Health and Environment provides a uniform medical exemption form for use by school districts, but there is no uniform religious exemption form.

The Revisors stated the only Kansas statute governing vaccinations and exemptions in colleges

and universities, KSA 76-761a, relates to a meningitis vaccine requirement for all incoming students residing in student housing. Policies under the statute must include appropriate waiver procedures for students who refuse to take the vaccine, but reasons for refusal are not specified in the statute.

The Revisors responded to Committee questions regarding exemption forms; who determines whether an exemption is granted; quarantine requirements for students; and the rules and regulations process.

Exemptions from employer requirements.

The Committee held an informational hearing on bill draft 22rs2356, regarding exemptions from employer COVID-19 vaccine requirements. Representatives of the Libertarian Party (4th District), Kansans for Health Freedom, and Kansas Family Voice and nine private citizens testified as proponents of the bill draft. Proponents generally supported the protections provided by the bill for employees with medical or religious objections to receiving a vaccine; some proponents stated additional language should be added to further strengthen the protections. A representative of the National Federation of Independent Business and a private citizen testified as neutral conferees. Representatives of the Kansas Chamber of Commerce, Kansas State Nurses Association, Mainstream Coalition, and LeadingAge Kansas, as well as a private citizen, testified as opponents of the bill draft. Most opponents generally expressed their opposition to any mandates on businesses, by the federal or state government, regarding vaccines, and noted concerns regarding possible conflicts between the provisions of the bill and the federal mandates, which could require businesses to choose between violating state law and violating federal law.

Multiple private citizens and representatives of various businesses and organizations submitted written-only testimony expressing a variety of viewpoints on the bill draft and the topic of vaccine mandates, generally.

Unemployment benefit eligibility.

The Committee held an informational hearing on bill draft 22rs2357, providing exceptions to unemployment benefit eligibility rules related to

compliance with a COVID-19 vaccine requirement. A representative of the Libertarian Party (4th District) and two private citizens testified as proponents of the bill draft, stating support for extending benefit eligibility to an employee who leaves employment due to denial of their request for a medical or religious exemption to an employer COVID-19 vaccine requirement. Representatives of the Kansas Chamber of Commerce, Kansas State Nurses Association, National Federation of Independent Business, and LeadingAge Kansas testified as opponents of the bill draft, generally expressing concerns regarding possible unemployment insurance tax increases on employers and the possible impact on the Unemployment Insurance Trust Fund.

Multiple private citizens and representatives of various businesses and organizations submitted written-only testimony expressing a variety of viewpoints on the bill draft and the topic of vaccine mandates, generally.

Bill drafts. After discussion, the Committee agreed to modify bill draft 22rs2356, regarding exemptions from employer COVID-19 vaccine requirements, to:

- Expand the list of medical providers who could provide the written statement required to accompany a request for a medical exemption; and
- Prohibit punitive action by an employer against an employee who submits a request for exemption under the bill.

[*Note:* Copies of the modifications are included with the attachments.]

The Committee made no modifications to bill draft 22rs2357, providing exceptions to unemployment benefit eligibility rules related to compliance with a COVID-19 vaccine requirement.

Representative Miller submitted bill draft 22rs2384, authorizing a civil action for damages for an adverse vaccine reaction, and the Committee agreed to recommend the bill draft for consideration at the Special Session.

RECOMMENDATIONS

The Committee recommends the Legislature call a Special Session by petition for consideration of three bill drafts:

- **22rs2356.** Requiring Exemptions from Employer COVID-19 Vaccine Requirements and Providing for Waiver Requests and a Civil Action for Violations Related to Exemptions (as modified by the Committee);
- **22rs2357.** Providing Exceptions to Unemployment Benefit Eligibility Rules for Otherwise Eligible Claimants Who Left Work or Were Discharged for Refusing to Comply with a COVID-19 Vaccine Requirement after Being Denied an Exemption and Retroactively Providing Benefits for Such Claimants Who Were Denied Benefits; and
- **22rs2384.** Authorizing a Civil Action for Damages Caused by an Adverse Reaction or Injury Related to a COVID-19 Vaccine.

[Note: Some provisions similar to those in these bill drafts are included in 2021 Special Session HB 2001, passed by the Legislature on November 22, 2021, and signed by the Governor and published in the *Kansas Register* on November 23, 2021.]

BRIEFS OF PROPOSED LEGISLATION

22rs2356. Requiring Exemptions from Employer COVID-19 Vaccine Requirements and Providing for Waiver Requests and a Civil Action for Violations Related to Exemptions.

As modified by the Committee, this bill draft would, notwithstanding any provisions of law to the contrary, if an employer implements a COVID-19 vaccine requirement, require the employer to exempt an employee from such requirement, without punitive action, if the employee submits a written waiver request to the employer stating that complying with the requirement would:

- Endanger the life or health of the employee or an individual residing with the employee, as evidenced by an accompanying written statement signed by a physician or another person who performs acts pursuant to practice agreements or protocols, or at the order, direction, or delegation of a physician; or
- Violate sincerely held religious beliefs of the employee, as evidenced by an accompanying written statement signed by the employee.

The bill draft would require an employer to grant an exemption requested in accordance with the bill based on sincerely held religious beliefs without inquiring as to the sincerity of the request.

The bill draft would allow an employee aggrieved by a violation of the bill to bring a civil action in an appropriate district court against an employer for injunctive relief and actual damages caused by the violation, and would require the court to award a prevailing plaintiff in such action the cost of the suit, including reasonable attorney fees.

For purposes of its provisions, the bill draft would define “COVID-19 vaccine,” “COVID-19 vaccine requirement,” “employee,” “employer,” “person,” “physician,” and “punitive action.”

The bill would take effect upon publication in the *Kansas Register*.

22rs2357. Providing Exceptions to Unemployment Benefit Eligibility Rules for Otherwise Eligible Claimants Who Left Work or Were Discharged for Refusing to Comply with a COVID-19 Vaccine Requirement after Being Denied an Exemption and Retroactively Providing Benefits for Such Claimants Who Were Denied Benefits.

The bill draft would amend the Employment Security Law to add the following to the list of conditions that do not disqualify for benefits an otherwise eligible unemployed claimant: the claimant has declined to accept work requiring compliance with a COVID-19 vaccine requirement as a condition of employment, the individual has

requested an exemption or accommodation from such requirement provided by state or federal law, and such request was denied. Such work would be deemed not to constitute suitable work for purposes of the Employment Security Law.

The bill draft would add to the list of conditions not disqualifying an individual for benefits for leaving work voluntarily without good cause a situation in which the individual left work due to the individual's refusal to comply with a COVID-19 vaccine requirement after the individual requested an exemption or accommodation from such requirement provided by state or federal law and such request was denied. Similarly, the bill draft would add an exception from disqualification for benefits when an individual is discharged by an employer for refusal to comply with a COVID-19 vaccine requirement after the individual requested an exemption or accommodation from such requirement provided by state or federal law and such request was denied, and an otherwise eligible individual would not be disqualified from benefits for refusing to accept new work if the position offered would require the individual to comply with a COVID-19 vaccine requirement, the individual has requested an exemption or accommodation from such requirement provided by state or federal law, and such request was denied.

The bill draft would allow a claimant, upon request, to be retroactively paid benefits for any week the claimant would otherwise have been eligible for such benefits, if the claimant was disqualified from receiving such benefits during the period of September 9, 2021, through the effective date of the bill, on the grounds that the claimant voluntarily left employment without good cause or was discharged or suspended for misconduct as the result of the claimant's refusal to comply with a COVID-19 vaccine requirement after the individual requested an exemption or accommodation from such requirement provided by state or federal law and such request was refused. The bill draft would require the Secretary of Labor (Secretary) to independently review any claims denied during the same period because the claimant was disqualified on the same grounds

under the same circumstances, and, if the claimant has not requested retroactive payment of such benefits, the Secretary would be required to retroactively pay benefits to such claimant for any week the claimant would otherwise have been eligible for such benefits. The Secretary would be required to develop and implement procedures to enable claimants to retroactively substantiate and file claims under these provisions, and the claimant or the employer would be allowed to appeal an award or denial of benefits made pursuant to these provisions.

For purposes of its provisions, the bill draft would define "COVID-19 vaccine" and "COVID-19 vaccine requirement" within the Employment Security Law.

The bill would take effect upon publication in the *Kansas Register*.

22rs2384. Authorizing a Civil Action for Damages Caused by an Adverse Reaction or Injury Related to a COVID-19 Vaccine.

The bill draft would allow an individual to bring a civil action in an appropriate district court against an employer or other person for any damages caused by an adverse reaction or injury related to a COVID-19 vaccine if:

- The employer or other person imposed a COVID-19 vaccine requirement on such individual; and
- The individual complied with the requirement and received a COVID-19 vaccine as a result of such requirement.

The court would be required to award a prevailing plaintiff the cost of the suit, including reasonable attorney fees, in such an action.

For purposes of its provisions, the bill draft would define "COVID-19 vaccine," "COVID-19 vaccine requirement," "employer," and "person."

The bill would take effect upon publication in the *Kansas Register*.

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Appendix

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AN ACT concerning employer COVID-19 vaccine requirements; requiring exemptions; providing for waiver requests and a civil action for violations related to exemptions.

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

Section 1. (a) Notwithstanding any provision of law to the contrary, if an employer implements a COVID-19 vaccine requirement, the employer shall exempt an employee from such requirement if the employee submits a written waiver request to the employer stating that complying with such requirement would:

(1) Endanger the life or health of the employee or an individual who resides with the employee, as evidenced by an accompanying written statement signed by a physician licensed by the state board of healing arts or an advanced practice registered nurse licensed by the board of nursing; or

(2) violate sincerely held religious beliefs of the employee, as evidenced by an accompanying written statement signed by the employee.

(b) An employer shall grant an exemption requested in accordance with this section based on sincerely held religious beliefs without inquiring into the sincerity of the request.

(c) (1) An employee aggrieved by a violation of this section may bring a civil action in an appropriate district court against an employer for injunctive relief and actual damages caused by such violation.

(2) In an action under this section, the court shall award a prevailing plaintiff the cost of the suit, including reasonable attorney fees.

(d) As used in this section:

(1) "COVID-19 vaccine" means an immunization, vaccination or injection against

disease caused by the novel coronavirus identified as SARS-CoV-2 or disease caused by a variant of the virus;

(2) "COVID-19 vaccine requirement" means that an employer:

(A) Requires an employee to receive a COVID-19 vaccine;

(B) requires an employee to provide documentation certifying receipt of a COVID-19 vaccine; or

(C) enforces a requirement described in subparagraph (A) or (B) that is imposed by the federal government or any other entity;

(3) "employee" means an individual who is employed in this state for wages by an employer and includes an applicant for employment;

(4) "employer" means any person in this state who employs one or more persons and includes the state of Kansas and all political subdivisions of the state;

(5) "person" means an individual, partnership, association, organization, corporation, legal representative, trustee, trustee in bankruptcy or receiver; and

(6) "physician" means an individual licensed to practice medicine and surgery.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

AN ACT concerning employer COVID-19 vaccine requirements; requiring exemptions; providing for waiver requests and a civil action for violations related to exemptions.

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

Section 1. (a) Notwithstanding any provision of law to the contrary, if an employer implements a COVID-19 vaccine requirement, the employer shall exempt an employee from such requirement if the employee submits a written waiver request to the employer stating that complying with such requirement would:

(1) Endanger the life or health of the employee or an individual who resides with the employee, as evidenced by an accompanying written statement signed by a physician ~~licensed by the state board of healing arts or an advanced practice registered nurse licensed by the board of nursing;~~ or

(2) violate sincerely held religious beliefs of the employee, as evidenced by an accompanying written statement signed by the employee.

(b) An employer shall grant an exemption requested in accordance with this section based on sincerely held religious beliefs without inquiring into the sincerity of the request.

(c) (1) An employee aggrieved by a violation of this section may bring a civil action in an appropriate district court against an employer for injunctive relief and actual damages caused by such violation.

(2) In an action under this section, the court shall award a prevailing plaintiff the cost of the suit, including reasonable attorney fees.

(d) As used in this section:

(1) "COVID-19 vaccine" means an immunization, vaccination or injection against

Proposed Amendments
Physicians and Other Persons
November 12, 2021
Prepared by: Jason Thompson
Office of Revisor of Statutes

or another person who performs acts pursuant to practice agreements, protocols or at the order, direction or delegation of a physician

disease caused by the novel coronavirus identified as SARS-CoV-2 or disease caused by a variant of the virus;

(2) "COVID-19 vaccine requirement" means that an employer:

(A) Requires an employee to receive a COVID-19 vaccine;

(B) requires an employee to provide documentation certifying receipt of a COVID-19 vaccine; or

(C) enforces a requirement described in subparagraph (A) or (B) that is imposed by the federal government or any other entity;

(3) "employee" means an individual who is employed in this state for wages by an employer and includes an applicant for employment;

(4) "employer" means any person in this state who employs one or more persons and includes the state of Kansas and all political subdivisions of the state;

(5) "person" means an individual, partnership, association, organization, corporation, legal representative, trustee, trustee in bankruptcy or receiver; and

(6) "physician" means an individual licensed to practice medicine and surgery.

by the state board of healing arts

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

Proposed Amendments
Punitive action prohibited
November 12, 2021
Prepared by: Jason Thompson
Office of Revisor of Statutes

AN ACT concerning employer COVID-19 vaccine requirements; requiring exemptions; providing for waiver requests and a civil action for violations related to exemptions.

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

Section 1. (a) Notwithstanding any provision of law to the contrary, if an employer implements a COVID-19 vaccine requirement, the employer shall exempt an employee from such requirement if the employee submits a written waiver request to the employer stating that complying with such requirement would:

, without punitive action,

(1) Endanger the life or health of the employee or an individual who resides with the employee, as evidenced by an accompanying written statement signed by a physician licensed by the state board of healing arts or an advanced practice registered nurse licensed by the board of nursing; or

(2) violate sincerely held religious beliefs of the employee, as evidenced by an accompanying written statement signed by the employee.

(b) An employer shall grant an exemption requested in accordance with this section based on sincerely held religious beliefs without inquiring into the sincerity of the request.

(c) (1) An employee aggrieved by a violation of this section may bring a civil action in an appropriate district court against an employer for injunctive relief and actual damages caused by such violation.

(2) In an action under this section, the court shall award a prevailing plaintiff the cost of the suit, including reasonable attorney fees.

(d) As used in this section:

(1) "COVID-19 vaccine" means an immunization, vaccination or injection against

disease caused by the novel coronavirus identified as SARS-CoV-2 or disease caused by a variant of the virus;

(2) "COVID-19 vaccine requirement" means that an employer:

(A) Requires an employee to receive a COVID-19 vaccine;

(B) requires an employee to provide documentation certifying receipt of a COVID-19 vaccine; or

(C) enforces a requirement described in subparagraph (A) or (B) that is imposed by the federal government or any other entity;

(3) "employee" means an individual who is employed in this state for wages by an employer and includes an applicant for employment;

(4) "employer" means any person in this state who employs one or more persons and includes the state of Kansas and all political subdivisions of the state;

(5) "person" means an individual, partnership, association, organization, corporation, legal representative, trustee, trustee in bankruptcy or receiver; ~~and~~

Strike

(6) "physician" means an individual licensed to practice medicine and surgery;

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

; and
(7) "punitive action" means any dismissal, demotion, transfer, reassignment, suspension, reprimand, warning of possible dismissal or withholding of work

AN ACT concerning employment security law; providing exceptions to benefit eligibility conditions and disqualification conditions based on refusal to comply with COVID-19 vaccine requirements; retroactive provision of benefits when denied on the basis of discharge for misconduct or voluntarily leaving employment without good cause for refusal to comply with COVID-19 vaccine requirements; amending K.S.A. 44-703, 44-705, 44-706 and 44-709 and repealing the existing sections.

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

Section 1. K.S.A. 44-703 is hereby amended to read as follows: 44-703. As used in this act, unless the context clearly requires otherwise:

(a) (1) "Annual payroll" means the total amount of wages paid or payable by an employer during the calendar year.

(2) "Average annual payroll" means the average of the annual payrolls of any employer for the last three calendar years immediately preceding the computation date as hereinafter defined if the employer has been continuously subject to contributions during those three calendar years and has paid some wages for employment during each of such years. In determining contribution rates for the calendar year, if an employer has not been continuously subject to contribution for the three calendar years immediately preceding the computation date but has paid wages subject to contributions during only the two calendar years immediately preceding the computation date, such employer's "average annual payroll" shall be the average of the payrolls for those two calendar years.

(3) "Total wages" means the total amount of wages paid or payable by an employer during the calendar year, including that part of remuneration in excess of the limitation prescribed as provided in subsection (o)(1).

(b) "Base period" means the first four of the last five completed calendar quarters

immediately preceding the first day of an individual's benefit year, except that the base period in respect to combined wage claims means the base period as defined in the law of the paying state.

(1) If an individual lacks sufficient base period wages in order to establish a benefit year in the manner set forth above and satisfies the requirements of K.S.A. [44-703\(hh\)](#) and 44-705(g) ~~and K.S.A. 44-703(hh)~~, and amendments thereto, the claimant shall have an alternative base period substituted for the current base period so as not to prevent establishment of a valid claim. For the purposes of this subsection, "alternative base period" means the last four completed quarters immediately preceding the date the qualifying injury occurred. In the event the wages in the alternative base period have been used on a prior claim, then they shall be excluded from the new alternative base period.

(2) For the purposes of this chapter, the term "base period" includes the alternative base period.

(c) (1) "Benefits" means the money payments payable to an individual, as provided in this act, with respect to such individual's unemployment.

(2) "Regular benefits" means benefits payable to an individual under this act or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, other than extended benefits.

(d) "Benefit year" with respect to any individual, means the period beginning with the first day of the first week for which such individual files a valid claim for benefits, and such benefit year shall continue for one full year. In the case of a combined wage claim, the benefit year shall be the benefit year of the paying state. Following the termination of a benefit year, a subsequent benefit year shall commence on the first day of the first week with respect to which an individual next files a claim for benefits. When such filing occurs with respect to a week that

overlaps the preceding benefit year, the subsequent benefit year shall commence on the first day immediately following the expiration date of the preceding benefit year. Any claim for benefits made in accordance with K.S.A. 44-709(a), and amendments thereto, shall be deemed to be a "valid claim" for the purposes of this subsection if the individual has been paid wages for insured work as required under K.S.A. 44-705(e), and amendments thereto. Whenever a week of unemployment overlaps two benefit years, such week shall, for the purpose of granting waiting-period credit or benefit payment with respect thereto, be deemed to be a week of unemployment within that benefit year in which the greater part of such week occurs.

(e) "Commissioner" or "secretary" means the secretary of labor.

(f) (1) "Contributions" means the money payments to the state employment security fund that are required to be made by employers on account of employment under K.S.A. 44-710, and amendments thereto, and voluntary payments made by employers pursuant to such statute.

(2) "Payments in lieu of contributions" means the money payments to the state employment security fund from employers that are required to make or that elect to make such payments under K.S.A. 44-710(e), and amendments thereto.

(g) "Employing unit" means any individual or type of organization, including any partnership, association, limited liability company, agency or department of the state of Kansas and political subdivisions thereof, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign including nonprofit corporations, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representatives of a deceased person, that has in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state shall be deemed to be employed by a single

employing unit for all the purposes of this act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the employment.

(h) "Employer" means:

(1) (A) Any employing unit for which agricultural labor as defined in subsection (w) is performed and during any calendar quarter in either the current or preceding calendar year paid remuneration in cash of \$20,000 or more to individuals employed in agricultural labor or for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor 10 or more individuals, regardless of whether they were employed at the same moment of time.

(B) For the purpose of this subsection (h)(1), any individual who is a member of a crew furnished by a crew leader to perform services in agricultural labor for any other person shall be treated as an employee of such crew leader if:

(i) Such crew leader holds a valid certificate of registration under the federal migrant and seasonal agricultural workers protection act or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment or any other mechanized equipment, that is provided by such crew leader; and

(ii) such individual is not in the employment of such other person within the meaning of subsection (i).

(C) For the purpose of this subsection (h)(1), in the case of any individual who is furnished by a crew leader to perform services in agricultural labor for any other person and who

is not treated as an employee of such crew leader:

(i) Such other person and not the crew leader shall be treated as the employer of such individual; and

(ii) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on the crew leader's own behalf or on behalf of such other person, for the services in agricultural labor performed for such other person.

(D) For the purposes of this subsection (h)(1) "crew leader" means an individual who:

(i) Furnishes individuals to perform services in agricultural labor for any other person;

(ii) pays, either on such individual's own behalf or on behalf of such other person, the individuals so furnished by such individual for the services in agricultural labor performed by them; and

(iii) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(2) (A) Any employing unit that for calendar year 2007 and each calendar year thereafter: (i) In any calendar quarter in either the current or preceding calendar year paid for services in employment wages of \$1,500 or more; (ii) for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or preceding calendar year, had in employment at least one individual, whether or not the same individual was in employment in each such day; or (iii) elects to have an unemployment tax account established at the time of initial registration in accordance with K.S.A. 44-711(c), and amendments thereto.

(B) Employment of individuals to perform domestic service or agricultural labor and

wages paid for such service or labor shall not be considered in determining whether an employing unit meets the criteria of this subsection (h)(2).

(3) Any employing unit for which service is employment as defined in subsection (i)(3) (E).

(4) (A) Any employing unit, whether or not it is an employing unit under subsection (g), that acquires or in any manner succeeds to: (i) Substantially all of the employing enterprises, organization, trade or business; or (ii) substantially all the assets, of another employing unit that at the time of such acquisition was an employer subject to this act;

(B) any employing unit that is controlled substantially, either directly or indirectly by legally enforceable means or otherwise, by the same interest or interests, whether or not such interest or interests are an employing unit under subsection (g), acquires or in any manner succeeds to a portion of an employer's annual payroll, is less than 100% of such employer's annual payroll, and intends to continue the acquired portion as a going business.

(5) Any employing unit that paid cash remuneration of \$1,000 or more in any calendar quarter in the current or preceding calendar year to individuals employed in domestic service as defined in subsection (aa).

(6) Any employing unit that having become an employer under this subsection (h) has not, under K.S.A. 44-711(b), and amendments thereto, ceased to be an employer subject to this act.

(7) Any employing unit that has elected to become fully subject to this act in accordance with K.S.A. 44-711(c), and amendments thereto.

(8) Any employing unit not an employer by reason of any other paragraph of this subsection (h), for which within either the current or preceding calendar year services in

employment are or were performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund; or that, as a condition for approval of this act for full tax credit against the tax imposed by the federal unemployment tax act, is required, pursuant to such act, to be an "employer" under this act.

(9) Any employing unit described in section 501(c)(3) of the federal internal revenue code of 1986 that is exempt from income tax under section 501(a) of the code that had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(i) "Employment" means:

(1) Subject to the other provisions of this subsection, service, including services in interstate commerce, performed by:

(A) Any active officer of a corporation; or

(B) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee subject to the provisions of subsection (i)(3)(D); or

(C) any individual other than an individual who is an employee under subsection (i)(1)(A) or subsection (i)(1)(B) above who performs services for remuneration for any person:

(i) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages, other than milk, or laundry or dry-cleaning services, for such individual's principal; or

(ii) as a traveling or city salesman, other than as an agent-driver or commission-driver,

engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, a principal, except for side-line sales activities on behalf of some other person, of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

For purposes of subsection (i)(1)(C), the term "employment" includes services described in paragraphs (i) and (ii) above only if:

(a) The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

(b) the individual does not have a substantial investment in facilities used in connection with the performance of the services, other than in facilities for transportation; and

(c) the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(2) The term "employment" includes an individual's entire service within the United States, even though performed entirely outside this state if:

(A) The service is not localized in any state;

(B) the individual is one of a class of employees who are required to travel outside this state in performance of their duties; and

(C) the individual's base of operations is in this state, or if there is no base of operations, then the place where service is directed or controlled is in this state.

(3) The term "employment" also includes:

(A) Services performed within this state but not covered by the provisions of subsection (i)(1) or subsection (i)(2) shall be deemed to be employment subject to this act if contributions are not required and paid with respect to such services under an unemployment compensation

law of any other state or of the federal government.

(B) Services performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act only if the individual performing such services is a resident of this state and the secretary approved the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

(C) Services covered by an arrangement pursuant to K.S.A. 44-714(j), and amendments thereto, between the secretary and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this state, shall be deemed to be employment if the secretary has approved an election of the employing unit for whom such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be insured work.

(D) Services performed by an individual for wages or under any contract of hire shall be deemed to be employment subject to this act if the business for which activities of the individual are performed retains not only the right to control the end result of the activities performed, but the manner and means by which the end result is accomplished.

(E) Services performed by an individual in the employ of this state or any instrumentality thereof, any political subdivision of this state or any instrumentality thereof, or in the employ of an Indian tribe, as defined pursuant to section 3306(u) of the federal unemployment tax act, any instrumentality of more than one of the foregoing or any instrumentality that is jointly owned by this state or a political subdivision thereof or Indian

tribes and one or more other states or political subdivisions of this or other states, provided that such service is excluded from "employment" as defined in the federal unemployment tax act by reason of section 3306(c)(7) of that act and is not excluded from "employment" under subsection (i)(4)(A) of this section. For purposes of this section, the exclusions from employment in subsections (i)(4)(A) and (i)(4)(L) shall also be applicable to services performed in the employ of an Indian tribe.

(F) Services performed by an individual in the employ of a religious, charitable, educational or other organization that is excluded from the term "employment" as defined in the federal unemployment tax act solely by reason of section 3306(c)(8) of that act, and is not excluded from employment under subsection (i)(4)(I) through (M).

(G) The term "employment" includes the services of an individual who is a citizen of the United States, performed outside the United States except in Canada, in the employ of an American employer, other than service that is deemed "employment" under the provisions of subsection (i)(2) or subsection (i)(3) or the parallel provisions of another state's law, if:

(i) The employer's principal place of business in the United States is located in this state; or

(ii) the employer has no place of business in the United States, but:

(a) The employer is an individual who is a resident of this state;

(b) the employer is a corporation which is organized under the laws of this state; or

(c) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of (i)(3)(G)(i) and (ii) are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual

has filed a claim for benefits, based on such service, under the law of this state.

(H) An "American employer," for purposes of subsection (i)(3)(G), means a person who is:

- (i) An individual who is a resident of the United States;
- (ii) a partnership if $\frac{2}{3}$ or more of the partners are residents of the United States;
- (iii) a trust, if all of the trustees are residents of the United States; or
- (iv) a corporation organized under the laws of the United States or of any state.

(I) Notwithstanding subsection (i)(2), all services performed by an officer or member of the crew of an American vessel or American aircraft on or in connection with such vessel or aircraft, if the operating office, from which the operations of such vessel or aircraft operating within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled is within this state.

(J) Notwithstanding any other provisions of this subsection (i), services with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or that as a condition for full tax credit against the tax imposed by the federal unemployment tax act is required to be covered under this act.

(K) Domestic service in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of \$1,000 or more in any calendar quarter in the current calendar year or the preceding calendar year to individuals employed in such domestic service.

(4) The term "employment" does not include: (A) Services performed in the employ of an employer specified in subsection (h)(3) if such service is performed by an individual in the

exercise of duties:

- (i) As an elected official;
 - (ii) as a member of a legislative body, or a member of the judiciary, of a state, political subdivision or of an Indian tribe;
 - (iii) as a member of the state national guard or air national guard;
 - (iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;
 - (v) in a position that, under or pursuant to the laws of this state or tribal law, is designated as a major nontenured policymaking or advisory position or as a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week;
- (B) services with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;
- (C) services performed by an individual in the employ of such individual's son, daughter or spouse, and services performed by a child under the age of 21 years in the employ of such individual's father or mother;
- (D) services performed in the employ of the United States government or an instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by this act, except that to the extent that the congress of the United States shall permit states to require any instrumentality of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this act shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other

employers, employing units, individuals and services. If this state shall not be certified for any year by the federal security agency under section 3304(c) of the federal internal revenue code of 1986, the payments required of such instrumentalities with respect to such year shall be refunded by the secretary from the fund in the same manner and within the same period as is provided in K.S.A. 44-717(h), and amendments thereto, with respect to contributions erroneously collected;

(E) services covered by an arrangement between the secretary and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election, are deemed to be performed entirely within the jurisdiction of such other state or federal agency;

(F) services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(G) services performed by an individual for an employing unit as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such employing unit is performed for remuneration solely by way of commission;

(H) services performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the federal internal revenue code of 1986, other than an organization described in section 401(a) or under section 521 of such code, if the remuneration for such service is less than \$50. In construing the application of the term "employment," if services performed during $\frac{1}{2}$ or more of any pay period by an individual for the person employing such individual constitute employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than $\frac{1}{2}$

of any such pay period by an individual for the person employing such individual do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subsection (i)(4)(H) the term "pay period" means a period, of not more than 31 consecutive days, for which a payment of remuneration is ordinarily made to the individual by the person employing such individual. This subsection (i)(4)(H) shall not be applicable with respect to services with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(I) services performed in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(J) services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of such individual's ministry or by a member of a religious order in the exercise of duties required by such order;

(K) services performed in a facility conducted for the purpose of carrying out a program of:

(i) Rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury; or

(ii) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work;

(L) services performed as part of an employment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political

subdivision thereof or of an Indian tribe, by an individual receiving such work relief or work training;

(M) services performed by an inmate of a custodial or correctional institution;

(N) services performed, in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university;

(O) services performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, that combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subsection (i)(4) (O) shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(P) services performed in the employ of a hospital licensed, certified or approved by the secretary of health and environment, if such service is performed by a patient of the hospital;

(Q) services performed as a qualified real estate agent. As used in this subsection (i)(4) (Q) the term "qualified real estate agent" means any individual who is licensed by the Kansas real estate commission as a salesperson under the real estate brokers' and salespersons' license act and for whom:

(i) Substantially all of the remuneration, whether or not paid in cash, for the services performed by such individual as a real estate salesperson is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and

(ii) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for state tax purposes;

(R) services performed for an employer by an extra in connection with any phase of motion picture or television production or television commercials for less than 14 days during any calendar year. As used in this subsection, the term "extra" means an individual who pantomimes in the background, adds atmosphere to the set and performs such actions without speaking and "employer" shall not include any employer that is a governmental entity or any employer described in section 501(c)(3) of the federal internal revenue code of 1986 that is exempt from income taxation under section 501(a) of the code;

(S) services performed by an oil and gas contract pumper. As used in this subsection (i) (4)(S), "oil and gas contract pumper" means a person performing pumping and other services on one or more oil or gas leases, or on both oil and gas leases, relating to the operation and maintenance of such oil and gas leases, on a contractual basis for the operators of such oil and gas leases and "services" shall not include services performed for a governmental entity or any organization described in section 501(c)(3) of the federal internal revenue code of 1986 that is exempt from income taxation under section 501(a) of the code;

(T) service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$200 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if:

(i) On each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or

(ii) such individual was regularly employed, as determined under subparagraph (i), by such employer in the performance of such service during the preceding calendar quarter.

Such excluded service shall not include any services performed for an employer that is a governmental entity or any employer described in section 501(c)(3) of the federal internal revenue code of 1986 that is exempt from income taxation under section 501(a) of the code;

(U) service which is performed by any person who is a member of a limited liability company and that is performed as a member or manager of that limited liability company; and

(V) services performed as a qualified direct seller. The term "direct seller" means any person if:

(i) Such person:

(a) Is engaged in the trade or business of selling or soliciting the sale of consumer products to any buyer on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise rather than in a permanent retail establishment; or

(b) is engaged in the trade or business of selling or soliciting the sale of consumer products in the home or otherwise than in a permanent retail establishment;

(ii) substantially all the remuneration whether or not paid in cash for the performance of the services described in subparagraph (i) is directly related to sales or other output including the performance of services rather than to the number of hours worked;

(iii) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract

provides that the person will not be treated as an employee for federal and state tax purposes;

(iv) for purposes of this act, a sale or a sale resulting exclusively from a solicitation made by telephone, mail, or other telecommunications method, or other nonpersonal method does not satisfy the requirements of this subsection;

(W) services performed as an election official or election worker, if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than \$1,000;

(X) services performed by agricultural workers who are aliens admitted to the United States to perform labor pursuant to section 1101(a)(15)(H)(ii)(a) of the immigration and nationality act;

(Y) services performed by an owner-operator of a motor vehicle that is leased or contracted to a licensed motor carrier with the services of a driver and is not treated under the terms of the lease agreement or contract with the licensed motor carrier as an employee for purposes of the federal insurance contribution act, 26 U.S.C. § 3101 et seq., the federal social security act, 42 U.S.C. § 301 et seq., the federal unemployment tax act, 26 U.S.C. § 3301 et seq., and the federal statutes prescribing income tax withholding at the source, 26 U.S.C. § 3401 et seq. Employees or agents of the owner-operator shall not be considered employees of the licensed motor carrier for purposes of employment security taxation or compensation. As used in this subsection (Y), the following definitions apply: (i) "Motor vehicle" means any automobile, truck-trailer, semitrailer, tractor, motor bus or any other self-propelled or motor-driven vehicle used upon any of the public highways of Kansas for the purpose of transporting persons or property; (ii) "licensed motor carrier" means any person, firm, corporation or other business entity that holds a certificate of convenience and necessity or a certificate of public service from

the state corporation commission or is required to register motor carrier equipment pursuant to 49 U.S.C. § 14504; and (iii) "owner-operator" means a person, firm, corporation or other business entity that is the owner of a single motor vehicle that is driven exclusively by the owner under a lease agreement or contract with a licensed motor carrier; and

(Z) services performed by a petroleum landman on a contractual basis. As used in this subparagraph, "petroleum landman" means an individual performing services on a contractual basis who is not an individual who is an active officer of a corporation as described in subsection (i)(1)(A) that may include:

- (i) Negotiating for the acquisition or divestiture of mineral rights;
- (ii) negotiating business agreements that provide exploration for or development of minerals;
- (iii) determining ownership in minerals through the research of public and private records;
- (iv) reviewing the status of title, curing title defects, providing title due diligence and otherwise reducing title risk associated with ownership in minerals or the acquisition and divestiture of mineral properties;
- (v) managing rights or obligations derived from ownership of interests in minerals; or
- (vi) unitizing or pooling of interests in minerals. For purposes of this subparagraph, "minerals" includes oil, natural gas or petroleum. "Services" does not include services performed for a governmental entity or any organization described in section 501(c)(3) of the federal internal revenue code of 1986, or a federally recognized Indian tribe that is exempt from income taxation under section 501(a) of the code.
- (j) "Employment office" means any office operated by this state and maintained by the

secretary of labor for the purpose of assisting persons to become employed.

(k) "Fund" means the employment security fund established by this act, to which all contributions and reimbursement payments required and from which all benefits provided under this act shall be paid and including all money received from the federal government as reimbursements pursuant to section 204 of the federal-state extended compensation act of 1970, and amendments thereto.

(l) "State" includes, in addition to the states of the United States of America, any dependency of the United States, the Commonwealth of Puerto Rico, the District of Columbia and the Virgin Islands.

(m) "Unemployment." An individual shall be deemed "unemployed" with respect to any week during which such individual performs no services and with respect to which no wages are payable to such individual, or with respect to any week of less than full-time work if the wages payable to such individual with respect to such week are less than such individual's weekly benefit amount.

(n) "Employment security administration fund" means the fund established by this act, from which administrative expenses under this act shall be paid.

(o) "Wages" means all compensation for services, including commissions, bonuses, back pay and the cash value of all remuneration, including benefits, paid in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash, shall be estimated and determined in accordance with rules and regulations prescribed by the secretary. Compensation payable to an individual that has not been actually received by that individual within 21 days after the end of the pay period in which the compensation was earned shall be considered to have been paid on the 21st day after the end of that pay period. Effective January 1,

1986, gratuities, including tips received from persons other than the employing unit, shall be considered wages when reported in writing to the employer by the employee. Employees must furnish a written statement to the employer, reporting all tips received if they total \$20 or more for a calendar month whether the tips are received directly from a person other than the employer or are paid over to the employee by the employer. This includes amounts designated as tips by a customer who uses a credit card to pay the bill. Notwithstanding the other provisions of this subsection (o), wages paid in back pay awards or settlements shall be allocated to the week or weeks and reported in the manner as specified in the award or agreement, or, in the absence of such specificity in the award or agreement, such wages shall be allocated to the week or weeks in which such wages, in the judgment of the secretary, would have been paid. The term "wages" shall not include:

(1) That part of the remuneration that has been paid in a calendar year to an individual by an employer or such employer's predecessor in excess of \$3,000 for all calendar years prior to 1972, in excess of \$4,200 for the calendar years 1972 to 1977, inclusive, in excess of \$6,000 for calendar years 1978 to 1982, inclusive, in excess of \$7,000 for the calendar year 1983, in excess of \$8,000 for the calendar years 1984 to 2014, inclusive, and in excess of \$12,000 with respect to employment during calendar year 2015, and in excess of \$14,000 with respect to all calendar years thereafter, except that if the definition of the term "wages" as contained in the federal unemployment tax act is amended to include remuneration paid to an individual by an employer under the federal act in excess of \$8,000 for the calendar years 1984-2014, inclusive, and in excess of \$12,000 with respect to employment during calendar year 2015, and in excess of \$14,000 with respect to all calendar years thereafter, wages shall include remuneration paid in a calendar year to an individual by an employer subject to this act or such employer's predecessor

with respect to employment during any calendar year up to an amount equal to the dollar limitation specified in the federal unemployment tax act. For the purposes of this subsection (o) (1), the term "employment" shall include service constituting employment under any employment security law of another state or of the federal government;

(2) the amount of any payment, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment, made to, or on behalf of, an employee or any of such employee's dependents under a plan or system established by an employer that makes provisions for employees generally, for a class or classes of employees or for such employees or a class or classes of employees and their dependents, on account of: (A) Sickness or accident disability, except in the case of any payment made to an employee or such employee's dependents, this subparagraph shall exclude from the term "wages" only payments that are received under a workers compensation law. Any third party that makes a payment included as wages by reason of this subparagraph (2)(A) shall be treated as the employer with respect to such wages; or (B) medical and hospitalization expenses in connection with sickness or accident disability; or (C) death;

(3) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

(4) any payment made to, or on behalf of, an employee or such employee's beneficiary:

(A) From or to a trust described in section 401(a) of the federal internal revenue code of 1986 that is exempt from tax under section 501(a) of the federal internal revenue code of 1986 at the time of such payment unless such payment is made to an employee of the trust as

remuneration for services rendered as such employee and not as a beneficiary of the trust;

(B) under or to an annuity plan that, at the time of such payment, is a plan described in section 403(a) of the federal internal revenue code of 1986;

(C) under a simplified employee pension as defined in section 408(k)(1) of the federal internal revenue code of 1986, other than any contribution described in section 408(k)(6) of the federal internal revenue code of 1986;

(D) under or to an annuity contract described in section 403(b) of the federal internal revenue code of 1986, other than a payment for the purchase of such contract that was made by reason of a salary reduction agreement whether evidenced by a written instrument or otherwise;

(E) under or to an exempt governmental deferred compensation plan as defined in section 3121(v)(3) of the federal internal revenue code of 1986;

(F) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this subparagraph to take into account some portion or all of the increase in the cost of living, as determined by the secretary of labor, since retirement but only if such supplemental payments are under a plan that is treated as a welfare plan under section 3(2)(B)(ii) of the federal employee retirement income security act of 1974; or

(G) under a cafeteria plan within the meaning of section 125 of the federal internal revenue code of 1986;

(5) the payment by an employing unit, without deduction from the remuneration of the employee, of the tax imposed upon an employee under section 3101 of the federal internal revenue code of 1986 with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(6) remuneration paid in any medium other than cash to an employee for service not in

the course of the employer's trade or business;

(7) remuneration paid to or on behalf of an employee if and to the extent that at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 of the federal internal revenue code of 1986 relating to moving expenses;

(8) any payment or series of payments by an employer to an employee or any of such employee's dependents that is paid:

(A) Upon or after the termination of an employee's employment relationship because of (i) death or (ii) retirement for disability; and

(B) under a plan established by the employer that makes provisions for employees generally, a class or classes of employees or for such employees or a class or classes of employees and their dependents, other than any such payment or series of payments that would have been paid if the employee's employment relationship had not been so terminated;

(9) remuneration for agricultural labor paid in any medium other than cash;

(10) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 129 of the federal internal revenue code of 1986 that relates to dependent care assistance programs;

(11) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119 of the federal internal revenue code of 1986;

(12) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(13) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 117 or 132 of the federal internal revenue code of 1986;

(14) any payment made, or benefit furnished, to or for the benefit of an employee, if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 of the federal internal revenue code of 1986 relating to educational assistance to the employee; or

(15) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d) of the federal internal revenue code of 1986 relating to health savings accounts.

Nothing in any paragraph of subsection (o), other than paragraph (1), shall exclude from the term "wages": (1) Any employer contribution under a qualified cash or deferred arrangement, as defined in section 401(k) of the federal internal revenue code of 1986, to the extent that such contribution is not included in gross income by reason of section 402(a)(8) of the federal internal revenue code of 1986; or (2) any amount treated as an employer contribution under section 414(h)(2) of the federal internal revenue code of 1986.

Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this section as of the later of when the services are performed or when there is no substantial risk of forfeiture of the rights to such amount. Any amount taken into account as wages by reason of this paragraph, and the income attributable thereto, shall not thereafter be treated as wages for purposes of this section. For purposes of this paragraph, the term "nonqualified deferred compensation plan" means any plan or other arrangement for

deferral of compensation other than a plan described in subsection (o)(4).

(p) "Week" means such period or periods of seven consecutive calendar days, as the secretary may by rules and regulations prescribe.

(q) "Calendar quarter" means the period of three consecutive calendar months ending March 31, June 30, September 30 or December 31, or the equivalent thereof as the secretary may by rules and regulations prescribe.

(r) "Insured work" means employment for employers.

(s) "Approved training" means any vocational training course or course in basic education skills, including a job training program authorized under the federal workforce investment act of 1998, approved by the secretary or a person or persons designated by the secretary.

(t) "American vessel" or "American aircraft" means any vessel or aircraft documented or numbered or otherwise registered under the laws of the United States; and any vessel or aircraft that is neither documented or numbered or otherwise registered under the laws of the United States nor documented under the laws of any foreign country, if its crew performs service solely for one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state.

(u) "Institution of higher education," for the purposes of this section, means an educational institution that:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized in this state to provide a program of education beyond high school;

(3) provides an educational program for which it awards a bachelor's or higher degree, or provides a program that is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(4) is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this subsection (u), all colleges and universities in this state are institutions of higher education for purposes of this section, except that no college, university, junior college or other postsecondary school or institution that is operated by the federal government or any agency thereof shall be an institution of higher education for purposes of the employment security law.

(v) "Educational institution" means any institution of higher education, as defined in subsection (u), or any institution, except private for profit institutions, in which participants, trainees or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher and that is approved, licensed or issued a permit to operate as a school by the state department of education or other government agency that is authorized within the state to approve, license or issue a permit for the operation of a school or to an Indian tribe in the operation of an educational institution. The courses of study or training that an educational institution offers may be academic, technical, trade or preparation for gainful employment in a recognized occupation.

(w) (1) "Agricultural labor" means any remunerated service:

(A) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including

the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife.

(B) In the employ of the owner or tenant or other operator of a farm, in connection with the operating, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(C) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section (15)(g) of the agricultural marketing act, as amended, 46 Stat. 1500, sec. 3; 12 U.S.C. § 1141j, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(D) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than $\frac{1}{2}$ of the commodity with respect to which such service is performed;

(ii) in the employ of a group of operators of farms, or a cooperative organization of which such operators are members, in the performance of services described in paragraph (i), but only if such operators produced more than $\frac{1}{2}$ of the commodity with respect to which such service is performed;

(iii) the provisions of paragraphs (i) and (ii) shall not be deemed to be applicable with respect to services performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal

market for distribution for consumption.

(E) On a farm operated for profit if such service is not in the course of the employer's trade or business.

(2) "Agricultural labor" does not include services performed prior to January 1, 1980, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the federal immigration and nationality act.

(3) As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(4) For the purpose of this section, if an employing unit does not maintain sufficient records to separate agricultural labor from other employment, all services performed during any pay period by an individual for the person employing such individual shall be deemed to be agricultural labor if services performed during $\frac{1}{2}$ or more of such pay period constitute agricultural labor; but if the services performed during more than $\frac{1}{2}$ of any such pay period by an individual for the person employing such individual do not constitute agricultural labor, then none of the services of such individual for such period shall be deemed to be agricultural labor. As used in this subsection, the term "pay period" means a period of not more than 31 consecutive days for which a payment of remuneration is ordinarily made to the individual by the person employing such individual.

(x) "Reimbursing employer" means any employer who makes payments in lieu of contributions to the employment security fund as provided in K.S.A. 44-710(e), and amendments

thereto.

(y) "Contributing employer" means any employer other than a reimbursing employer or rated governmental employer.

(z) "Wage combining plan" means a uniform national arrangement approved by the United States secretary of labor in consultation with the state unemployment compensation agencies and in which this state shall participate, whereby wages earned in one or more states are transferred to another state, called the "paying state," and combined with wages in the paying state, if any, for the payment of benefits under the laws of the paying state and as provided by an arrangement so approved by the United States secretary of labor.

(aa) "Domestic service" means any services for a person in the operation and maintenance of a private household, local college club or local chapter of a college fraternity or sorority, as distinguished from service as an employee in the pursuit of an employer's trade, occupation, profession, enterprise or vocation.

(bb) "Rated governmental employer" means any governmental entity that elects to make payments as provided by K.S.A. 44-710d, and amendments thereto.

(cc) "Benefit cost payments" means payments made to the employment security fund by a governmental entity electing to become a rated governmental employer.

(dd) "Successor employer" means any employer, as described in subsection (h), that acquires or in any manner succeeds to: (1) Substantially all of the employing enterprises, organization, trade or business of another employer; or (2) substantially all the assets of another employer.

(ee) "Predecessor employer" means an employer, as described in subsection (h), who has previously operated a business or portion of a business with employment to which another

employer has succeeded.

(ff) "Lessor employing unit" means any independently established business entity that engages in the business of providing leased employees to a client lessee.

(gg) "Client lessee" means any individual, organization, partnership, corporation or other legal entity leasing employees from a lessor employing unit.

(hh) "Qualifying injury" means a personal injury by accident arising out of and in the course of employment within the coverage of the Kansas workers compensation act, K.S.A. 44-501 et seq., and amendments thereto.

(ii) (1) "COVID-19 vaccine" means an immunization, vaccination or injection against disease caused by the novel coronavirus identified as SARS-CoV-2 or disease caused by a variant of the virus.

(2) "COVID-19 vaccine requirement" means that an employer:

(A) Requires an individual to receive a COVID-19 vaccine;

(B) requires an individual to provide documentation certifying receipt of a COVID-19 vaccine; or

(C) enforces a requirement described in subparagraph (A) or (B) that is imposed by the federal government or another entity.

Sec. 2. K.S.A. 44-705 is hereby amended to read as follows: 44-705. Except as provided by K.S.A. 44-757, and amendments thereto, an unemployed individual shall be eligible to receive benefits with respect to any week only if the secretary, or a person or persons designated by the secretary, finds that:

(a) The claimant has registered for work at and thereafter continued to report at an employment office in accordance with rules and regulations adopted by the secretary, except that,

subject to the provisions of K.S.A. 44-704(a), and amendments thereto, the secretary may adopt rules and regulations that waive or alter either or both of the requirements of this subsection.

(b) The claimant has made a claim for benefits with respect to such week in accordance with rules and regulations adopted by the secretary.

(c) (1) The claimant is able to perform the duties of such claimant's customary occupation or the duties of other occupations that the claimant is reasonably fitted by training or experience, and is available for work, as demonstrated by the claimant's pursuit of the full course of action most reasonably calculated to result in the claimant's reemployment except that, notwithstanding any other provisions of this section, an unemployed claimant otherwise eligible for benefits shall not become ineligible for benefits:

(A) Because of the claimant's enrollment in and satisfactory pursuit of approved training, including training approved under section 236(a)(1) of the trade act of 1974;

(B) solely because such individual is seeking only part-time employment if the individual is available for a number of hours per week that are comparable to the individual's part-time work experience in the base period;~~or~~

(C) because ~~a~~ the claimant is not actively seeking work:

(i) During a state of disaster emergency proclaimed by the governor pursuant to K.S.A. 48-924 and 48-925, and amendments thereto;

(ii) in response to the spread of the public health emergency of COVID-19; and

(iii) the state's temporary waiver of the work search requirement under the employment security law for such claimant is in compliance with the families first coronavirus response act, public law 116-127; or

(D) notwithstanding any other provision of the employment security law, because the

claimant has declined to accept work that requires compliance with a COVID-19 vaccine requirement as a condition of employment, the individual has requested an exemption or accommodation from such requirement provided by state or federal law and such request was denied. In such case, such work for such claimant shall be deemed not to constitute suitable work for purposes of the employment security law.

(2) The secretary shall develop and implement procedures to address claimants who refuse to return to suitable work or refuse to accept an offer of suitable work without good cause. Such procedures shall include the receipt and processing of job refusal reports from employers, the evaluation of such reports in consideration of the claimant's work history and skills and suitability of the offered employment and guidelines for a determination of whether the claimant shall remain eligible for unemployment benefits or has failed to meet the work search requirements of this subsection or the requirements of K.S.A. 44-706(c), and amendments thereto. In determining whether the employment offered is suitable, the secretary's considerations shall include whether the employment offers wages comparable to the claimant's recent employment and work duties that correspond to the claimant's education level and previous work experience. The secretary shall also consider whether the employment offers wages of at least the amount of the claimant's maximum weekly benefits.

(3) To facilitate the requirements of paragraph (2), the secretary shall provide readily accessible means for employers to notify the department when a claimant refuses to return to work or refuses an offer of employment, including by telephone, email or an online web portal. Nothing in this subsection shall be construed as to require an employer to report such job refusals to the department.

(4) At the time of receipt of notice from an employer pursuant to paragraph (3), the

secretary shall, within 10 business days of receipt of such notice from the employer, provide a notice to the claimant who has refused to return to work or to accept an offer of suitable work without good cause. The method of providing the notice to the claimant shall be consistent with other correspondence from the department to the claimant and may include mail, telephone, email or through an online web portal. The notice shall, at minimum, include the following information:

(A) A summary of state employment security law regarding a claimant's duties to return to work or accept suitable work;

(B) a statement that the claimant has been or may be disqualified and the claimant's right to collect benefits has been or may be terminated for refusal to return to work or accept suitable work without good cause, as provided by this subsection and K.S.A. 44-706(c), and amendments thereto;

(C) an explanation of what constitutes suitable work under the employment security law; and

(D) instructions for contesting a denial of a claim if the denial is based upon a report by an employer that the claimant has refused to return to work or has refused to accept an offer of suitable work.

(5) For the purposes of this subsection, an inmate of a custodial or correctional institution shall be deemed to be unavailable for work and not eligible to receive unemployment compensation while incarcerated.

(d) (1) Except as provided further, the claimant has been unemployed for a waiting period of one week or the claimant is unemployed and has satisfied the requirement for a waiting period of one week under the shared work unemployment compensation program as provided in

K.S.A. 44-757(k)(4), and amendments thereto, and that period of one week, in either case, occurs within the benefit year that includes the week for which the claimant is claiming benefits. No week shall be counted as a week of unemployment for the purposes of this subsection:

(A) If benefits have been paid for such week;

(B) if the individual fails to meet with the other eligibility requirements of this section;

or

(C) if an individual is seeking unemployment benefits under the unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such state or of the United States finally determines that the claimant is not entitled to unemployment benefits under such other law, this subparagraph shall not apply.

(2) (A) The waiting week requirement of paragraph (1) shall not apply to:

(i) New claims by claimants who become unemployed as a result of an employer terminating business operations within this state, declaring bankruptcy or initiating a work force reduction pursuant to public law 100-379, the federal worker adjustment and retraining notification act, 29 U.S.C. §§ 2101 through 2109, as amended; or

(ii) new claims filed on or after April 5, 2020, through December 26, 2020, in accordance with the families first coronavirus response act, public law 116-127 and the federal CARES act, public law 116-136.

(B) The secretary shall adopt rules and regulations to administer the provisions of this paragraph.

(3) If the waiting week requirement of paragraph (1) applies, a claimant shall become eligible to receive compensation for the waiting period of one week, pursuant to paragraph (1), upon completion of three weeks of unemployment consecutive to such waiting period. This

paragraph shall not apply to initial claims effective on and after April 1, 2021.

(e) For benefit years established on and after the effective date of this act, the claimant has been paid total wages for insured work in the claimant's base period of not less than 30 times the claimant's weekly benefit amount and has been paid wages in more than one quarter of the claimant's base period, except that the wage credits of an individual earned during the period commencing with the end of a prior base period and ending on the date that such individual filed a valid initial claim shall not be available for benefit purposes in a subsequent benefit year unless, in addition thereto, such individual has returned to work and subsequently earned wages for insured work in an amount equal to at least eight times the claimant's current weekly benefit amount.

(f) The claimant participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and needs reemployment services pursuant to a profiling system established by the secretary, unless the secretary determines that: (1) The individual has completed such services; or (2) there is justifiable cause for the claimant's failure to participate in such services.

(g) The claimant is returning to work after a qualifying injury and has been paid total wages for insured work in the claimant's alternative base period of not less than 30 times the claimant's weekly benefit amount and has been paid wages in more than one quarter of the claimant's alternative base period if:

(1) The claimant has filed for benefits within four weeks of being released to return to work by a licensed and practicing health care provider;

(2) the claimant files for benefits within 24 months of the date the qualifying injury occurred; and

(3) the claimant attempted to return to work with the employer where the qualifying injury occurred, but the individual's regular work or comparable and suitable work was not available.

Sec. 3. K.S.A. 44-706 is hereby amended to read as follows: 44-706. The secretary shall examine whether an individual has separated from employment for each week claimed. The secretary shall apply the provisions of this section to the individual's most recent employment prior to the week claimed. An individual shall be disqualified for benefits:

(a) If the individual left work voluntarily without good cause attributable to the work or the employer, subject to the other provisions of this subsection. For purposes of this subsection, "good cause" is cause of such gravity that would impel a reasonable, not supersensitive, individual exercising ordinary common sense to leave employment. Good cause requires a showing of good faith of the individual leaving work, including the presence of a genuine desire to work. Failure to return to work after expiration of approved personal or medical leave, or both, shall be considered a voluntary resignation. After a temporary job assignment, failure of an individual to affirmatively request an additional assignment on the next succeeding workday, if required by the employment agreement, after completion of a given work assignment, shall constitute leaving work voluntarily. The disqualification shall begin the day following the separation and shall continue until after the individual has become reemployed and has had earnings from insured work of at least three times the individual's weekly benefit amount. An individual shall not be disqualified under this subsection if:

(1) The individual was forced to leave work because of illness or injury upon the advice of a licensed and practicing health care provider and, upon learning of the necessity for absence, immediately notified the employer thereof, or the employer consented to the absence, and after

recovery from the illness or injury, when recovery was certified by a practicing health care provider, the individual returned to the employer and offered to perform services and the individual's regular work or comparable and suitable work was not available. As used in this paragraph "health care provider" means any person licensed by the proper licensing authority of any state to engage in the practice of medicine and surgery, osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;

(2) the individual left temporary work to return to the regular employer;

(3) the individual left work to enlist in the armed forces of the United States, but was rejected or delayed from entry;

(4) the spouse of an individual who is a member of the armed forces of the United States who left work because of the voluntary or involuntary transfer of the individual's spouse from one job to another job, which is for the same employer or for a different employer, at a geographic location which makes it unreasonable for the individual to continue work at the individual's job. For the purposes of this provision the term "armed forces" means active duty in the army, navy, marine corps, air force, coast guard or any branch of the military reserves of the United States;

(5) the individual left work because of hazardous working conditions; in determining whether or not working conditions are hazardous for an individual, the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness and prior training and the working conditions of workers engaged in the same or similar work for the same and other employers in the locality shall be considered; as used in this paragraph, "hazardous working conditions" means working conditions that could result in a danger to the physical or mental well-being of the individual; each determination as to whether hazardous working conditions

exist shall include, but shall not be limited to, a consideration of: (A) The safety measures used or the lack thereof; and (B) the condition of equipment or lack of proper equipment; no work shall be considered hazardous if the working conditions surrounding the individual's work are the same or substantially the same as the working conditions generally prevailing among individuals performing the same or similar work for other employers engaged in the same or similar type of activity;

(6) the individual left work to enter training approved under section 236(a)(1) of the federal trade act of 1974, provided the work left is not of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal trade act of 1974, and wages for such work are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal trade act of 1974;

(7) the individual left work because of unwelcome harassment of the individual by the employer or another employee of which the employing unit had knowledge and that would impel the average worker to give up such worker's employment;

(8) the individual left work to accept better work; each determination as to whether or not the work accepted is better work shall include, but shall not be limited to, consideration of: (A) The rate of pay, the hours of work and the probable permanency of the work left as compared to the work accepted; (B) the cost to the individual of getting to the work left in comparison to the cost of getting to the work accepted; and (C) the distance from the individual's place of residence to the work accepted in comparison to the distance from the individual's residence to the work left;

(9) the individual left work as a result of being instructed or requested by the employer, a supervisor or a fellow employee to perform a service or commit an act in the scope of official

job duties which is in violation of an ordinance or statute;

(10) the individual left work because of a substantial violation of the work agreement by the employing unit and, before the individual left, the individual had exhausted all remedies provided in such agreement for the settlement of disputes before terminating. For the purposes of this paragraph, a demotion based on performance does not constitute a violation of the work agreement;

(11) after making reasonable efforts to preserve the work, the individual left work due to a personal emergency of such nature and compelling urgency that it would be contrary to good conscience to impose a disqualification; ~~or~~

(12) (A) the individual left work due to circumstances resulting from domestic violence, including:

(i) The individual's reasonable fear of future domestic violence at or en route to or from the individual's place of employment;

(ii) the individual's need to relocate to another geographic area in order to avoid future domestic violence;

(iii) the individual's need to address the physical, psychological and legal impacts of domestic violence;

(iv) the individual's need to leave employment as a condition of receiving services or shelter from an agency which provides support services or shelter to victims of domestic violence; or

(v) the individual's reasonable belief that termination of employment is necessary to avoid other situations which may cause domestic violence and to provide for the future safety of the individual or the individual's family.

(B) An individual may prove the existence of domestic violence by providing one of the following:

(i) A restraining order or other documentation of equitable relief by a court of competent jurisdiction;

(ii) a police record documenting the abuse;

(iii) documentation that the abuser has been convicted of one or more of the offenses enumerated in articles 34 and 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or articles 54 or 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2021 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6422, and amendments thereto, where the victim was a family or household member;

(iv) medical documentation of the abuse;

(v) a statement provided by a counselor, social worker, health care provider, clergy, shelter worker, legal advocate, domestic violence or sexual assault advocate or other professional who has assisted the individual in dealing with the effects of abuse on the individual or the individual's family; or

(vi) a sworn statement from the individual attesting to the abuse.

(C) No evidence of domestic violence experienced by an individual, including the individual's statement and corroborating evidence, shall be disclosed by the department of labor unless consent for disclosure is given by the individual; or

(13) the individual left work due to the individual's refusal to comply with a COVID-19 vaccine requirement after the individual requested an exemption or accommodation from such requirement provided by state or federal law and such request was denied.

(b) If the individual has been discharged or suspended for misconduct connected with

the individual's work. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and in cases where the disqualification is due to discharge for misconduct has had earnings from insured work of at least three times the individual's determined weekly benefit amount, except that if an individual is discharged for gross misconduct connected with the individual's work, such individual shall be disqualified for benefits until such individual again becomes employed and has had earnings from insured work of at least eight times such individual's determined weekly benefit amount. In addition, all wage credits attributable to the employment from which the individual was discharged for gross misconduct connected with the individual's work shall be canceled. No such cancellation of wage credits shall affect prior payments made as a result of a prior separation.

(1) For the purposes of this subsection, "misconduct" is defined as a violation of a duty or obligation reasonably owed the employer as a condition of employment including, but not limited to, a violation of a company rule, including a safety rule, if: (A) The individual knew or should have known about the rule; (B) the rule was lawful and reasonably related to the job; and (C) the rule was fairly and consistently enforced.

(2) (A) Failure of the employee to notify the employer of an absence and an individual's leaving work prior to the end of such individual's assigned work period without permission shall be considered prima facie evidence of a violation of a duty or obligation reasonably owed the employer as a condition of employment.

(B) For the purposes of this subsection, misconduct shall include, but not be limited to, violation of the employer's reasonable attendance expectations if the facts show:

- (i) The individual was absent or tardy without good cause;
- (ii) the individual had knowledge of the employer's attendance expectation; and

(iii) the employer gave notice to the individual that future absence or tardiness may or will result in discharge.

(C) For the purposes of this subsection, if an employee disputes being absent or tardy without good cause, the employee shall present evidence that a majority of the employee's absences or tardiness were for good cause. If the employee alleges that the employee's repeated absences or tardiness were the result of health related issues, such evidence shall include documentation from a licensed and practicing health care provider as defined in subsection (a) (1).

(3) (A) The term "gross misconduct" as used in this subsection shall be construed to mean conduct evincing extreme, willful or wanton misconduct as defined by this subsection. Gross misconduct shall include, but not be limited to: (i) Theft; (ii) fraud; (iii) intentional damage to property; (iv) intentional infliction of personal injury; or (v) any conduct that constitutes a felony.

(B) For the purposes of this subsection, the following shall be conclusive evidence of gross misconduct:

(i) The use of alcoholic liquor, cereal malt beverage or a nonprescribed controlled substance by an individual while working;

(ii) the impairment caused by alcoholic liquor, cereal malt beverage or a nonprescribed controlled substance by an individual while working;

(iii) a positive breath alcohol test or a positive chemical test, provided:

(a) The test was either:

(1) Required by law and was administered pursuant to the drug free workplace act, 41 U.S.C. § 701 et seq.;

(2) administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment;

(3) requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment;

(4) required by law and the test constituted a required condition of employment for the individual's job; or

(5) there was reasonable suspicion to believe that the individual used, had possession of, or was impaired by alcoholic liquor, cereal malt beverage or a nonprescribed controlled substance while working;

(b) the test sample was collected either:

(1) As prescribed by the drug free workplace act, 41 U.S.C. § 701 et seq.;

(2) as prescribed by an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment;

(3) as prescribed by the written policy of the employer of which the employee had knowledge and which constituted a required condition of employment;

(4) as prescribed by a test which was required by law and which constituted a required condition of employment for the individual's job; or

(5) at a time contemporaneous with the events establishing probable cause;

(c) the collecting and labeling of a chemical test sample was performed by a licensed health care professional or any other individual certified pursuant to paragraph (b)(3)(A)(iii)(f) or authorized to collect or label test samples by federal or state law, or a federal or state rule or

regulation having the force or effect of law, including law enforcement personnel;

(d) the chemical test was performed by a laboratory approved by the United States department of health and human services or licensed by the department of health and environment, except that a blood sample may be tested for alcohol content by a laboratory commonly used for that purpose by state law enforcement agencies;

(e) the chemical test was confirmed by gas chromatography, gas chromatography-mass spectroscopy or other comparably reliable analytical method, except that no such confirmation is required for a blood alcohol sample or a breath alcohol test;

(f) the breath alcohol test was administered by an individual trained to perform breath tests, the breath testing instrument used was certified and operated strictly according to a description provided by the manufacturers and the reliability of the instrument performance was assured by testing with alcohol standards; and

(g) the foundation evidence establishes, beyond a reasonable doubt, that the test results were from the sample taken from the individual;

(iv) an individual's refusal to submit to a chemical test or breath alcohol test, provided:

(a) The test meets the standards of the drug free workplace act, 41 U.S.C. § 701 et seq.;

(b) the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment;

(c) the test was otherwise required by law and the test constituted a required condition of employment for the individual's job;

(d) the test was requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment; or

(e) there was reasonable suspicion to believe that the individual used, possessed or was impaired by alcoholic liquor, cereal malt beverage or a nonprescribed controlled substance while working;

(v) an individual's dilution or other tampering of a chemical test.

(C) For purposes of this subsection:

(i) "Alcohol concentration" means the number of grams of alcohol per 210 liters of breath;

(ii) "alcoholic liquor" means the same as provided in K.S.A. 41-102, and amendments thereto;

(iii) "cereal malt beverage" means the same as provided in K.S.A. 41-2701, and amendments thereto;

(iv) "chemical test" includes, but is not limited to, tests of urine, blood or saliva;

(v) "controlled substance" means the same as provided in K.S.A. 2021 Supp. 21-5701, and amendments thereto;

(vi) "required by law" means required by a federal or state law, a federal or state rule or regulation having the force and effect of law, a county resolution or municipal ordinance, or a policy relating to public safety adopted in an open meeting by the governing body of any special district or other local governmental entity;

(vii) "positive breath test" means a test result showing an alcohol concentration of 0.04 or greater, or the levels listed in 49 C.F.R. part 40, if applicable, unless the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, in which case "positive chemical test" shall mean a test result showing an alcohol concentration at or

above the levels provided for in the assistance or treatment program;

(viii) "positive chemical test" means a chemical result showing a concentration at or above the levels listed in K.S.A. 44-501, and amendments thereto, or 49 C.F.R. part 40, as applicable, for the drugs or abuse listed therein, unless the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, in which case "positive chemical test" means a chemical result showing a concentration at or above the levels provided for in the assistance or treatment program.

(4) An individual shall not be disqualified under this subsection if the individual is discharged under the following circumstances:

(A) The employer discharged the individual after learning the individual was seeking other work or when the individual gave notice of future intent to quit, except that the individual shall be disqualified after the time at which such individual intended to quit and any individual who commits misconduct after such individual gives notice to such individual's intent to quit shall be disqualified;

(B) the individual was making a good-faith effort to do the assigned work but was discharged due to:

- (i) Inefficiency;
- (ii) unsatisfactory performance due to inability, incapacity or lack of training or experience;
- (iii) isolated instances of ordinary negligence or inadvertence;
- (iv) ~~good-faith~~ good faith errors in judgment or discretion; or
- (v) unsatisfactory work or conduct due to circumstances beyond the individual's

control;~~or~~

(C) the individual's refusal to perform work in excess of the contract of hire; or

(D) the employer discharged the individual for refusal to comply with a COVID-19 vaccine requirement after the individual requested an exemption or accommodation from such requirement provided by state or federal law and such request was denied.

(c) If the individual has failed, without good cause, to either apply for suitable work when so directed by the employment office of the secretary of labor, or to accept suitable work when offered to the individual by the employment office, the secretary of labor, or an employer, such disqualification shall begin with the week in which such failure occurred and shall continue until the individual becomes reemployed and has had earnings from insured work of at least three times such individual's determined weekly benefit amount. In determining whether or not any work is suitable for an individual, the secretary of labor, or a person or persons designated by the secretary, shall consider the degree of risk involved to health, safety and morals, physical fitness and prior training, experience and prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation or work for which the individual is reasonably fitted by training or experience, and the distance of the available work from the individual's residence. Notwithstanding any other provisions of this act, an otherwise eligible individual shall not be disqualified for refusing an offer of suitable employment, or failing to apply for suitable employment when notified by an employment office, or for leaving the individual's most recent work accepted during approved training, including training approved under section 236(a)(1) of the trade act of 1974, if the acceptance of or applying for suitable employment or continuing such work would require the individual to terminate approved training and no work shall be deemed suitable and benefits shall not be denied under this act to any

otherwise eligible individual for refusing to accept new work under any of the following conditions: (1) If the position offered is vacant due directly to a strike, lockout or other labor dispute; (2) if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (3) if as a condition of being employed, the individual would be required to join or to resign from or refrain from joining any labor organization;~~and~~ (4) if the individual left employment as a result of domestic violence, and the position offered does not reasonably accommodate the individual's physical, psychological, safety, or legal needs relating to such domestic violence; and (5) if the position offered would require the individual to comply with a COVID-19 vaccine requirement, the individual has requested an exemption or accommodation from such requirement provided by state or federal law and such request was denied.

(d) For any week with respect to which the secretary of labor, or a person or persons designated by the secretary, finds that the individual's unemployment is due to a stoppage of work which exists because of a labor dispute or there would have been a work stoppage had normal operations not been maintained with other personnel previously and currently employed by the same employer at the factory, establishment or other premises at which the individual is or was last employed, except that this subsection (d) shall not apply if it is shown to the satisfaction of the secretary of labor, or a person or persons designated by the secretary, that: (1) The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and (2) the individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs any of whom are participating in or financing or directly interested in the dispute. If in any case separate branches of work which are

commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection be deemed to be a separate factory, establishment or other premises. For the purposes of this subsection, failure or refusal to cross a picket line or refusal for any reason during the continuance of such labor dispute to accept the individual's available and customary work at the factory, establishment or other premises where the individual is or was last employed shall be considered as participation and interest in the labor dispute.

(e) For any week with respect to which or a part of which the individual has received or is seeking unemployment benefits under the unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such other state or the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

(f) For any week with respect to which the individual is entitled to receive any unemployment allowance or compensation granted by the United States under an act of congress to ex-service men and women in recognition of former service with the military or naval services of the United States.

(g) If the individual, or another in such individual's behalf with the knowledge of the individual, has knowingly made a false statement or representation, or has knowingly failed to disclose a material fact to obtain or increase benefits under this act or any other unemployment compensation law administered by the secretary of labor, unless the individual has repaid the full amount of the overpayment as determined by the secretary or the secretary's designee, including, but not limited to, the total amount of money erroneously paid as benefits or unlawfully obtained, interest, penalties and any other costs or fees provided by law. If the individual has

made such repayment, the individual shall be disqualified for a period of one year for the first occurrence or five years for any subsequent occurrence, beginning with the first day following the date the department of labor confirmed the individual has successfully repaid the full amount of the overpayment. In addition to the penalties set forth in K.S.A. 44-719, and amendments thereto, an individual who has knowingly made a false statement or representation or who has knowingly failed to disclose a material fact to obtain or increase benefits under this act or any other unemployment compensation law administered by the secretary of labor shall be liable for a penalty in the amount equal to 25% of the amount of benefits unlawfully received. Notwithstanding any other provision of law, such penalty shall be deposited into the employment security trust fund. No person who is a victim of identity theft shall be subject to the provisions of this subsection. The secretary shall investigate all cases of an alleged false statement or representation or failure to disclose a material fact to ensure no victim of identity theft is disqualified, required to repay or subject to any penalty as provided by this subsection as a result of identity theft.

(h) For any week with respect to which the individual is receiving compensation for temporary total disability or permanent total disability under the workmen's compensation law of any state or under a similar law of the United States.

(i) For any week of unemployment on the basis of service in an instructional, research or principal administrative capacity for an educational institution as defined in K.S.A. 44-703(v), and amendments thereto, if such week begins during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between two regular but not successive terms during such period or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs such services in the first

of such academic years or terms and there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms.

(j) For any week of unemployment on the basis of service in any capacity other than service in an instructional, research, or administrative capacity in an educational institution, as defined in K.S.A. 44-703(v), and amendments thereto, if such week begins during the period between two successive academic years or terms if the individual performs such services in the first of such academic years or terms and there is a reasonable assurance that the individual will perform such services in the second of such academic years or terms, except that if benefits are denied to the individual under this subsection and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subsection.

(k) For any week of unemployment on the basis of service in any capacity for an educational institution as defined in K.S.A. 44-703(v), and amendments thereto, if such week begins during an established and customary vacation period or holiday recess, if the individual performs services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(l) For any week of unemployment on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, if such week begins during the period between two successive sport seasons or

similar period if such individual performed services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods.

(m) For any week on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the federal immigration and nationality act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of such individual's alien status shall be made except upon a preponderance of the evidence.

(n) For any week in which an individual is receiving a governmental or other pension, retirement or retired pay, annuity or other similar periodic payment under a plan maintained by a base period employer and to which the entire contributions were provided by such employer, except that: (1) If the entire contributions to such plan were provided by the base period employer but such individual's weekly benefit amount exceeds such governmental or other pension, retirement or retired pay, annuity or other similar periodic payment attributable to such week, the weekly benefit amount payable to the individual shall be reduced, but not below zero, by an amount equal to the amount of such pension, retirement or retired pay, annuity or other similar periodic payment which is attributable to such week; or (2) if only a portion of

contributions to such plan were provided by the base period employer, the weekly benefit amount payable to such individual for such week shall be reduced, but not below zero, by the prorated weekly amount of the pension, retirement or retired pay, annuity or other similar periodic payment after deduction of that portion of the pension, retirement or retired pay, annuity or other similar periodic payment that is directly attributable to the percentage of the contributions made to the plan by such individual; or (3) if the entire contributions to the plan were provided by such individual, or by the individual and an employer, or any person or organization, who is not a base period employer, no reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection; or (4) whatever portion of contributions to such plan were provided by the base period employer, if the services performed for the employer by such individual during the base period, or remuneration received for the services, did not affect the individual's eligibility for, or increased the amount of, such pension, retirement or retired pay, annuity or other similar periodic payment, no reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection. No reduction shall be made for payments made under the social security act or railroad retirement act of 1974.

(o) For any week of unemployment on the basis of services performed in any capacity and under any of the circumstances described in subsection (i), (j) or (k) that an individual performed in an educational institution while in the employ of an educational service agency. For the purposes of this subsection, the term "educational service agency" means a governmental agency or entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(p) For any week of unemployment on the basis of service as a school bus or other

motor vehicle driver employed by a private contractor to transport pupils, students and school personnel to or from school-related functions or activities for an educational institution, as defined in K.S.A. 44-703(v), and amendments thereto, if such week begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, if the individual has a contract or contracts, or a reasonable assurance thereof, to perform services in any such capacity with a private contractor for any educational institution for both such academic years or both such terms. An individual shall not be disqualified for benefits as provided in this subsection for any week of unemployment on the basis of service as a bus or other motor vehicle driver employed by a private contractor to transport persons to or from nonschool-related functions or activities.

(q) For any week of unemployment on the basis of services performed by the individual in any capacity and under any of the circumstances described in subsection (i), (j), (k) or (o) which are provided to or on behalf of an educational institution, as defined in K.S.A. 44-703(v), and amendments thereto, while the individual is in the employ of an employer which is a governmental entity, Indian tribe or any employer described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income under section 501(a) of the code.

(r) For any week in which an individual is registered at and attending an established school, training facility or other educational institution, or is on vacation during or between two successive academic years or terms. An individual shall not be disqualified for benefits as provided in this subsection provided:

(1) The individual was engaged in full-time employment concurrent with the individual's school attendance;

(2) the individual is attending approved training as defined in K.S.A. 44-703(s), and

amendments thereto; or

(3) the individual is attending evening, weekend or limited day time classes, which would not affect availability for work, and is otherwise eligible under K.S.A. 44-705(c), and amendments thereto.

(s) For any week with respect to which an individual is receiving or has received remuneration in the form of a back pay award or settlement. The remuneration shall be allocated to the week or weeks in the manner as specified in the award or agreement, or in the absence of such specificity in the award or agreement, such remuneration shall be allocated to the week or weeks in which such remuneration, in the judgment of the secretary, would have been paid.

(1) For any such weeks that an individual receives remuneration in the form of a back pay award or settlement, an overpayment will be established in the amount of unemployment benefits paid and shall be collected from the claimant.

(2) If an employer chooses to withhold from a back pay award or settlement, amounts paid to a claimant while they claimed unemployment benefits, such employer shall pay the department the amount withheld. With respect to such amount, the secretary shall have available all of the collection remedies authorized or provided in K.S.A. 44-717, and amendments thereto.

(t) (1) Any applicant for or recipient of unemployment benefits who tests positive for unlawful use of a controlled substance or controlled substance analog shall be required to complete a substance abuse treatment program approved by the secretary of labor, secretary of commerce or secretary for children and families, and a job skills program approved by the secretary of labor, secretary of commerce or the secretary for children and families. Subject to applicable federal laws, any applicant for or recipient of unemployment benefits who fails to complete or refuses to participate in the substance abuse treatment program or job skills program

as required under this subsection shall be ineligible to receive unemployment benefits until completion of such substance abuse treatment and job skills programs. Upon completion of both substance abuse treatment and job skills programs, such applicant for or recipient of unemployment benefits may be subject to periodic drug screening, as determined by the secretary of labor. Upon a second positive test for unlawful use of a controlled substance or controlled substance analog, an applicant for or recipient of unemployment benefits shall be ordered to complete again a substance abuse treatment program and job skills program, and shall be terminated from unemployment benefits for a period of 12 months, or until such applicant for or recipient of unemployment benefits completes both substance abuse treatment and job skills programs, whichever is later. Upon a third positive test for unlawful use of a controlled substance or controlled substance analog, an applicant for or a recipient of unemployment benefits shall be terminated from receiving unemployment benefits, subject to applicable federal law.

(2) Any individual who has been discharged or refused employment for failing a preemployment drug screen required by an employer may request that the drug screening specimen be sent to a different drug testing facility for an additional drug screening. Any such individual who requests an additional drug screening at a different drug testing facility shall be required to pay the cost of drug screening.

(u) If the individual was found not to have a disqualifying adjudication or conviction under K.S.A. 39-970 or 65-5117, and amendments thereto, was hired and then was subsequently convicted of a disqualifying felony under K.S.A. 39-970 or 65-5117, and amendments thereto, and discharged pursuant to K.S.A. 39-970 or 65-5117, and amendments thereto. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times

the individual's determined weekly benefit amount.

(v) Notwithstanding the provisions of any subsection, an individual shall not be disqualified for such week of part-time employment in a substitute capacity for an educational institution if such individual's most recent employment prior to the individual's benefit year begin date was for a non-educational institution and such individual demonstrates application for work in such individual's customary occupation or for work for which the individual is reasonably fitted by training or experience.

Sec. 4. K.S.A. 44-709 is hereby amended to read as follows: 44-709. (a) *Filing*. Claims for benefits shall be made in accordance with rules and regulations adopted by the secretary. The secretary shall furnish a copy of such rules and regulations to any individual requesting them. Each employer shall: (1) Post and maintain printed statements furnished by the secretary without cost to the employer in places readily accessible to individuals in the service of the employer; and (2) provide any other notification to individuals in the service of the employer as required by the secretary pursuant to the families first coronavirus response act, public law 116-127.

(b) *Determination*. (1) Except as otherwise provided in this paragraph, a representative designated by the secretary, and hereinafter referred to as an examiner, shall promptly examine the claim and, on the basis of the facts found by the examiner, shall determine whether or not the claim is valid. If the examiner determines that the claim is valid, the examiner shall determine the first day of the benefit year, the weekly benefit amount and the total amount of benefits payable with respect to the benefit year. If the claim is determined to be valid, the examiner shall send a notice to the last employing unit who shall respond within 10 days by providing the examiner all requested information including all information required for a decision under K.S.A. 44-706, and amendments thereto. The information may be submitted by the employing

unit in person at an employment office of the secretary or by mail, by telefacsimile machine or by electronic mail. If the required information is not submitted or postmarked within a response time limit of 10 days after the examiner's notice was sent, the employing unit shall be deemed to have waived its standing as a party to the proceedings arising from the claim and shall be barred from protesting any subsequent decisions about the claim by the secretary, a referee, the employment security board of review or any court, except that the employing unit's response time limit may be waived or extended by the examiner or upon appeal, if timely response was impossible due to excusable neglect. In any case in which the payment or denial of benefits will be determined by the provisions of K.S.A. 44-706(d), and amendments thereto, the examiner shall promptly transmit the claim to a special examiner designated by the secretary to make a determination on the claim after the investigation as the special examiner deems necessary. The parties shall be promptly notified of the special examiner's decision and any party aggrieved by the decision may appeal to the referee as provided in subsection (c). The claimant and the claimant's most recent employing unit shall be promptly notified of the examiner's or special examiner's decision.

(2) The examiner may for good cause reconsider the examiner's decision and shall promptly notify the claimant and the most recent employing unit of the claimant, that the decision of the examiner is to be reconsidered, except that no reconsideration shall be made after the termination of the benefit year.

(3) Notwithstanding the provisions of any other statute, a decision of an examiner or special examiner shall be final unless the claimant or the most recent employing unit of the claimant files an appeal from the decision as provided in subsection (c), except that the time limit for appeal may be waived or extended by the referee or board of review if a timely response was

impossible due to excusable neglect. The appeal must be filed within 16 calendar days after the mailing of notice to the last known addresses of the claimant and employing unit or, if notice is not by mail, within 16 calendar days after the delivery of the notice to the parties.

(c) *Appeals.* Unless the appeal is withdrawn, a referee, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the examiner or special examiner. The parties shall be duly notified of the referee's decision, together with the reasons for the decision. The decision shall be final, notwithstanding the provisions of any other statute, unless a further appeal to the employment security board of review is filed within 16 calendar days after the mailing of the decision to the parties' last known addresses or, if notice is not by mail, within 16 calendar days after the delivery of the decision, except that the time limit for appeal may be waived or extended by the referee or board of review if a timely response was impossible due to excusable neglect.

(d) *Referees.* The secretary shall appoint, in accordance with K.S.A. 44-714(c), and amendments thereto, one or more referees to hear and decide disputed claims.

(e) *Time, computation and extension.* In computing the period of time for an employing unit response or for appeals under this section from the examiner's or the special examiner's determination or from the referee's decision, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday.

(f) *Board of review.* There is hereby created an employment security board of review, hereinafter referred to as the board.

(1) (A) Except as provided in subparagraph (B), the board shall consist of three

members. Each member of the board shall be appointed for a term of four years as provided in this subsection. Not more than two members of the board shall belong to the same political party.

(B) On the effective date of this act, the board shall consist of six members. The six-member board shall consist of the following: (i) Three members appointed under subparagraph (A); and (ii) three members appointed for a term that shall expire upon the expiration of this subparagraph. Each member of the board appointed under subparagraph (B)(ii) shall be appointed as provided in this subsection. Not more than four members of the six-member board shall belong to the same political party. The provisions of this subparagraph shall expire on June 30, 2024.

(2) When a vacancy on the employment security board of review occurs, the workers compensation and employment security boards nominating committee established under K.S.A. 44-551, and amendments thereto, shall convene and submit a nominee to the governor for appointment to each vacancy on the employment security board of review, subject to confirmation by the senate as provided by K.S.A. 75-4315b, and amendments thereto. The governor shall either: (A) Accept and submit to the senate for confirmation the person nominated by the nominating committee; or (B) reject the nomination and request the nominating committee to nominate another person for that position. Except as provided by K.S.A. 46-2601, and amendments thereto, no person appointed to the employment security board of review, whose appointment is subject to confirmation by the senate, shall exercise any power, duty or function as a member until confirmed by the senate.

(3) No member of the employment security board of review shall serve more than two consecutive terms. This paragraph shall not apply to members of the board appointed under subsection (f)(1)(B)(ii). The service of a board member appointed under subsection (f)(1)(B)(ii)

shall not constitute a term as contemplated in this paragraph.

(4) Each member of the employment security board shall serve until a successor has been appointed and confirmed. Any vacancy in the membership of the board occurring prior to expiration of a term shall be filled by appointment for the unexpired term in the same manner as provided for original appointment of the member.

(5) Each member of the employment security board of review shall be entitled to receive as compensation for the member's services at the rate of \$15,000 per year, together with the member's travel and other necessary expenses actually incurred in the performance of the member's official duties in accordance with rules and regulations adopted by the secretary. Members' compensation and expenses shall be paid from the employment security administration fund.

(6) The employment security board of review shall organize annually by the election of a chairperson from among its members. The chairperson shall serve in that capacity for a term of one year and until a successor is elected. For the purpose of hearing and determining cases, the board members may sit in panels. A board panel shall consist of three members with not more than two members belonging to the same political party. The chairperson may sit as a member of a panel and shall preside over such panel. When the chairperson is not a member of a hearing panel, the chairperson shall appoint a member of the panel to preside. The board or board panel shall meet on the first Monday of each month or on the call of the chairperson or any two members of the board at the place designated. The secretary of labor shall appoint an executive secretary of the board and the executive secretary or the executive secretary's designee shall attend the meetings of the board and board panels.

(7) The employment security board of review or board panel, on its own motion, may

affirm, modify or set aside any decision of a referee on the basis of the evidence previously submitted in the case; may direct the taking of additional evidence; or may permit any of the parties to initiate further appeal before it. The board or board panel shall permit such further appeal by any of the parties interested in a decision of a referee that overrules or modifies the decision of an examiner. The board or board panel may remove to itself the proceedings on any claim pending before a referee. Any proceedings so removed to the board or board panel shall be heard in accordance with the requirements of subsection (c). The board or board panel shall promptly notify the interested parties of its findings and decision.

(8) A simple majority of the members of the employment security board of review or board panel shall constitute a quorum and no action of the board or board panel shall be valid unless it has the concurrence of a majority of its members. A vacancy on the board shall not impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(g) *Procedure.* The manner that disputed claims are presented, the reports on claims required from the claimant and from employers and the conduct of hearings and appeals shall be in accordance with rules of procedure prescribed by the employment security board of review for determining the rights of the parties, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings and decisions in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed. In the performance of its official duties, the board or board panel shall have access to all of the records that pertain to the disputed claim and are in the custody of the secretary of labor and shall receive the assistance of the secretary upon request.

(h) *Witness fees.* Witnesses subpoenaed pursuant to this section shall be allowed fees

and necessary travel expenses at rates fixed by the board. Such fees and expenses shall be deemed a part of the expense of administering this act.

(i) *Review of board action.* Any action of the employment security board of review including that of a board panel, may not be reconsidered after the mailing of the decision. An action of the board or board panel shall become final unless a petition for review in accordance with the Kansas judicial review act is filed within 16 calendar days after the date of the mailing of the decision. If an appeal has not been filed within 16 calendar days of the date of the mailing of the decision, the decision becomes final. No bond shall be required for commencing an action for such review. In addition to those persons having standing pursuant to K.S.A. 77-611, and amendments thereto, the examiner shall have standing to obtain judicial review of an action of such board or board panel. The review proceeding, and the questions of law certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workers compensation act.

(j) Any finding of fact or law, judgment, determination, conclusion or final order made by the employment security board of review or board panel or any examiner, special examiner, referee or other person with authority to make findings of fact or law pursuant to the employment security law is not admissible or binding in any separate or subsequent action or proceeding, between a person and a present or previous employer brought before an arbitrator, court or judge of the state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

(k) In any proceeding or hearing conducted under this section, a party to the proceeding or hearing may appear before a referee or the employment security board of review or board panel either personally or by means of a designated representative to present evidence and to

state the position of the party. Hearings may be conducted in person, by telephone or other means of electronic communication. The hearing shall be conducted by telephone or other means of electronic communication if none of the parties requests an in-person hearing. If a party requests an in-person hearing, the referee or board or board panel shall have the discretion to deny the request in the absence of good cause shown for the request by the requesting party. If a request for an in-person hearing is granted, the referee or board or board panel shall have the discretion to require all parties to appear in person or allow the party not requesting an in-person hearing to appear by telephone or other means of electronic communication. The notice of hearing shall include notice to the parties of their right to request an in-person hearing and instructions on how to make the request.

(1) (1) Notwithstanding the time limitations of this section, the provisions of K.S.A. 44-706 in effect prior to the effective date of this act, or any other provision of the employment security law, a claimant upon request shall be retroactively paid benefits for any week that the claimant would otherwise have been eligible for such benefits, if such claimant was disqualified from receiving such benefits during the period of September 9, 2021, through the effective date of this act on the grounds that the claimant voluntarily left employment without good cause or was discharged or suspended for misconduct as the result of the claimant's refusal to comply with a COVID-19 vaccine requirement after the individual requested an exemption or accommodation from such requirement provided by state or federal law and such request was denied.

(2) The secretary shall independently review any claims denied during the period of September 9, 2021, through the effective date of this act because the claimant was disqualified from receiving benefits on the grounds that the claimant voluntarily left employment without

good cause or was discharged or suspended for misconduct as the result of the claimant's refusal to comply with a COVID-19 vaccine requirement after the individual requested an exemption or accommodation from such requirement provided by state or federal law and such request was denied. In the event that the claimant has not requested retroactive payment of such benefits as provided by paragraph (1), the secretary shall retroactively pay benefits to such claimant for any week that the claimant would otherwise have been eligible for such benefits.

(3) The claimant or the employer may appeal an award or denial of benefits made pursuant to this subsection as provided in subsection (c).

(4) The secretary shall develop and implement procedures to enable claimants to retroactively substantiate and file claims under this subsection.

Sec. 5. K.S.A. 44-703, 44-705, 44-706 and 44-709 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the Kansas register.

AN ACT concerning civil actions and civil procedure; authorizing a civil action for damages caused by an adverse reaction or injury related to a COVID-19 vaccine.

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

Section 1. (a) An individual may bring a civil action in an appropriate district court against an employer or other person for any damages caused by an adverse reaction or injury related to a COVID-19 vaccine if:

(1) The employer or other person imposed a COVID-19 vaccine requirement on such individual; and

(2) the individual complied with the requirement and received a COVID-19 vaccine as a result of such requirement.

(b) In an action under this section, the court shall award a prevailing plaintiff the cost of the suit, including reasonable attorney fees.

(c) As used in this section:

(1) "COVID-19 vaccine" means an immunization, vaccination or injection against disease caused by the novel coronavirus identified as SARS-CoV-2 or disease caused by a variant of the virus;

(2) "COVID-19 vaccine requirement" means that an employer or other person required the individual to receive a COVID-19 vaccine or required the individual to provide documentation certifying receipt of a COVID-19 vaccine. "COVID-19 vaccine requirement" does not include a requirement that was imposed to conform to requirements issued by a governmental entity.

(3) "employer" means any person in this state who employs one or more persons and

includes the state and all political subdivisions of the state; and

(4) "person" means an individual, partnership, association, organization, corporation, legal representative, trustee, trustee in bankruptcy or receiver.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

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Report of the Special Committee on Home and Community Based Services Intellectual and Developmental Disability Waiver to the 2022 Kansas Legislature

CHAIRPERSON: Senator Richard Hilderbrand

VICE-CHAIRPERSON: Representative Will Carpenter

OTHER MEMBERS: Senators Molly Baumgardner, Rick Billinger, Beverly Gossage, and Tom Hawk; and Representatives Barbara Ballard, Brenda Landwehr, Megan Lynn, Susan Ruiz, and Troy Waymaster

STUDY TOPIC

The Committee is directed to review and study issues, including but not limited to, the Home and Community Based Services Intellectual and Developmental Disability waiver waitlist, adequate provider networks, and waiver reimbursement rates.

December 2021

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Special Committee on Home and Community Based Services Intellectual and Developmental Disability Waiver

REPORT

Conclusions and Recommendations

The Special Committee on Home and Community Based Services Intellectual and Developmental Disability Waiver generally agreed that the State should explore how to move individuals from the Home and Community Based Services (HCBS) Intellectual and Developmental Disability (I/DD) waiver waitlist on to the HCBS I/DD waiver. Therefore, the Committee recommends:

- The Legislative Coordinating Council (LCC) consider approving a task force or committee, with a similar structure to the 2020 and 2021 Special Committees on Kansas Mental Health Modernization and Reform, to study modernization of the HCBS I/DD waiver;
- The Legislature approve funding for HCBS I/DD waiver providers to give direct care support workers pay raises as an incentive to retain more long-term employees;
- The Kansas Department for Aging and Disability Services (KDADS) provide recommendations to the House Committee on Social Services Budget and the Senate Committee on Ways and Means Subcommittee on Human Services for increases to the personal care attendant and supportive employment reimbursement rates;
- KDADS conduct an analysis of the targeted case management rates of the HCBS I/DD waiver and compare them to those of the Supports and Training for Employing People Successfully (STEPS) Program and report its findings to the House Committee on Social Services Budget and the Senate Committee on Ways and Means Subcommittee on Human Services;
- The Legislature identify areas in the budget to reduce expenditures in order to provide increased funding for HCBS I/DD waiver expenditures;
- The Legislature study how other states have addressed HCBS waitlists through restructuring those programs under different waiver authorities, and the State's options for its HCBS I/DD waiver;
- KDADS, with the Kansas Department of Health and Environment, collect and provide information on the actual services individuals on the HCBS I/DD waitlist currently need, and separately collect and provide information on the actual services individuals on the HCBS I/DD waiver currently use;
- The Legislature consider providing individual budget authority to HCBS I/DD waiver participants who self-direct their services;

- KDADS evaluate whether projects, particularly state infrastructure and consultant services, identified in its HCBS temporary 10.0 percent federal medical assistance percentage (FMAP) plan may be funded with pandemic-related American Rescue Plan Act (ARPA) funding. If projects may be funded with ARPA funding, then the Committee recommends the agency submit its plans to the Health and Education Advisory Committee of the Strengthening People and Revitalizing Kansas (SPARK) Task Force for consideration; and
- The Legislature explore potential legislation to provide automatic annual adjustments for the HCBS I/DD waiver reimbursement rates. Should the LCC approve an I/DD waiver task force or committee, such committee should explore potential legislation.

Proposed Legislation: None

BACKGROUND

During the 2021 Session, the House Committee on Social Services Budget and the House Committee on Appropriations recommended the Legislative Coordinating Council (LCC) form a special interim committee to review and study issues regarding the Home and Community Based Services (HCBS) Intellectual and Developmental Disability (I/DD) waiver waitlist, including adequate provider networks and I/DD waiver reimbursement rates.

The Special Committee on HCBS I/DD (Committee) was granted two meeting days by the LCC and met October 21 and 22, 2021, at the Statehouse.

COMMITTEE ACTIVITIES

The Committee's two-day meeting focused on information on the waitlist, workforce issues, and funding and reimbursement rates and on Committee discussion and recommendations.

The Committee received background information on the HCBS I/DD waiver and its waitlist from Kansas Legislative Research (KLRD) staff. The Committee heard testimony from representatives of the Kansas Department for Aging and Disability Services (KDADS) and the Kansas Department of Health and Environment (KDHE) on various issues surrounding the I/DD waiver. Additionally, representatives of various organizations testified concerning other states'

efforts in addressing similar waitlists and provided suggestions to the Committee. Several individuals presented testimony regarding their experience on the waitlist, and several providers testified to their issues retaining qualified staff. The Committee concluded its meeting with a discussion of the various issues and concerns it heard and determined its recommendations to the 2022 Legislature. The key issues and concerns are described as follows.

Historical Information and Eligibility Criteria for the HCBS I/DD Waiver

Historical Information

KLRD staff provided an overview of services provided to individuals with I/DD in the state. This overview included information on treatment provided by the state hospitals for individuals with I/DD and the push for "deinstitutionalization" in the 1970s and 1980s. Staff explained how this shift eventually led to the development of HCBS waivers in Kansas. Staff also provided a chart detailing the number of individuals on the I/DD waiver waitlist from September 2012 to September 2021.

General HCBS Eligibility Criteria

A representative of KDHE provided an overview of the Medicaid eligibility process and discussed how HCBS factors in financial eligibility as well as functional eligibility. The KDHE representative provided specific information on the resource limits and income standards for HCBS participants. The presentation included several examples of how client obligation

would be calculated depending on a potential participant's income.

A representative of KDADS provided a brief overview of the HCBS I/DD waiver. She explained that costs for HCBS waiver services must remain less than the cost of receiving services in an institution, and that the services provided should follow an individualized, person-centered plan of care. Additionally, she explained the functional eligibility portion of HCBS waiver eligibility. The representative described the following broad criteria an individual must meet for eligibility:

- Be 5 years of age or older;
- Either have been diagnosed by a licensed health care professional with an intellectual disability prior to the age of 18 or a developmental disability prior to the age of 22;
- Be determined program eligible by a community developmental disability organization (CDDO);
- Meet the Medicaid long-term care threshold; and
- Be found financially eligible for Medicaid.

After outlining the broad criteria of HCBS eligibility, the representative described the role CDDOs play in eligibility and outlined CDDOs' responsibilities as required by the State's Developmental Disabilities Reform Act (KSA 39-1801 *et seq.*). Included in the CDDO discussion was a map of the catchment areas of each of the State's 27 CDDOs.

In response to Committee member questions, the KDADS representative clarified that the individual must have received a diagnosis of intellectual or developmental disability before the age of 18 for intellectual disabilities and before the age of 22 for developmental disabilities, but that individual may apply for services at a later date. The representative stated that, due to the waitlist, the agency does not see individuals moving to Kansas from other states as a significant

contribution to the long wait individuals face on the waitlist.

HCBS I/DD Waiver Waitlist

Kansas Department for Aging and Disability Services

The KDADS representative stated 9,107 individuals are enrolled on the I/DD waiver, with a waitlist of 4,563 as of August 2021. She noted the longest an individual has been waiting was 9.5 years, and that approximately 70.0 percent of individuals on the waitlist also receive Medicaid services through KanCare.

She provided demographic information on those on the I/DD waiver and those on the waitlist, noting that a majority of people on the waitlist are younger than 35, with 39.0 percent between the ages of 13 and 21, and a large portion of individuals on the waiver and waitlist are male.

In her overview of the waitlist, the KDADS representative explained how individuals can begin to receive waiver services via a crisis or various exception requests. With respect to crisis requests, she indicated there must be either:

- Documentation from law enforcement or the Department for Children and Families (DCF) supporting the need to protect the individual from confirmed abuse, neglect, or exploitation; or
- Documentation substantiating that the individual is capable of and at significant, imminent risk of performing serious harm to themselves or others.

The KDADS representative explained additional waitlist expectations apply to crisis requests, which largely center around individuals transferring from institutions or DCF custody back to the community. The KDADS representative stated approximately 50 individuals make that transition each quarter, which translates to approximately 200 to 250 individuals a year.

The KDADS' waitlist presentation included information on Louisiana's efforts to address its waitlist and Kansas' plan for a waitlist study.

The KDADS representative highlighted how Louisiana utilizes a screening tool to determine an individual's need for waiver services. Individuals who are determined to need support within a year are prioritized for services appropriate to their needs. Other individuals are placed on a registry to be reassessed periodically at certain times.

She also highlighted how a portion of Louisiana's efforts are the result of having a different waiver structure than that of Kansas. Kansas utilizes a comprehensive waiver structure, under which an individual on the waiver is entitled to all services offered through the I/DD waiver. Louisiana's waiver includes five separate programs for I/DD services, which allows the state to provide participants tailored services to meet their needs.

The KDADS' representative provided an overview of the State's plan to study the I/DD waiver waitlist and determine how it can identify and monitor the needs of individuals on the waitlist. To fund this study, the agency plans to utilize moneys from a temporary 10.0 percent increase in the federal medical assistance percentage (FMAP) for HCBS waiver services included in the American Rescue Plan Act of 2021 (ARPA).

The Committee's questions focused on how Louisiana addressed its waitlist and included discussion on how Kansas can potentially utilize a different waiver structure to move people off the waitlist. In response to a question, the KDADS representative provided a rough all-funds estimate of \$200.0 million to move everyone from the waitlist onto the waiver; she also indicated the system did not have the capacity to provide services to everyone on the waitlist. Additional questions centered around the demographics of individuals on the waitlist and how the State can identify the current needs of individuals on the I/DD waitlist.

Intellectual/Developmental Disability Organizations

Various I/DD organizations and advocates provided presentations.

Representatives of InterHab provided an overview of its report and recommendations for

the Committee. The InterHab representatives provided a brief overview of I/DD waiver funding and reviewed a survey the organization conducted through its member CDDOs in an effort to provide some demographic information for the Committee. They described some of the efforts made by other states in addressing similar waitlists, primarily utilizing different waiver authorities to allow individuals to receive select services, as opposed to the comprehensive structure Kansas utilizes. They suggested recommendations for the Committee, which centered around funding and alternative waiver authorities in federal law.

A representative of the Kansas Council on Developmental Disabilities discussed the elimination of the I/DD underserved list in 2014 and expressed a need for the State to have a strategic plan to study the waitlist. He noted that individuals on the waiver and waitlist total approximately 13,000 individuals, and that approximately an additional 43,000 individuals in Kansas have an intellectual or developmental disability. He highlighted some of the supports individuals and families have indicated they need. The representative also spoke about the Supports and Training for Employing People Successfully (STEPS) pilot program at KDHE, which aims to assist individuals with employment and independent living supports. He requested funding the I/DD waiver and building system capacity.

A representative of the Disability Rights Center of Kansas provided testimony regarding the I/DD waitlist. He also requested an in-depth study of the waitlist. He elaborated that any study conducted should be followed up with a task force to develop recommendations to address the I/DD waitlist. He noted that the process in Louisiana to develop the state's plan included a task force that included legislators, agency staff, self advocates, families, providers, and other experts. He also noted several other efforts to assist individuals on the waitlist in Kansas, including supportive decision-making, school-to-community transitions through the Kansas Department of Education, and the STEPS pilot program at KDHE.

A representative of the Self Advocate Coalition of Kansas provided a view of the waiting list from an individual who was once on the list. He testified that he considers the services he received through the waiver as being one of the

reasons for his independence and employment. He also expressed concern over the nine-year wait for waiver services and how that wait might affect an individual with I/DD graduating from high school without waiver services.

A representative of the Kansas University Center on Developmental Disabilities testified regarding the Center's work in assisting individuals with disabilities through training, technical assistance, research, and information sharing. He reviewed several issues regarding the I/DD waiver including the waitlist: the use of the crisis exception as an entry point to the waiver, inconsistency in where services are offered in the state, and low employment rates for individuals with I/DD. He highlighted that the length of time on the waitlist creates instances in which individuals leave high school without continuation of services they had maintained through the school system.

The Kansas University Center on Developmental Disabilities representative provided information in discussion regarding the outcomes of federal grant-funded studies and Center efforts to assist individuals with I/DD transition from high school into the community, unnecessary guardianship, and educating parents on other services, such as supportive decision making, to help avoid guardianship.

Individuals on the Waitlist

The Committee heard testimony from several parents with children on the I/DD waitlist. Several individuals indicated that they had applied for services within the past year and half and are expected to wait approximately eight to ten years for services. Another individual stated her child had been on the waitlist for approximately five years, and she anticipates waiting another six years for services.

The testimony offered by individuals centered around the issues they experienced finding services for their children outside of the HCBS I/DD waiver. Additional discussion topics included income limits for someone with intellectual or development disability to receive Supplemental Security Income, services provided through schools, and how school-based services interact with the HCBS waiver services.

Adequacy of HCBS I/DD Waiver Services Provider Network

Kansas Department for Aging and Disability Services

A representative of KDADS provided a brief presentation regarding issues surrounding the I/DD provider workforce that included an overview of the national demand for direct care support workers, while highlighting that the national average hourly wage for the direct care workforce is approximately \$13.50 with average annual earnings of \$28,000.

She provided Kansas-specific statistics indicating that Kansas is ranked 42nd in the nation in the direct services worker average hourly rate (\$11.30) and annual salary (\$23,520). She also indicated that, on average, each \$1.00 increase in the hourly rate decreased the caregiver turnover by 3.0 percent.

The KDADS representative provided an overview of how the agency anticipates to utilize moneys from the temporary 10.0 percent FMAP increase to assist the workforce. The agency's current plan for the workforce includes:

- A recruitment and retention bonus program to attempt to increase retention rates throughout the state;
- Providing training grants to improve the quality of care, opportunities for professional development, and direct support worker retention rates; and
- Studying and designing a career ladder to incentivize longevity and promotion opportunities while increasing workers' earning potential in an effort to decrease turnover.

In response to Committee questions and comments on support for providing funds directly to the direct care workforce and use of FMAP moneys, the KDADS representative said these projects were envisioned as an effort to help stabilize the system while the agency explored long-term solutions.

Direct Care Support Workers and Provider Organizations

The Committee heard several accounts from representatives of HCBS I/DD waiver service providers Aetna Better Health of Kansas, Big Lakes Developmental Center, COF Training Services Inc., Sunflower Health Plan, Starkey Inc., and Tri-Ko Inc. about experiences with workforce challenges. Several provider organization representatives expressed concern over the competition their organizations face with similar fields such as nursing care where employees might leave to provide care at a nursing facility to receive a higher hourly rate. Provider representatives detailed how their employees must cover multiple shifts as they experience staff shortages.

The representative from Big Lakes Developmental Center thanked the Legislature for the reimbursement rate increase provided in 2021, as it helped increase the hourly rate for direct care workers, but expressed concern over the wage competition with similar industries. The representative further explained that it was difficult to provide residential services for an individual given the 24/7 nature of the services and the low reimbursement rate the provider receives.

A direct care support worker from Big Lakes Developmental Center explained that the high turnover creates a continuity of care issue, where waiver participants lack a consistent individual providing services. She expressed concern that staffing shortages may lead to errors in medication and accidents for both participants and staff, as well as staff exhaustion.

A representative of Sunflower Health Plan (Sunflower), a KanCare managed care organization (MCO), testified that while Sunflower has not experienced a shortage in providers willing to provide services, it has seen an increase in providers not taking on new clients. She indicated Sunflower is exploring how the use of technology, such as smart home technology that can provide remote medication assistance, can be used to help alleviate workforce issues.

Additionally, she stated Sunflower had been looking into how the COVID-19 family caregiver

exceptions can be extended to allow for a flexible subsidy to encourage caregivers as providers.

Committee members expressed admiration for the work providers performed, especially during the pandemic. In response to questions, conferees provided information on how providers are paid, including how the reimbursement rates translate into a direct care support worker's hourly rate. The representative of Big Lakes Developmental Center indicated that organization tries to estimate what it will receive in reimbursement rates and then calculate what it can provide staff based on the average need of clients. In response to a question, a KDADS representative said there are approximately 300 I/DD waiver service providers in Kansas.

Funding for the HCBS I/DD Waiver and Provider Reimbursement Rates

The Committee began its review of funding and reimbursement rates with a presentation from KLRD on the historical funding for the I/DD waiver.

Budget Neutrality

The State Medicaid Director, KDHE, provided information on Medicaid budget neutrality and how that affects the State's ability to provide increases for Medicaid-related expenditures. She provided a brief history of the KanCare programs. She explained that KanCare is implemented under a federal 1115 waiver of certain requirements of the Medicaid program, which requires that the state Medicaid program not cost more than it would absent the 1115 waiver. [Note: Section 1115 of the Social Security Act gives the U.S. Secretary of Health and Human Services authority to approve experimental, pilot, or demonstration programs the Secretary finds to be likely to assist in promoting the objectives of the Medicaid program.]

She indicated the budget neutrality cap remains in effect throughout the waiver's life, and that Kansas would be responsible for any costs above the cap. She noted that, with every change to the KanCare program, the State should be cognizant on how the change will impact the 1115 waiver budget neutrality cap.

She indicated that in 2019, the State appeared to have a \$1.0 billion budget neutrality cushion, and projected to end the waiver period, in December 2023, roughly \$568.0 million below the budget neutrality cap. She said that subsequently, the federal Centers for Medicare and Medicaid Services (CMS) made accounting errors that reduced Kansas' cap. She stated KDHE was in the process of submitting a proposal to CMS to correct those errors, but until CMS approves those changes, the State will not have as much budget neutrality room as it originally anticipated.

Use of Federal and State Funds

A representative of KDADS provided a brief overview of the how HCBS waivers are funded with a mix of state and federal funds. She explained the federal share is calculated using FMAP. Absent the 10.0 percent FMAP increase as a result of ARPA, the FMAP is approximately 60.0 percent, meaning for every dollar the state spends on HCBS, 60.0 percent of that dollar would be funded with federal moneys and the remaining 40.0 percent would come from with state funds.

The representative explained the KanCare MCOs receive a per-member-per-month payment to provide Medicaid health services and additional HCBS waiver services. For FY 2021, MCO payments were approximately \$4,000 per member per month. She then provided an overview of the reimbursement rates the MCOs use when reimbursing providers for I/DD waiver services.

Funding and Provider Reimbursements

A representative of the Disability Rights Center of Kansas provided testimony regarding funding for the I/DD waiver. The representative's testimony included detailed recommendations to increase funding for the waiver, including adding funding for the waiver as the system builds capacity, significantly increasing rates for certain one-on-one services, and incorporating a process for ongoing rate adjustments. He reiterated his support for a study on the waiver, including studying the need to adjust reimbursement rates. He additionally recommended the State consider providing individuals who self-direct services individual budget authority to allow them more control in addressing their needs.

A representative of Sunflower provided an overview of its value-based payments system to allow for extraordinary circumstances. She clarified how some providers may receive an increased reimbursement rate when an individual's needs exceed those of an average participant. She also expressed concern over the discrepancy in the specialized nursing care reimbursement rate created when the Legislature increased the rate for the Technology Assisted (TA) waiver code but not for the I/DD waiver. She stated the discrepancy created some issues with providers accepting referrals only for individuals on the TA waiver.

CONCLUSIONS AND RECOMMENDATIONS

The Committee generally agreed the State should explore how to move individuals from the HCBS I/DD waiver waitlist to the waiver. After discussion, the Committee recommends:

- The Legislative Coordinating Council consider approving a task force or committee, with a similar structure to the 2020 and 2021 Special Committees on Kansas Mental Health Modernization and Reform, to study modernization of the HCBS I/DD waiver;
- The Legislature provide funding for HCBS I/DD waiver providers to give direct care support workers pay raises as an incentive to retain more long-term employees;
- KDADS provide recommendations to the House Committee on Social Services Budget and the Senate Committee on Ways and Means Subcommittee on Human Services for increases to the personal care attendant and supportive employment reimbursement rates.;
- KDADS conduct an analysis of the targeted case management rates of the HCBS I/DD waiver and compare them to those of the STEPS Program and report its findings to the House Committee on Social Services Budget and the Senate Committee on Ways and Means Subcommittee on Human Services;

- The Legislature identify areas in the budget to reduce expenditures in order to provide increased funding for HCBS I/DD waiver expenditures;
- The Legislature study how other states have addressed HCBS waitlists through restructuring those programs under different waiver authorities and the State's options for its HCBS I/DD waiver;
- KDADS and KDHE collect and provide information on the actual services individuals on the HCBS I/DD waitlist currently need, and separately collect and provide information on the actual services individuals on the HCBS I/DD waiver currently use;
- The Legislature consider providing individual budget authority to I/DD waiver participants who self-direct their services;
- KDADS evaluate whether projects, particularly state infrastructure and consultant services, identified in its HCBS temporary 10.0 percent FMAP plan may be funded with pandemic-related ARPA funding. If projects may be funded with ARPA funding, then the Committee recommends the agency submit its plans to the Health and Education advisory committee of the Strengthening People and Revitalizing Kansas (SPARK) Task Force for consideration; and
- The Legislature explore legislation to provide automatic annual adjustments for the HCBS I/DD waiver reimbursement rates. Should the Legislative Coordinating Council approve an I/DD waiver task force or committee, such committee should explore potential legislation.

Report of the Special Committee on Liquor Law Modernization to the 2022 Kansas Legislature

CHAIRPERSON: Representative John Barker

VICE-CHAIRPERSON: Senator Larry Alley

RANKING MINORITY MEMBER: Representative Louis Ruiz

OTHER MEMBERS: Senators Brenda Dietrich, Richard Hilderbrand, Tom Holland, and Rick Kloos; and Representatives John Carmichael, Tom Kessler, Marty Long, and Sean Tarwater

STUDY TOPIC

The Committee is directed to:

- Evaluate the current laws in Kansas pertaining to alcoholic liquor, wine, beer, and cereal malt beverage (regulated beverages).

In its evaluation, the Committee will:

- Study current Kansas laws and regulations concerning regulated beverages;
- Study recently enacted legislation concerning regulated beverages; and
- Make recommendations to the 2022 Legislature to harmonize existing provisions and ensure the law treats regulated beverages and associated licensees in a similar fashion.

December 2021

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Special Committee on Liquor Law Modernization

REPORT

Conclusions and Recommendations

The Special Committee on Liquor Law Modernization (Committee) wishes to make the Legislature aware of the collateral effects of alcohol on the lives of Kansans and urges the Legislature to be diligent in monitoring such effects.

The Committee makes the following recommendations:

Kansas State Fair

The Committee recommends the appropriate House standing committee conduct hearings on 2021 SB 2, as introduced, concerning the consumption of alcohol on the grounds of the Kansas State Fair and collection of associated liquor taxes, and that the standing committee consider taking action on the bill.

Farm Wineries

The Committee recommends that a farm winery automatically be eligible for a drinking establishment license as an agribusiness without regard to any other local building codes or restrictions. The Committee also recommends that such licensee also be automatically granted a cereal malt beverage (CMB) retailer's license in the same manner as producer licensees, who under current law are automatically approved for a CMB retailer's license if the applicant has already been issued a producer's license for a vineyard pursuant to KSA 2020 Supp. 41-355, provided the applicant is not otherwise disqualified from holding the retailer's license under law.

Urban Farm Wineries

The Committee recommends the Legislature or an appropriate committee study the possibility of establishing an urban winery license that would have no Kansas agricultural production requirements.

Tax Rate on Wine

The Committee recommends the introduction of legislation to amend KSA 2020 Supp. 41-501(b) (1) concerning the excise tax on wine to increase the 14 percent alcohol by volume (ABV) threshold for state taxation to match the recently raised federal taxation threshold of 16 percent ABV for certain still wine classes.

Sale and Delivery of Alcoholic Beverages between a Retailer and Certain Licensees for Resale

The Committee recommends the introduction of legislation to amend the provisions of KSA 2020 Supp. 41-308 to authorize a retail liquor store licensee to sell and deliver alcoholic liquor and CMB to a caterer or to the licensed premises of a public venue, club, or drinking establishment for resale by such public venue, club, establishment, or caterer, regardless of the proximity to the retailer.

Proposed Legislation: None

BACKGROUND

The study directive from the Legislative Coordinating Council (LCC) to the Special Committee on Liquor Law Modernization (Committee) is to evaluate the current laws in Kansas pertaining to regulated beverages—alcoholic liquor, wine, beer, and cereal malt beverage (CMB)—and to make recommendations to the 2022 Legislature to harmonize existing provisions and ensure the law treats regulated beverages and associated licensees in a similar fashion.

The Committee was authorized by the LCC to meet on four days and met at the Statehouse on August 31; October 7 and 8; and November 10, 2021.

COMMITTEE ACTIVITIES

August 31, 2021, Meeting

The Committee met on August 31 to hear informational presentations from legislative staff and from the Director of the Alcoholic Beverage Control Division of the Department of Revenue (ABC Director).

Overview of Recent Liquor Legislation

A Senior Assistant Revisor of Statutes provided an overview of recent liquor and CMB legislation. He discussed the provisions of notable recently enacted legislation and explained the provisions of each bill.

Overview of the Three-tier System

The ABC Director discussed the history of the ABC from the Prohibition Era to the present. She also discussed the structure of the three-tier system of suppliers, distributors, and retail establishments.

The ABC Director also described different taxes applicable to the production and sale of liquor and CMB. She answered questions on topics including counterfeit spirits, consolidation of liquor statutes, crimes, and home delivery of regulated beverages.

Committee Discussion

Committee members asked Kansas Legislative Research Department (KLRD) and Office of Revisor of Statutes staff to provide information on the following topics:

- Sales of alcohol at the Kansas State Fair (State Fair);
- Sampling of alcohol at the State Fair;
- Tax rates on alcohol products;
- Local government zoning requirements for farm wineries;
- Available tax credits for farm wineries;
- Distributor franchise agreements;
- Alcohol-related crime statistics;
- Home delivery of alcohol products; and

- Location restrictions on sales between liquor stores and drinking establishments.

October 7, 2021, Meeting

Presentation of Committee Research Topics

A KLRD Senior Research Analyst gave a presentation on the following topics:

- Sale and delivery of spirits to a drinking establishment;
- Alcohol-related crime statistics;
- Farm winery location requirements;
- Sampling requirements for liquor and alcohol consumption at the State Fair; and
- Liquor and CMB tax rates.

A Senior Assistant Revisor of Statutes gave a presentation on the following topics:

- Agritourism tax credit availability for farm wineries;
- Alcohol consumption at the State Fair;
- Distributor franchise agreements;
- Permitted activities for farm wineries; and
- Restrictions on in-state shipping for farm wineries, microbreweries, and microdistilleries.

The Committee requested information on local building codes applicable to farm wineries and on distributor franchise agreements and farm winery licensees.

Overview of the Kansas Open Meetings Act

A Senior Assistant Revisor of Statutes gave a presentation on the Kansas Open Meetings Act (KOMA). He discussed the requirement that legislative meetings be open to the public and

situations in which a gathering could be considered a meeting.

The Chairperson noted past instances of legislative committee members having a conversation via text message, and discouraged similar conversations from occurring.

Conferee Testimony on Delivery of CMB

A representative of Walmart stated the company is asking for authorization to deliver CMB to the homes of customers. The conferee further stated that Walmart belongs to a loose coalition of other CMB retailers that would like to make similar deliveries.

A representative of Dillons stated the company agrees with the comments of Walmart and discussed deliveries the company makes in other states.

A representative of Fuel True, Casey's General Stores, and the Retail Grocers Association discussed the history of CMB legislation in Kansas and legislation in regional states. The representative also discussed the effects of the COVID-19 pandemic on retail sales and the desire of his clients to deliver CMB. The representative stated his clients are working to draft legislation to allow CMB retailers to deliver CMB and other products.

The ABC Director addressed questions raised during conferee presentations concerning delivery of liquor and CMB by a retail liquor store. The ABC Director discussed ABC's interpretation of KSA 2020 Supp. 41-308, and noted a minor correction that could be made to the statute.

A Senior Assistant Revisor of Statutes provided his interpretation of KSA 2020 Supp. 41-308 and stated he believes further clarification will be necessary. The Senior Assistant Revisor of Statutes also addressed a question concerning farm wineries by stating such a licensee must also have a drinking establishment license to sell CMB.

A representative of the Kansas Wine & Spirits Wholesalers Association stated that if the Legislature modifies the Liquor Control Act, it

may also need to modify the Drinking Establishment Act. He also discussed the farm winery zoning questions, and referred to two Attorney General opinions in conjunction with a statute. The representative also discussed current franchise agreement laws and tax rates of regulated beverage products. In response to questions, the representative discussed the possibility of legislation limiting the geographical area of delivery and also discussed the differences between delivery and shipping of regulated beverages.

A representative of the Kansas Association of Beverage Retailers stated there has been a decline in the number of retail liquor stores in the state and noted that when new entities enter the marketplace, more business is diverted from licensed retailers. She asked the Committee to not recommend legislation that would introduce additional out-of-state and unlicensed entities into the marketplace.

A representative of the Distilled Spirits Council of the United States discussed the rise in online shopping for groceries and regulated beverages due to the COVID-19 pandemic. He discussed demand for direct-to-consumer shipping by manufacturers and discussed survey results showing that consumers want the ability to purchase products directly. The representative also discussed issues with craft distillers finding a wholesaler to distribute their product.

A representative of the Wine Institute stated the Wine Institute would like to see the distribution of wine be removed from franchise law, or amended to allow more flexibility in franchise agreements. He also discussed the tax rates of ready-to-drink beverages and stated the Wine Institute requests fair and equitable tax rates for such beverages. In response to questions, the representative discussed franchise laws and related litigation.

October 8, 2021, Meeting

The ABC Director addressed Committee questions from the prior day's meeting. The ABC Director discussed ABC's role as the custodian of franchise agreements. She discussed notice required for alterations, modifications, or terminations of such agreements; remedies for

aggrieved parties; and the timeline of when changes to the agreement take effect. The ABC Director also cited statistics related to requests to change a franchise agreement and resulting litigation.

The ABC Director also discussed taxes on alcoholic candy, noting the minimum level of alcoholic content to be assessed taxes and to be sold by retail liquor stores. In response to a question, the ABC Director stated there is no maximum amount of alcohol that may be contained in alcoholic candy.

Conferee Testimony on Liquor Sales and Delivery

A representative of Vern's Retail Liquor described the effects of 2019 law on retail liquor stores and current supply chain challenges due to the COVID-19 pandemic. The representative stated the supply chain challenges would be exacerbated if more parties were introduced to the market.

A representative of the Kansas Association for Responsible Liquor Laws reviewed the temporary provisions in place during the COVID-19 pandemic that allowed restaurants to sell mixed beverages along with food orders and discussed the extension of that privilege to other entities in 2021. The representative discussed concerns with allowing home delivery and direct sales and stated the organization supports the current construction of the three-tier system.

A representative of the Kansas Beer Wholesalers Association described the products CMB retailers are authorized to sell and, in response to a question, stated 3.2 percent beer is still available for purchase in the state. He stated his opinion that the three-tier system is working and that franchise laws protect independence and provide for consumer choice. The representative also discussed his concerns with direct shipping.

A representative of the Kansas Licensed Beverage Association, the Kansas Craft Brewers Association, the Kansas Viticulture and Farm Winery Association, and the Artisan Distillers of Kansas discussed the differences between direct delivery and direct shipping, and that his clients would like to be involved when the Legislature

considers legislation on direct delivery. The representative also proposed a new urban farm winery license be created that would have no agriculture requirements, and he discussed an issue regarding the transfer of beer between a caterer and a distributor.

November 10, 2021, Meeting

A KLRD Research Analyst presented a memorandum to the Committee concerning home delivery of regulated beverages, addressing questions Committee members had raised at the October 7 meeting. She described the current status of alcohol delivery laws across the country and noted that many states' laws were enacted during the COVID-19 pandemic.

Discussion on Committee Research Topics

Topics reviewed by staff and discussed by the Committee included:

- Permitted activities of farm wineries;
- Farm winery agritourism tax credit eligibility;
- Allowable locations of farm wineries;
- Building code requirements for farm winery buildings;
- A State Fair common consumption area;
- Sampling requirements at the State Fair;
- Current law on distributor franchise agreements;
- Current law on in-state shipping by farm wineries, microbreweries, and microdistilleries;
- Sale and delivery of alcoholic beverages between a retailer and an on-premises licensee;
- Home delivery of regulated beverages;

- Tax rates for liquor, CMB, and alcoholic candy;
- Effect of 2017 House Sub. for SB 13 on sales of items in addition to liquor at retail liquor stores; and
- The impact of recent alcohol legislation on alcohol-related crime.

CONCLUSIONS AND RECOMMENDATIONS

Following discussion, the Committee adopted the following recommendations:

Effects of Alcohol

The Committee wishes to make the Legislature aware of the collateral effects of alcohol on the lives of Kansans and urges the Legislature to be diligent in monitoring such effects.

State Fair

The Committee recommends the appropriate House standing committee conduct hearings on 2021 SB 2, as introduced, concerning the consumption of alcohol on the grounds of the State Fair and collection of associated liquor taxes, and that the standing committee consider taking action on the bill.

Farm Wineries

The Committee recommends that a farm winery automatically be eligible for a drinking establishment license as an agribusiness without regard to any other local building codes or restrictions.

The Committee also recommends that such licensee also be automatically granted a CMB retailer's license in the same manner as producer licensees, who under current law are automatically approved for a CMB retailer's license if the applicant has already been issued a producer's license for a vineyard pursuant to KSA 2020 Supp. 41-355, provided the applicant is not otherwise disqualified from holding the retailer's license under law.

Urban Farm Wineries

The Committee recommends the Legislature or an appropriate committee study the possibility of establishing an urban winery license that would have no Kansas agricultural production requirements.

Tax Rate on Wine

The Committee recommends the introduction of legislation to amend KSA 2020 Supp. 41-501(b)(1) concerning the excise tax on wine to increase the 14 percent alcohol by volume (ABV) threshold for state taxation to match the recently

raised federal threshold of 16 percent ABV for certain still wine classes.

Sale and Delivery of Alcoholic Beverages between a Retailer and Certain Licensees for Resale

The Committee recommends the introduction of legislation to amend the provisions of KSA 2020 Supp. 41-308 such that a retail liquor store licensee may sell and deliver alcoholic liquor and CMB to a caterer or to the licensed premises of a public venue, club, or drinking establishment, for resale by such public venue, club, establishment, or caterer, regardless of the proximity to the retailer.

Report of the Joint Committee on Child Welfare System Oversight to the 2022 Kansas Legislature

CHAIRPERSON: Senator Richard Hilderbrand

VICE-CHAIRPERSON: Representative Susan Concannon

OTHER MEMBERS: Senators Molly Baumgardner, Oletha Faust-Goudeau, Beverly Gossage, Cindy Holscher, and Kristen O’Shea; and Representatives Suzi Carlson, Charlotte Esau, Susan Humphries, Timothy Johnson, Jarrod Ousley, and Susan Ruiz

CHARGE

Review the Child Welfare System

Pursuant to provisions in 2021 Session Law, Chapter 11, New Section 1 [HB 2158], the Committee is directed to review:

- Data on child maltreatment and demographic trends impacting the child welfare system;
- The duties, responsibilities, and contributions of the Department for Children and Families (DCF), the Kansas Department for Aging and Disability Services (KDADS), the Kansas Department of Health and Environment (KDHE), the Department of Corrections, law enforcement, and the Judicial Branch that comprise and impact the child welfare system;
- The programs, services, and benefits offered directly or through grants or contracts by DCF, KDADS, KDHE, and the Judicial Branch that impact children and families who are involved, or at risk of becoming involved, in the child welfare system, including: child maltreatment prevention, investigations of child maltreatment, in-home family services including services offered through federal prevention and family preservation funding and foster care, reintegration, and adoption services;

- Trends, performance outcomes, activities, and improvement plans related to the federal Child and Family Services Reviews;
- Reports from child welfare-related groups, including citizen review panels, the Kansas Supreme Court Permanency Planning Task Force, the Kansas Children’s Cabinet, and any interim study committees or work groups authorized by the Kansas Legislature;
- Implementation of the 2019 Child Welfare System Task Force report recommendations, including top-tier recommendations related to the child welfare workforce, data, technology, access to behavioral health care for high-risk youth, and implementation of the federal Family First Prevention Services Act;
- Reports on concerns received from the DCF Child Welfare Ombudsman or customer service department or similar office;
- Opportunities for Kansas to strengthen the child welfare system through evidence-based interventions and services for children and families;
- Data and trends on family foster home licenses pursuant to KSA 65-516(b) and amendments;
- The exception of State Child Death Review Board confidentiality for city or county entities with the express purpose of providing local review of child deaths (KSA 2020 Supp 22a-243 and amendments); and
- Any other topic the Committee deems appropriate.

January 2022

Joint Committee on Child Welfare System Oversight

ANNUAL REPORT

Conclusions and Recommendations

The Joint Committee on Child Welfare System Oversight (Committee) makes the following recommendations:

- Each court should provide biological parents, and other family members or kin who attend court for the first time, with a document outlining requirements to accomplish reintegration or regain custody of their children;
- The Department for Children and Families (DCF) should place more emphasis during mental and physical (MAP) training on the foster program, as opposed to the foster to adopt program, and the differences in roles for each type of foster parent;
- The court-appointed special advocate (CASA) program should maintain the \$225,000 funding for FY 2023 and following years;
- DCF should expand activities for foster children of all ages that encourage bonding with their foster parents, as well as activities that encourage bonding with other children of a similar age;
- DCF should include input from the perspective of the child in custody in child placement books, often referred to as red, blue, or orange books;
- The Governor and Legislature should return the \$21 million transferred out of the Juvenile Justice Improvement Fund in FY 2021, which was originally intended for evidence-based intervention programs addressed in 2016 SB 367 to aid community programs serving the needs of juveniles in the justice system;
- The Legislature should explore codifying caseworker accredited standard caseloads in statute and add a statutory cap on the number of cases that caseworkers may have while maintaining accreditation standards;
- DCF should transform the request for proposal (RFP) federal grant awarding process into a performance-based federal grant awarding process when contracting with foster care agencies, which requires outcome-based assessments;
- The Legislature should prioritize increasing support to kinship-placed children and affording them the same services as children placed in a licensed foster home;
- The Legislature should strengthen the consideration of attachment for permanency placement of children in the Best Interest Staffing (BIS) process by adjusting statutes to consider attachment science, regarding the child's attachment, in the BIS process;

- The Governor should rescind Executive Order 21-28 and issue an Executive Reorganization Order to avoid future legal issues between the Executive and Legislative branches;
- Further, the Governor and Legislature should collaborate to reach a consensus on a bill during the 2022 Legislative Session that would establish a true, independent, and transparent Office of the Child Advocate;
- DCF should work to improve the communication and relationship with legislators to address child welfare system-related matters involving constituents;
- The Child Death Review Board should establish rules and regulations by January 31, 2022, concerning local death review boards; and
- When possible, the Child Death Review Board should include information in its report regarding sexual orientation, gender identity, and race and ethnicity.

Additionally, the Committee requests that DCF provide an update to the Committee at its next meeting regarding the legislation passed in 2019 regarding child-on-child sexual assault.

Proposed Legislation: Three bills.

- The Legislature should pass legislation, effective July 1, 2022, to amend Adrian’s Law and expand it to require visual pediatric physician examination from a pediatrician with specialized training for examining alleged abused and neglected children. The legislation should also include the two-pronged program approach proposed by the Kansas Chapter American Academy of Pediatrics (KAAP). In phase one, the State would implement a triage system pilot program for pediatricians with specialized training for examining alleged abused and neglected children, and in phase two, the State would develop a statewide network of “Safe Care Providers” who would participate in an educational training program on child maltreatment.
- DCF should work with the representative of the Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association, and other law enforcement agencies as needed, and seek the assistance of the Office of Revisor of Statutes to draft statute clarifying the interpretation of statutory language for sharing information with local law enforcement. If a resolution is not achieved by the start of the 2022 Legislative Session, it is recommended the Judicial Council be consulted to assist in coming to a resolution.
- Legislation should be introduced to amend the language in KSA 22a-243 to address the issue raised by the Child Death Review Board regarding extending confidentiality rules and regulations to local child fatality review organizations.

(Note: For the purpose of this report, “Proposed Legislation” means items recommended with legislative action.)

BACKGROUND

The 2021 Legislature passed HB 2158, which established the Joint Committee on Child Welfare System Oversight (Committee), composed of 13 members, and outlined the topics for the Committee to review.

The bill charged the Committee to review:

- Data on child maltreatment and demographic trends impacting the child welfare system;
- Duties, responsibilities, and contributions of the Department for Children and Families (DCF), the Kansas Department for Aging and Disability Services (KDADS), the Kansas Department of Health and Environment (KDHE), the Kansas Department of Corrections (KDOC), law enforcement, and the Judicial Branch to the child welfare system;
- Programs, services, and benefits offered by DCF, KDADS, KDHE, and the Judicial Branch that impact children and families who are involved, or at risk of being involved, in the child welfare system;
- Trends, performance outcomes, activities, and improvement plans related to the federal Child and Family Services Reviews;
- Reports from child welfare-related groups;
- Implementation of 2019 Child Welfare System Task Force report top-tier recommendations;
- Reports on concerns received from the DCF Child Welfare Ombudsman or customer service department;
- Opportunities for Kansas to

strengthen the child welfare system through evidence-based interventions and services for children and families;

- Data and trends on family foster home licenses issued pursuant to the exception created in 2021 HB 2158;
- The exception added by 2021 HB 2158 to the confidentiality of Child Death Review Board records for city or county entities reviewing child deaths; and
- Any other topic the Committee deems necessary or appropriate.

COMMITTEE ACTIVITIES

The Legislative Coordinating Council approved four meeting days for the Committee in 2021. The Committee met four times: October 5 and 6 and November 3 and 4. All meetings were held via in-person and virtual formats. The Committee's work focused on the specific topics described in the following sections.

OCTOBER 5, 2021, MEETING

Review of Executive Order No. 21-27 and Executive Order No. 21-28

At the October 5, 2021, meeting, during opening remarks, the Chairperson and Committee members made comments regarding the timing of the executive orders (EOs), EO No. 21-27, establishing the Office of Public Advocates, and EO No. 21-28, establishing the Division of the Child Advocate, in light of positions held by the House and Senate on how best to establish these offices. The Chairperson asked staff to research whether the EOs should have been Executive Reorganization Orders (EROs), which would have required legislative approval, and asked members of the Committee not to allow the timing of the EOs to influence their thoughts or opinions.

The Vice-chairperson noted the existence of pending bills in the House and Senate that would establish an Office of the Child Advocate and asked Office of the Revisor of Statutes staff what

might happen if the bills are passed. Office of the Revisor of Statutes staff stated that if a bill was passed out of either chamber regarding an Office of the Child Advocate, the language of the bill could impact the current EO, but there would be questions regarding how the current EO and the bill would interact.

The Senate passed Senate Sub. for HB 2153, which would have established the Child Advocate Act and Office of the Child Advocate within the Office of the Attorney General and the Committee, but with the absence of a House bill or agreement by both chambers, this does not constitute final action and would not impact the EO.

Overview of Duties, Responsibilities, and Contributions and Implementation of Top-tier Recommendations

Department for Children and Families. Regarding data and trends of foster family home licenses issued, the Director of Permanency, DCF, presented current data regarding the exception created in HB 2158, which allows DCF to license a foster home if a juvenile offender over 18 years of age lives in the same home, as long as certain conditions are met. During the 2021 Session, HB 2149 was introduced to address gaps in current law but did not pass.

The Director of Permanency said DCF seeks to change the statutory language in KSA 65-516 to allow DCF to grant limited exceptions to prohibited offenses on a case-by-case basis and provide for a case-by-case ability to help foster families make decisions regarding their foster children. DCF licenses foster family homes, while KDHE licenses child and day care facilities. A Committee member stated that when the Committee made this exception, members did not realize the language only covered adults eligible for expungement, but did not cover children under 18 years of age.

Regarding individuals aging out of the foster care system, a DCF representative noted that being 18 to 21 years of age is the most common indicator of a person who has “aged out” of the foster care system, but individuals in foster care may stay in the system beyond this age range or leave the system before reaching it. There is no

clear age indicating that an individual has “aged out” of foster care.

Regarding missing foster children and children staying overnight in contractors’ offices, A Deputy Secretary of DCF provided information on DCF’s trained special response team network, which seeks to help find missing foster children and prevent foster children from running away. According to the *McIntyre v. Howard, et al.* case, the practice of keeping children in offices overnight was required to cease by the end of October 2021. DCF has a policy to immediately notify law enforcement, the National Center for Missing and Exploited Children, family, caregivers, courts, and others, within 24 hours of notice that a child is missing. DCF makes daily contact and inquiries with the child’s caregivers, school, family, social media, and other mediums associated with the child between days one through five after the child is reported missing.

After day five, DCF makes weekly contact. If the child is recovered, DCF does a complete assessment of the child. DCF keeps a daily report of the number of missing children on its website and has had 434 recoveries from January 1, 2021, to September 24, 2021. The Deputy Secretary said this number includes multiple recoveries of the same children, and it does not represent the total number of distinct individuals recovered.

The Senior Director of Public and Governmental Affairs, DCF, provided an overview of reports made to the DCF Customer Service Office, which handles protection and prevention calls related to foster care and adoption, as well as reports of suspected abuse or neglect. DCF has a three-person customer service team that works with customer service teams in the six regions of the state to route specific questions to the appropriate person. The representative noted if an inquiry cannot be answered at a given time, DCF creates a ticket, and the inquiry is routed to the appropriate local office. DCF also added a statewide helpline phone number at the beginning of the COVID-19 pandemic to accommodate the transition to remote work.

The Secretary for Children and Families provided an overview of DCF’s duties, responsibilities, and contributions to the child welfare system. The Secretary outlined protection

and prevention services DCF provides and shared an update on the status of the 2018 Child Welfare Task Force recommendations and 2020 Special Committee on Foster Care Oversight recommendations. DCF partners with other agencies and organizations, including schools, courts, and local law enforcement, to develop strategies for protecting children.

The Secretary noted DCF receives reports of alleged child abuse or neglect through the Kansas Protection Report Center. Reports of alleged child abuse or neglect are evaluated by intake specialists who make an initial assessment. After a complete assessment, reports may be assigned for investigation, which includes interviews with the reporter and witnesses, the child victim, family members, and the alleged perpetrator, after which DCF makes a determination regarding the allegations. DCF updated its policies to assure the visual observation of each victim of child abuse or neglect in compliance with the enactment of Adrian's Law (KSA 38-2226).

Regarding Family First Prevention Services, the Secretary said the federal Title IV-E Prevention Program is provided for in the Family First Prevention Services Act, a federal law passed in 2020, and it includes prevention services for mental health, substance abuse, and in-home parent skill-based programs for youth who are candidates for foster care, pregnant or parenting youth in foster care, and parents or kin caregivers of those youth. The Secretary stated Kansas prevention services include Family Preservation Prevention and Protection Services, which provide voluntary services in partnership with families to build on family strengths and reduce the risk of children being placed in foster care. This service has 4 contractors and consists of 18 grants for evidence-based programs and provides for a 50-50 federal-state match.

The Secretary noted only law enforcement and a court can remove children from their families. DCF recommends the county or district attorney file a child in need of care (CINC) petition, which may result in the child entering into DCF custody, *i.e.* state custody. Once children are in state care, they are placed in a setting appropriate for their individual needs, case plans are established, and one of DCF's four contractors manages the case plans. DCF is also responsible for licensing and

regulation of all child care facilities in the state pertaining to children in DCF custody.

The Secretary stated DCF supports "crossover youth," youth involved in both the child welfare system and also likely to be involved in the juvenile corrections system. DCF supports youth transitioning into adulthood and leaving foster care without achieving permanency with its Independent Living program, which seeks to aid the youth in achieving self-sufficiency. The Kansas Youth Advisory Council provides feedback on the needs of youth who are or were receiving child welfare services. Some services available include tuition waivers for postsecondary education, medical coverage through KanCare, independent living subsidies, basic Chafee funds, and the Education and Training Voucher program.

Judicial Branch. The Honorable Kellie Hogan, 18th Judicial District Judge, provided an overview of the judiciary's involvement in the child welfare system. The Judiciary Branch follows the Kansas Code for the Care of Children and ensures that federal law is followed (*e.g.* the Indian Child Welfare Act, the Interstate Compact for the Placement of Children, and the Uniform Child Custody Jurisdiction and Enforcement Act). The Judicial Branch collaborates with service providers by hearing evidence presented by parties in CINC cases before the court and makes legal decisions about the best interest of the child based on evidence, while upholding parents' fundamental rights to parent their child. The Judicial Branch formally collaborates, through the Supreme Court Task Force on Permanency Planning, with other child welfare system stakeholders charged with implementing legislative recommendations. Federal law requires a permanency hearing to be conducted once every 12 months, during which the judge must decide whether DCF, through its subcontractors, is making reasonable efforts to reintegrate children back into parental custody. The judge also reviews the parents' progress and decides whether reintegration into a parental home is viable.

On the subject of KSA 38-2241(c), specifically regarding grandparents as interested parties making statements to the court, Judge Hogan stated when she presided over CINC cases, she acknowledged the child's grandparents' presence in the courtroom and, prior to deciding

on the evidence, would ask grandparents who were *pro se*, or self-representing, if they had anything to add. In situations where grandparents voiced frustration, Judge Hogan said she would consider appointing an attorney to represent the grandparents as to better understand the grandparents' frustration. A Committee member stated they received information that some judges deny grandparents' requests to speak in court, and Judge Hogan responded that although the law gives grandparents the opportunity to speak in court, the judge presiding over the case always has an obligation to maintain order in court and may, at times, have a congested docket.

Regarding crossover youth, Judge Hogan also noted that juvenile detention facilities were removed as a placement option for children under the CINC Code, unless the child is also an alleged juvenile offender and the placement is authorized under the Juvenile Code.

Kansas Department for Aging and Disability Services. The Commissioner of Behavioral Health Services, KDADS, provided an overview of behavioral health services the agency offers for youth, including efforts in providing continuity of mental health services for youth in foster care, and current statistics on psychiatric residential treatment facilities. The Behavioral Health Services Commission has a Youth Services division that oversees programming for children in the state's system of behavioral health care, including outpatient and inpatient services for foster care children. The Behavioral Health Services Commissioner stated KDADS works closely with DCF on foster care and treatment related issues and with KDHE to develop public health and Medicaid policies for KanCare that impact children in foster care. KDADS works with the KanCare managed care organizations (MCOs), DCF's contractors, and DCF staff regarding children in foster care with serious emotional disturbances (SED), children who qualify for the SED Home and Community Based Services (HCBS) waiver under KanCare, and other issues including crossover youth who are justice involved or have developmental disabilities.

The Behavioral Health Services Commissioner stated that based on recommendations from the 2018 Child Welfare

System Task Force and 2020 Special Committee on Foster Care Oversight, KDADS and DCF drafted amendments to the community mental health center (CMHC) agreements to help prevent delays and provide continuity of mental health services for youth in foster care through telemedicine. KDADS worked with KDHE and DCF in developing the mobile crisis KanCare policy and State Plan Amendment for the Kansas Family Response, launched October 1, 2021.

The Commissioner of HCBS, KDADS, briefed the Committee on HCBS waiver programs that routinely serve youth: the Autism waiver, Intellectual and Developmental Disability waiver, SED waiver, Technology Assisted waiver, and Brain Injury waiver.

Kansas Department of Health and Environment. The Deputy Medicaid Director, KDHE, discussed KDHE's involvement in activities to support delivery of health care services to children in foster care, such as eligibility for medical assistance, access to medical services, and collaboration with stakeholders.

KDHE facilitates the Foster Care in KanCare workgroup consisting of representatives from the KanCare MCOs and foster care contractors and KDHE, DCF, KDADS, and KDOC staff. KDHE also facilitates the state agency-only Foster Care in KanCare workgroup consisting of staff from KDHE, DCF, KDADS, and KDOC for internal discussions related to Foster Care in KanCare.

Law enforcement. A representative of the Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association provided testimony on law enforcement interaction in the child welfare system. He noted difficulty with information sharing between DCF and law enforcement due to DCF's legal interpretation of statutes pertaining to disclosure of information. The law enforcement representative stated there is an absence of statutory direction regarding exchange of information to assist law enforcement in making decisions in cases of alleged child abuse or neglect.

The Committee requested DCF and law enforcement representatives meet to address the

information sharing issue and report back to the Committee. The law enforcement representative presented data collected from a survey he conducted of members of the organizations he represents to determine issues being experienced relating to child welfare. The survey results indicated a need for a stronger after-case review process of child welfare cases that law enforcement is involved in to address issues of information sharing and other barriers encountered during an investigation. The survey also indicated the need for a third-party review of statute interpretation that restricts the flow of information between agencies and creates barriers to a child welfare investigation.

He noted law enforcement basic training should include child welfare investigative actions by police officers, advanced training should be made available to officers doing intensive follow-up child welfare investigations on a regular basis, and technology should be updated for instant electronic sharing of important information in abuse and neglect cases.

Kansas Department of Corrections. KDOC provided written testimony stating the agency is committed to supporting communication and information sharing at all levels to measure and analyze data on crossover youth in Kansas.

OCTOBER 6, 2021, MEETING

Federal Child and Family Services Reviews; Trends, Performance, and Improvement Plans

A Deputy Secretary of DCF provided an overview of the State's federal Child and Family Services Reviews (CFSR), performance trends, and performance improvement plans. Federal reviews assess state performance on seven outcomes and systemic factors and occur every four to six years. Results of the 2015 CFSR reflect Kansas was strong in safety outcome 1, children first and foremost protected from abuse and neglect. The Deputy Secretary said Kansas needs improvement in every other safety area, including safety outcome 2, children safely maintained in their homes whenever possible and appropriate, and in all permanency and well-being outcomes. The last Kansas federal CFSR was performed in 2015, with nine items requiring performance improvement plans (PIPs). Kansas met eight of the nine required PIP items. PIP items call for

continuous improvement through monthly data management reports and quarterly case reviews. The Deputy Secretary noted that DCF needs to improve regarding placement stability.

Strengthening the Child Welfare System in Kansas

The Secretary for Children and Families presented new approaches for strengthening Kansas families to avoid involvement in the child welfare system. DCF has implemented mental health supports, including launching the Family Crisis Response and Support program, establishing a Director of Children's Mental Health and Medicaid position within DCF, and moving forward with Family First Prevention Services. The Secretary stated the Kansas Practice Model places evidence-based practices and tools in DCF workers' hands and involves families and youth in the process. The Secretary noted the model has been effective in reducing the number of children entering the child welfare system. The Secretary also discussed the agency's focus on placement stability innovations.

Kansas Family First Prevention Plan. The Secretary discussed the Family First Prevention Plan, which is a federal program creating reimbursement pathways for federal funds to provide services to keep children who are at imminent risk of removal safely with their families. The Secretary noted that 89 percent of youth referred to this program had, after a year, stayed with their families.

Evidence-based Programs for Children and Families

Presenters from Casey Family Programs provided an overview of evidence-based programs and interventions other states are using in the federal Family First Prevention Services Act plan. Some program examples noted were Brief Strategic Family Therapy, Family Check-up, Multisystemic therapy, Nurse-Family Partnership, Parents Anonymous, and Multidimensional Family Therapy. The presenters also highlighted programs well-supported by evidence-based ratings, those programs that are promising, and those that affect people of color. The presenters also provided an article relating to the role of spirituality among youth in foster care.

HB 2158 Exception Regarding the Confidentiality of Child Death Review Board Records

The Chairperson of the Child Death Review Board (CDRB) provided an overview of the CDRB's function, which is to review all deaths of Kansas children from birth to 18 years of age. She noted Kansas is one of seven states and the District of Columbia that review all childhood deaths. The CDRB Chairperson stated the mortality rate for Kansas children is trending downward. She shared the CDRB would like to see a statutory modification to resolve confidentiality issues created by HB 2158, since disclosing information regarding child deaths to local entities where the death occurred or where the child resided would likely violate statutory provisions that require the CDRB maintain confidentiality.

The Director of the Unified Government Public Health Department, Wyandotte County, provided an overview of the Wyandotte County Youth Fatality Review Board. She provided data and trends in youth deaths in Wyandotte County and noted the homicide rate in the county is higher than state and national rates, so this board's recommendations would not apply across the state. Wyandotte County officials have taken steps to evaluate needs, look nationally at other successful local review boards, create bylaws, and ensure confidentiality within the board. The Director recommended the statutory language in HB 2158 be amended to extend confidentiality protections to local review boards and the five-year sunset provision be removed, as it takes several years to organize a review board, and the sunset provision is a disincentive to other counties.

Reports from Child Welfare-related Groups

Supreme Court Task Force on Permanency Planning. Judge Hogan provided an overview of the function and recommendations of the Supreme Court Task Force on Permanency Planning (Task Force). She stated the Task Force consists of 20 members representing district court judges, district magistrate judges, Indian tribal courts, counsel of parents with children involved in the state child welfare system, guardians *ad litem*, prosecutors, Court Appointed Special Advocates (CASAs), citizen review boards, mental and behavioral health community treatment providers, substance

abuse community treatment providers, the Kansas State Department of Education, domestic violence programs, and former foster care alumni. The Chief Justice of the Supreme Court also appoints one justice to serve as liaison to the Task Force.

The purpose of the Task Force is to demonstrate meaningful, continuous collaboration among district courts, DCF, and Indian tribes in Kansas. The Task Force identifies the needs of the child welfare system and meets approximately ten times per year to approve, monitor, and assist in implementation of projects in the strategic plan it created to improve the system. Judge Hogan noted there is a need for attorneys and judges to receive formal training in legal education on areas such as drug addiction, mental illness, domestic violence, child development, and understanding the impact of childhood trauma. The Task Force addresses the need by providing continuing legal education (CLE) to attorneys in the above-mentioned areas. There is a demand in CLE training modules for guardians *ad litem* and child welfare stakeholders who address training requirements needed for attorney training compliance with Kansas Supreme Court Rule 110a.

Douglas County Citizen's Review Board. The Director of the Douglas County Citizen's Review Board stated six needs should be met to improve the child welfare system: reasonable expectations for and additional investment in the child welfare workforce; continued investment in promoting protective and promotive factors for families; continuity of and collaboration on education for children; additional investments in kinship, non-related kin, and foster families; robust, consistent curriculum that all placements can use to teach life skills and independent living skills; and a more secure care option available for children who do not qualify for psychiatric residential treatment facilities treatment, but are still at risk of running away.

Cornerstones of Care. The President of Cornerstones of Care provided an overview of the organization and noted the children it serves have experienced trauma. She noted the organization has seen improvements in placement stability, placement in family settings, and relative or kin placement. She stated some youth have complex behaviors that make it difficult to find a safe place

for them, but DCF has significantly reduced the number of youth staying overnight in offices.

DCCCA, Inc. A DCCCA representative stated the organization is focused on family preservation, child placement services, behavioral health, prevention, and women and children services. The representative stated the child welfare system needs solutions regarding workforce issues, rates and capacity, kinship, data infrastructure, extended Medicaid postpartum coverage, and prevention.

TFI Family Services, Inc. The Senior Vice President of Permanency Services, TFI Family Services, stated TFI Family Services is licensed by DCF as a child placement agency and works to recruit, train, supervise, support, and retain foster families. The organization is also a recipient of DCF grants for delivering Family First services, Family Preservation services, and Case Management Provider services.

KVC Kansas. The President of KVC Kansas provided a brief history of the child welfare system in Kansas. KVC's goal is to reduce the number of children in foster care by 50 percent through prevention services that will help children stay with their families. She noted the number of children in foster care has declined over the past several years, but the COVID-19 pandemic led to a national decrease in child abuse and neglect reports.

Saint Francis Ministries. The Vice President of Programs at Saint Francis Ministries stated the organization provides case management services, services coordination, parent support, placement stability coordination, and education. She provided recommendations to improve the child welfare and foster care system, including addressing the need of high-risk youth in and out of foster care through supporting and expanding available services.

CASA. The CASA State Director explained CASA is staffed by trained volunteers who work with courts, child welfare agencies, and families who enter into the child welfare system. The State Director stated CASA volunteers speak on behalf of children in custody of the State and the child's best interest. She expressed concern regarding a \$200,000 funding reduction to the CASA program.

Kansas Children's Cabinet. The Executive Director of the Kansas Children's Cabinet stated the Cabinet administers a federal grant to support community-based primary and secondary prevention. She said the Cabinet recommended increasing investments in three prevention strategies: access to basic needs, preventative legal services, and differentiating poverty and neglect. She also disputed the statement by the CASA State Director regarding a \$200,000 funding reduction.

NOVEMBER 3, 2021, MEETING

Kansas Legislative Research Department Overviews

A Kansas Legislative Research Department (KLRD) research analyst reviewed proposed preliminary recommendations from the October 5-6, 2021, meeting. A KLRD fiscal analyst presented an overview of foster care funding and noted states need to meet certain requirements to receive federal funds, such as maintenance of effort and matching funds. The amount of funds required for matching is set in statute or by the federal agency. Foster care receives funding from the State General Fund, Social Welfare Fee Fund, Title IV-E, Title IV-B, Supplemental Security Income-Social Security Administration Foster Care Maintenance Recovery, Social Services Block Grant (SSBG), Temporary Assistance for Needy Families (TANF), and TANF-SSBG.

In the question-and-answer portion of her presentation, the fiscal analyst informed the Committee the amount of money provided to each contractor depends on the number of children and their acuity level. The fiscal analyst stated the Social Welfare Fee Fund includes reconciled federal money, unused money from foster care caseloads in previous years, and money from the St. Francis settlement.

Overview of Legislative Post Audit Child Welfare System Audits

The Post Auditor, Legislative Division of Post Audit (LPA), provided an overview of conclusions drawn from audits of DCF over the last ten years. He noted DCF established good monitoring processes but did not act to correct problems because it took a "hands-off approach" with its contractors. The audits identified that DCF did not ensure frequent and thorough background checks;

did not always ensure monthly in-person visits were conducted; did not address the exclusion of documentation identified during audits, which created issues for LPA when conducting its audits; and did not address the frequent turnover and high caseloads of DCF staff.

Additionally, agency data issues were found to exist, including a lack of integrated information about foster homes.

Overview of Data Organization for Child Welfare

Binti. The Chief Executive Office (CEO) and Founder of Binti, a foster care software company, presented an option for Kansas to modernize its foster care data system. Binti has a placement module that allows for matching and mapping placement that assists with keeping sibling children together and in their school of origin. Binti uses a Software as a Service (SaaS) approach, and its software allows social workers to quickly approve families and data for case managers to make decisions.

Data transmission for child welfare information between law enforcement and DCF. As requested by the Committee during the October 5, 2021, meeting, a representative of three law enforcement associations and a Deputy Secretary of DCF submitted written testimony stating they agreed to propose a new statute to directly address an information sharing issue. Both stated that very little information should be withheld between the DCF and law enforcement agencies when resolving child welfare information.

The Deputy Secretary noted that in August 2021, DCF announced a new pilot collaboration with Wichita and Sedgwick County law enforcement to fund community support specialist case manager positions. Law enforcement in Wichita and Sedgwick County now have access to the DCF child abuse and neglect information system known as KIPS.

The Committee requested a Revisor to be assigned to work with DCF and law enforcement agencies to draft a new statute pertaining to data transmission for child welfare information between the two entities.

Entry into Foster Care

The Deputy Secretary stated there are two categories for reasons children are removed from parental custody: abuse/neglect or family in need of assessment (FINA), and more than one category can apply to a case at any time. She noted neglect is the most common reason for entry into the foster care system. The Deputy Secretary stated DCF anticipates amendments to the federal Child Abuse Prevention Treatment Re-authorization Act (CAPTA) of 2021.

When asked what actions DCF takes before a case comes to the judge, the Deputy Secretary stated DCF staff try to make every reasonable effort to prevent families from entering foster care. When asked to give an update on the 2020 pilot project between DCF and law enforcement to support Kansas families, the Deputy Secretary responded DCF is working on mandated reporters for non-abuse issues. The Deputy Secretary said after one year with the 2020 pilot program, DCF made a lot of progress and has opened a position with the Wichita police and the Sedgwick County Sheriff's Office. She noted DCF gave law enforcement access to the KIPS system, which includes the history of child abuse and neglect reports that DCF has for families.

DCF Update on SB 77. The Deputy Secretary presented an update on 2019 SB 77 (KSA 38-2290), which requires DCF to offer mental health and other services to children with sexual behavior issues and to their families. She shared that in FY 2020 to FY 2021, there were over 1,400 assigned reports of sexual abuse by children under age 18 and of those reports, 202 were substantiated and some of children were already receiving mental health services.

Presentations on the Foster Care System from the Perspective of Individuals, Providers, and Organizations

Part I. Several private citizens gave testimony about their experiences with the child welfare system in Kansas: three parents; an investigator hired by one parent; the President of Kansas Justice Advocate, Inc.; the Director of the Women's Activity Learning Center at Topeka Correctional Facility; and an inmate who was a foster child and is the parent of children in foster care. One parent stated poverty is not neglect.

Another parent and his investigator noted DCF has a monetary incentive to place children for adoption. The President of Kansas Justice Advocate, Inc. stated she believes DCF does not understand cultural differences between white and Black Americans, which contributes to higher representation of Black Kansans in the foster care system. An inmate of the Topeka Correctional Facility described her experiences with the foster care system as traumatic due to attachment loss. She noted trauma caused by the foster care system gives rise to a cyclical effect, evidenced by the fact her children are now in foster care system.

Part II. In the second part of private citizen testimony, one parent, a former foster youth; the Douglas County CASA Director; and a representative of CarePortal shared their experiences with the child welfare system.

The founder of the Kansas Family Advisory Network testified regarding her experience as a foster and adoptive parent and stated racial equity is important in Kansas and in families who adopt Black children, who have biologically and culturally unique hair and skin. She stated non-Black foster parents should be trained on how to care for Black children from a cultural perspective, including proper hair and skin care. A former foster youth shared their experience in foster care. They stated they were often overlooked, and there was not much bonding between foster children and their foster families. They recommended more bonding activities be sponsored and added to the foster care process. They also suggested the child placement books, known as red, blue, and orange books, include information about the foster child from the child's perspective. They also urged the Committee members to become CASA volunteers.

Following the former foster youth, the Douglas County CASA Director noted he would like to see the child welfare system make more investments in children before they become involved in the system. He also noted case managers are overwhelmed and usually have 30 children on their caseload. The case managers end up dealing mostly with the most urgent issues, which leaves little time to focus on reintegration of children and families. As a result, some states have lowered the maximum number of cases assigned to a case manager to 25 or below.

A parent with disabilities who has children with disabilities stated that the child welfare system is unfair to her and her children. She stated her child was harmed at school, and the incident was reported as parental neglect and turned into a CINC case. The parent stated her belief that the child welfare system, schools, and communities, were not intended to protect children with disabilities. She recommended the Committee and everyone involved in the child welfare system put an end to abuse, increase transparency, and add services to protect children with special needs.

A representative of CarePortal provided information on the organization's technology platform, which works with DCF to help connect children and families with church and community supports in adjacent areas.

Becoming a Foster Parent

The foster parent application process. The Chief Child Welfare Officer for DCCCA noted the organization is responsible for foster parent recruitment, training, and support. She noted there are three complete examinations of homes before foster parents are licensed by DCF. She also stated it would simplify the process if DCF could provide a comprehensive list of eligibility requirements for individuals going through the foster parent application process.

Two private citizens, who underwent the foster parent application process, provided testimony. One noted the foster parent application process includes many small obstacles that prevent eligible people from fostering. Another private citizen, who has fostered over 75 children, shared the following recommendations with the Committee: focus on children's rights instead of parent's rights; limit bureaucracy; create effective third-party advocacy other than the guardian *ad litem* system; and eliminate hard time limits to avoid children being removed from their foster homes once a bond is formed.

Additionally, the Director of Permanency, DCF, submitted written-only testimony regarding licensing foster parents and foster homes.

Best Interest Staffing

Department for Children and Families. The Deputy Secretary for Children and Families

provided an overview of the Best Interest Staffing (BIS) process used to determine placement of children once DCF determines they are available for adoption. The representative stated 50 percent of cases involve a waiver. A BIS process may be waived if there is one potential identified adoptive family or relative, non-related kin or foster family; if the child is not placed with a relative, and efforts to identify, locate, and evaluate parental relatives as adoptive families have been documented and ruled out; and the child was placed with an identified family or individual for a minimum six-month period with no interruptions.

If these conditions are not met and the BIS process is not waived, DCF arranges and initiates the BIS process and includes potential adoptive families and members of the child's planning team in the BIS process, which may also include those who are part of the child's support system (e.g. youth age 14 or older, the child's current and former case manager or support worker, the child's planning team, a guardian *ad litem*, therapist or service provider, CASA, Court Services Officer, and other support members such as teachers or coaches.) A DCF representative provided a flowchart displaying how they conduct the BIS process.

KVC. The Vice President of KVC provided information regarding its process for hosting BIS meetings. The Vice President stated KVC staff try to gather as many people as possible, including the child's neighbors and friends, for a meeting to make the best decision. A KVC adoption supervisor explained the process and timelines for preparation of all involved parties during the BIS process. KVC added it has matched over 5,000 children with adoptive families, and November is National Adoption Month.

Adoptive parent view. An adoptive parent discussed her personal experience with the BIS process through which she adopted seven children. The adoptive parent also noted the following recommendations for improvement: judicial institutions could improve record keeping; case workers and adoptive family workers could be relieved by minimizing case loads; families should be positive advocates for their children by making and keeping important records and giving them to best interest staff to make informed determinations about where to best place the child; and families

should educate themselves on available resources to advocate for their children.

Comparing 2021 HB 2345, 2021 SB 301, and the Governor's Executive Order 21-28 Establishing the Division of the Child Advocate

An Assistant Revisor with the Office of Revisor of Statutes provided an overview comparing Executive Order (EO) 21-28 with the House and Senate bills that would establish the Office of the Child Advocate. She noted the following key differences and similarities between the legislation and the EO.

Naming. EO 21-28 named the office the Division of the Child Advocate, while HB 2345 would name an "Office of the Child Advocate for the Children's Protection and Services," and SB 2153 would name an "Office of the Child Advocate."

Defining "child." While both pieces of legislation include a definition of "child," the EO does not expressly include a definition of "child" but references "a child in custody of the Secretary for the Department for Children and Families or alleged to be a Child in Need of Care," among other differences.

Funding. The main difference discussed was that of funding. The Committee expressed interest in whether fiscal needs for the EO that established the Division of the Child Advocate would be similar to that of SB 301, requiring DCF to add three full-time equivalent positions and KDADS to add one full-time equivalent position.

DCF and KDADS responded the Division of the Child Advocate will employ other staff, and DCF and KDADS will require similar staffing increases to what was described in fiscal notes for HB 2345 and SB 301, but provisions of EO 21-28 are not fully identical to those in either bill, and a fiscal note has not been created relating to the EO.

NOVEMBER 4, 2021, MEETING

At the November 4 meeting, a fiscal analyst from KLRD provided the Committee with requested information about a decrease in the Social Welfare Fee Fund from FY 2020 and FY 2021.

Juvenile Justice Reform Legislation: 2016 SB 367 Circumstances and Impact

Office of Revisor of Statutes. An Assistant Revisor who drafted 2016 SB 367 provided an overview of amendments to the juvenile justice reform legislation and its impact. She stated SB 367 made significant changes to the juvenile justice system and set case length and probation length limits; created a rebuttable presumption that juvenile offenders between age 10 and age 14 in the serious offender II, III, and IV categories, and those in the chronic offender category, be placed in youth residential facilities instead of juvenile correctional facilities; and determined that juveniles should return to their parents unless they present a danger to life or property, or their return would not be in the child's best interest.

The Assistant Revisor noted 2018 SB 179 created juvenile crisis intervention centers for juveniles experiencing mental health crises. She noted, among other things, 2017 SB 42 was passed to modify changes made by 2015 SB 367 and removed the requirement for DCF to prepare parents for a juvenile's return if they were in out-of-home placement at the time of sentencing. To maintain eligibility for federal Title IV-E funding, judges must consider and make a certain finding when removing a juvenile from the home for the first time.

Office of Judicial Council. The Director of Trial Court Programs for the Office of Judicial Administration (OJA) noted there have been positive changes since SB 367 became law, including increased focus on juvenile justice evidence-based practices and implementation of the Georgetown Crossover Youth Practice Model, which she noted is currently operational in Sedgwick County. She said OJA's goal is to work the model statewide. She stated implementation was complex, but KDOC and OJA have developed a strong working relationship. She also urged the Committee to review the Juvenile Justice Oversight Committee Annual Report, which became available on November 30, 2021. It was asked whether OJA followed up on an increase in violence against social workers after SB 367 passed, the Director of Trial Court Programs stated she did not recall conversations about actions against social workers.

DCF. The Deputy Secretary for Children and Families offered written-only testimony explaining that 2019 House Sub. for SB 25 included a budget proviso for DCF to develop two working groups to study the impact of SB 367 on crossover youth, called the 2019 Crossover Youth Services Working Group and the 2019 the Crossover Youth Working Group. The testimony noted DCF's working group reports and current data trends regarding crossover youth.

Standards and Requirements of Faith-based Child Welfare-related Organizations

DCF. The Director of Permanency, DCF, provided an overview of standards and requirements of faith-based child welfare organizations and explained such organizations can be grouped into three categories: those licensed and regulated by DCF; providers under contract with and monitored for compliance by DCF; and community-based organizations for whom DCF does not provide oversight. He stated there is no difference between requirements or monitoring practices for faith-based organizations and the requirements for other organizations. There are laws and regulations regarding licensed facilities and agencies such as changes made by the Host Families Act and the Adoption Protection Act. He noted the existing direct agreements between DCF and faith-based organizations and the working relationships between DCF contractors and faith-based organizations. He also added DCF does not have direct oversight of programs by community-based organizations or providers that give services to children and families; however, some organizations may be licensed by other agencies or boards.

Faith-based child welfare-related organizations. The Committee received presentations from FaithBuilders, which has volunteer staff who work with children and families in crisis; Joy Meadows, which provides housing and therapy on their large property for foster families and services large sibling sets of foster children so siblings are not separated in foster care; and Kansas Family Advisory Network and EmberHope Youthville, which recruit and train foster parents. The conferees noted the organizations operate to fill gaps in the system and connect the community with available support for children involved in the child welfare system.

DCF Benefit Programs

The Director of the Temporary Assistance to Needy Families (TANF) program, DCF, provided an overview of benefits and programs offered by DCF. She noted the four purposes for TANF: provide assistance to needy families, allowing children to receive care in their own homes or homes of relatives; end the dependence of needy parents on government benefits by promoting job preparation, work and marriage; prevent and reduce out-of-wedlock pregnancies; and encourage the formation and maintenance of two-parent families. In response to a question regarding transportation needs in Wichita, the TANF Director stated DCF is working to meet the needs of parents, increase their capacity, and decrease their dependence on public support. The Director also noted, if TANF benefits end for a recipient due to earned income, DCF continues to support the recipient for an additional 12 months to help ease the transition from support to financial self-sufficiency. She noted around seven to eight percent of TANF recipients have had case closures. As of September 2021, 6,632 Kansas are in the TANF program, and DCF is expecting an increase in 2022.

Pediatrician's Perspective of Proposed Adrian's Law Recommendation

Kansas Chapter American Academy of Pediatrics. Four doctors appeared to testify on behalf of the Kansas Chapter of the American Academy of Pediatrics (KAAP) regarding their perspective on the proposed requirement to require physical evaluation of potential child abuse victims by pediatric physicians trained to identify child abuse. One presenter noted pediatric physicians trained to identify child abuse currently only exist in the Kansas City and Wichita areas and recommended a two-pronged program approach. First, the state should implement a triage system pilot program tested in Johnson and Wyandotte counties where a short form is filled out by DCF staff, who send the form to a centralized email account where it is reviewed by a board-certified child abuse pediatrician.

The first prong would take coordinated effort to rely on primary care physicians and hospital personnel consultation with a child abuse pediatrician, as needed. The second prong would involve developing a coordinated network of "Safe

Care Providers" throughout the state that would participate in training on child maltreatment and bill the State for each exam performed, regardless of the finding of abuse or neglect.

According to KAAP representatives, based on Missouri's numbers, this two-prong program could cost \$500,000 annually. The KAAP representatives also recommended a working group be formed to determine the statutory system and changes needed to develop this approach. When asked how long the triage system pilot program took to develop in Wyandotte and Johnson counties, a KAAP representative answered they were given permission in July 2021, and the pilot program went live in October 2021. A KAAP representative also stated this program would allow doctors to request examination outside of the initial referred subjects.

CONCLUSIONS AND RECOMMENDATIONS

At its meetings on November 3 and November 4, 2021, the Committee adopted the following recommendations to the 2022 Legislature:

Proposed Legislation:

- The Legislature should pass legislation, effective July 1, 2022, to amend Adrian's Law and expand it to require pediatric physician examination from a pediatrician with specialized training in examining abused children. The legislation should also include the two-pronged program approach proposed by the KAAP. In phase one, the State would implement a triage system pilot program for pediatricians with specialized training for examining alleged abused and neglected children, and in phase two, the State would develop a statewide network of "Safe Care Providers" that would participate in an educational training program on child maltreatment.
- DCF should work with the representative of the Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association, and other law enforcement agencies as needed, and seek the assistance of the Office of

Revisor of Statutes to draft statute clarifying the interpretation of statutory language for sharing information with local law enforcement. If a resolution is not achieved by the start of the 2022 Legislative Session, it is recommended the Judicial Council be consulted to assist in coming to a resolution.

- Legislation should be introduced to amend the language in KSA 22a-243 to address the issue raised by the Child Death Review Board regarding extending confidentiality rules and regulations to local child fatality review organizations.

Other Recommendations:

- Each court should provide biological parents, and other family members or kin who attend court for the first time, with a document outlining requirements to accomplish reintegration or regain custody of their children;
- DCF should place more emphasis during mental and physical (MAP) training on the foster program, as opposed to the foster to adopt program, and the differences in roles for each type of foster parent;
- The CASA program should maintain the \$225,000 funding for FY 2023 and following years;
- DCF should expand activities for foster children of all ages that encourage bonding with their foster parents, as well as activities that encourage bonding with other children of a similar age;
- DCF should include input from the perspective of the child in custody in child placement books, often referred to as red, blue, and orange books;
- The Governor and Legislature should return the \$21 million transferred out of the Juvenile Justice Improvement Fund originally intended for evidence-based intervention programs addressed in 2016

SB 367 to aid community programs serving the needs of juveniles in the justice system;

- The Legislature should explore codifying caseworker accredited standard caseloads in statute and add a statutory cap on the number of cases caseworkers may have while maintaining accreditation standards;
- DCF should transform the request for proposal (RFP) federal grant awarding process into a performance-based federal grant awarding process when contracting with foster care agencies, which requires outcome-based assessments;
- The Legislature should prioritize increasing support to kinship-placed children and affording them the same services as children placed in a licensed foster home;
- The Legislature should strengthen the consideration of attachment for permanency placement of children in the Best Interest Staffing (BIS) process by adjusting statutes to consider attachment science, regarding the child's attachment, in the BIS process;
- The Governor should rescind EO 21-28 and issue an Executive Reorganization Order to avoid future legal issues between the Executive and Legislative branches;
- The Governor and Legislature should collaborate to reach a consensus on a bill during the 2022 Legislative Session that would establish a true, independent, and transparent Office of the Child Advocate;
- DCF should work to improve the communication and relationship with legislators to address child welfare system-related matters involving constituents;
- DCF should provide an update to the Committee at the next meeting regarding

the legislation passed in 2019 regarding child-on-child sexual assault;

- The Child Death Review Board should establish rules and regulations by January 31, 2022, concerning local death review boards; and
- When possible, the Child Death Review Board should include information in its report regarding sexual orientation, gender identity, and race and ethnicity.

Report of the Joint Committee on Corrections and Juvenile Justice Oversight to the 2022 Kansas Legislature

CHAIRPERSON: Representative J. Russell Jennings

VICE-CHAIRPERSON: Senator Molly Baumgardner

RANKING MINORITY MEMBER: Representative Dennis “Boog” Highberger

OTHER MEMBERS: Senators Elaine Bowers, Ethan Corson, John Doll, Renee Erickson, Oletha Faust-Goudeau, and Kristen O'Shea; and Representatives Sydney Carlin, Gail Finney, Kyle Hoffman, Stephen Owens, and John Resman

CHARGE

KSA 2020 Supp. 46-2801 directs the 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 (KDOC).

The Committee studied issues relating to KDOC operations, employee retention, and appropriations and planning generally, and also considered the continuing implementation of the juvenile justice reforms originally enacted in 2016.

The Committee also reviewed and considered the following during the 2021 Interim:

- Compassionate medical release and terminal medical release under Kansas and federal law;
- Kansas Sentencing Commission (KSC) data and trends, and analysis of past legislative initiatives that were adopted;
- Perspectives on adult and juvenile community corrections issues by community stakeholders;

- The Kansas Judicial Council report and recommendations concerning offender registration;
- The Juvenile Evidence-based Programs Account; and
- An update on the 2003 SB 123 Substance Abuse Treatment Program by the KSC and providers.

The Committee was authorized to tour the Kansas Juvenile Correctional Complex (to observe daily operations) and the Lansing Correctional Facility (to observe the facility's new construction and learn more about the facility's substance abuse treatment program and career center initiative).

December 2021

Joint Committee on Corrections and Juvenile Justice Oversight

ANNUAL REPORT

Conclusions and Recommendations

The Joint Committee on Corrections and Juvenile Justice Oversight (Committee) recommends the Kansas Department of Corrections (KDOC) Community and Field Services Division (Community Corrections) and the Secretary of Corrections immediately develop an incentives plan to include new-hire bonuses, retention bonuses, and referral bonuses, to be presented to the Strengthening People and Revitalizing Kansas (SPARK) Committee for payment from COVID-19 federal relief funds.

The Secretary of Corrections should then come before the 2022 Legislature with a pay enhancement package to address wages, night differentials, and premium pay.

The Committee recommends strong support for a \$6.6 million proposal to use maintenance of effort funds for information technology upgrades for Wi-Fi devices and tablet computers, as well as equipment such as the welding tools and commercial driver training simulators, for educational programs at correctional facilities. If maintenance of effort moneys are not needed, the Committee recommends the SPARK Committee approve use of federal American Rescue Plan Act of 2021 funds for this purpose.

The Committee expressed concern regarding expenditures from the Evidence-based Programs Account being limited only to programs identified in the annual budgeting process, and suggests rolling grant application cycles be implemented. The Committee recommends the House Committee on Corrections and Juvenile Justice and the Senate Committee on Judiciary consider a bill that clarifies the distribution of funds in the Evidence-based Programs Account.

The Committee recommends allowing all KDOC employees to be included in the Kansas Public Employees Retirement System Corrections Plan, with first priority given to juvenile correctional officers.

The Committee encourages the Senate Committee on Judiciary to take action on 2021 HB 2030, which would allow for the release of an inmate with a terminal medical condition likely to cause death within 120 days rather than within 30 days pursuant to current law. The Committee notes the House vote on February 10, 2021, was 96 Yeas and 29 Nays.

The Committee recommends the Legislature consider eliminating fines and fees for justice-involved youth to include expungement fees set by each county.

The Committee recommends KDOC conduct an outreach program, webinar, or campaign or some combination of those on how to apply for Evidence-based Programs Fund Account of the State General Fund moneys.

The Committee recommends adding funding for the creation of a Jobs for America's Graduates – Kansas (JAG-K) program at the Kansas Juvenile Correctional Complex (KJCC).

The Committee recommends KDOC submit an appropriation request for Career Technical Education facility renovation at the KJCC.

The Committee recommends support of the offender registration bill, HB 2092, recommended by the Kansas Judicial Council's Advisory Committee on Sex Offenses and Registration.

The Committee recommends postponing consideration of changes to Topeka Correctional Facility and KJCC until the report on regional juvenile correctional facilities from Clark & Enersen is complete; it is due July 1, 2022.

The Committee recommends the Legislature adopt the Kansas Sentencing Commission's policy recommendations (ten bills introduced in the 2021 Session):

- Establishing a more robust KDOC compassionate release policy, HB 2030;
- Incentivizing offenders to be successful in prison, HB 2031;
- Incentivizing offenders to be successful on probation, HB 2084;
- Modifying offender registries, HB 2092;
- Clarifying multiple sentencing of offenders, HB 2081;
- Early release for certain drug offenders, HB 2147;
- Sentencing proportionality for drug possession offenses, HB 2139;
- Sentencing drug grid modification to reflect sentencing realities, HB 2146;
- Sentencing nondrug grid modification to reflect sentencing realities, HB 2350; and
- Sentencing proportionality of property crimes, SB 5.

Proposed Legislation: The Committee requests legislation be introduced in both the House and Senate:

- The Committee requests the filing of a bill that restores \$21.1 million to the Evidence-based Programs Account. This bill would be introduced in both the Senate Committee on Ways and Means and the House Committee on Appropriations; and
- The Committee requests the filing of a bill that would prohibit the physical restraint of juveniles in court appearances without a showing of just cause.

BACKGROUND

The 1997 Legislature created the Joint Committee on Corrections and Juvenile Justice Oversight (Committee) to provide legislative oversight of the Kansas Department of Corrections (KDOC) and the Juvenile Justice Authority. Pursuant to Executive Reorganization Order No. 42, on July 1, 2013, the jurisdiction, powers, functions, and duties of the Juvenile Justice Authority and the Commissioner of Juvenile

Justice were transferred to KDOC and the Secretary of Corrections.

Statewide, there are eight adult 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 is one operational juvenile correctional facility: the Kansas Juvenile Correctional Complex (KJCC). Individuals as young as 10 and as old as 17 may be adjudicated as juvenile offenders and remain in custody in a juvenile correctional facility until age 22.5 and in the community until age 23.

The Committee's duties, as outlined in KSA 2020 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 KDOC's control and supervision. The Committee is also 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.

With regard to juvenile offenders, KSA 2020 Supp. 46-2801(k) directs the Committee to review and study programs, activities, and plans involving juvenile offenders, including the responsibility for their care, custody, control, and rehabilitation, and the condition and operation of the juvenile correctional facilities. Further, the Committee is charged to review and study the juvenile offender programs, 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 juvenile offenders.

In addition to its statutory duties, the 2021 Committee was charged by the Legislative

Coordinating Council to study the following topics:

- Compassionate medical release and terminal medical release under Kansas and federal law;
- Kansas Sentencing Commission (KSC) data and trends, and analysis of past legislative initiatives that were adopted;
- Perspectives on adult and juvenile community corrections issues by community stakeholders;
- The Kansas Judicial Council report and recommendations concerning offender registration;
- The Evidence-based Programs Account of the State General Fund; and
- An update on the 2003 SB 123 Substance Abuse Treatment Program by the KSC and providers.

COMMITTEE ACTIVITIES

The Committee requested and received Legislative Coordinating Council approval for three meeting days and authorization to tour the Lansing Correctional Facility and the KJCC. The Committee met October 25, 26, and 27, 2021, at the Leavenworth Public Library and the Statehouse. The Committee also toured the Lansing Correctional Facility on October 25 and the KJCC on October 27.

October 25, 2021, Meeting

Overview—Kansas Sentencing Commission

The Executive Director of the KSC presented an overview of the agency and its annual report, prison population projections, and policy recommendations.

The Executive Director stated that, among other activities, the KSC provides brief impact analyses to the Legislature during the Legislative

Session; serves as the state statistical analysis center for criminal justice, including maintaining a database of sentencing and probation revocation journal entries; maintains and updates the *Kansas Sentencing Guidelines Desk Reference Manual*; produces annual bed population and inmate classification projections for KDOC; and administers 2003 SB 123 drug abuse treatment program payments to treatment providers.

Reviewing the annual report, the Executive Director stated that, in FY 2020, the top five offenses resulting in prison, probation, and jail sentences were drug offenses, theft, burglary, aggravated battery, and criminal threat. He discussed the race, gender, ethnicity, and age distributions of offenders. The Executive Director also discussed admissions to KDOC facilities, stating admissions decreased by 29.0 percent in FY 2020, and the number of probation sentences decreased by 23.2 percent, which is attributed to the effects of the COVID-19 pandemic. He further stated that of the 3,227 probation drug offenses in FY 2020, 79.8 percent were for possession offenses. The four counties with the largest numbers of prison, probation, and jail sentences were Sedgwick, Johnson, Wyandotte, and Shawnee, whose sentences totaled 47.1 percent of the total sentences statewide.

Regarding FY 2022 prison population projections, the Executive Director stated that the effects of the COVID-19 pandemic had reduced the prison population and prison admissions. He reported an adult prison population of 8,556 in 2021, which is down from 9,189 in 2020, with a total capacity of 10,364. By 2031, the prison population is projected to decrease to 8,172, with both male and female populations projected to remain below current capacity. He stated these projections would provide the Legislature with an opportunity to keep prison admission numbers down by drawing on the criminal justice reform efforts currently underway, including by supporting probationers with needed support during their supervision.

The Executive Director discussed the KSC's policy recommendations for the 2022 Legislative Session. The recommendations include several bills that were introduced in the 2021 Session but that did not pass both chambers of the Legislature. These policy recommendations include extending

compassionate release eligibility (HB 2030); allowing earned discharge credit while in prison or on probation (HB 2031; HB 2084); modifying offender registries (HB 2092); clarifying multiple and concurrent sentencing of offenders (HB 2081); allowing early release to probation for certain drug offenders (HB 2147); addressing sentencing proportionality with regard to several crimes or classes of crimes (HB 2139, SB 5); and expansion of presumptive probation and border boxes on the drug and nondrug grids (HB 2146, HB 2350).

The Executive Director addressed questions and concerns from the Committee on topics including an analysis of felony domestic violence cases for the last three fiscal years; the number of felony cases with appointed counsel versus retained counsel, and the likelihood of trial versus plea deal in FY 2020; comparisons to prison population shifts in the surrounding states; the demographic breakdown of Hispanic offenders in FY 2020; and clarification that the KSC includes Hispanic offenders with white offenders for purposes of race demographics.

October 26, 2021, Meeting

Overview—Kansas Open Meetings Act and Kansas Open Records Act

A Senior Assistant Revisor from the Office of the Revisor of Statutes provided an overview of the Kansas Open Meetings Act (KOMA) and the Kansas Open Records Act (KORA) for the Committee.

The Senior Assistant Revisor stated KOMA declares it is the public policy of the State of Kansas that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public (KSA 75-4317).

The Senior Assistant Revisor stated KORA declares it is public policy of the State of Kansas that public records be open for inspection by any person unless otherwise prohibited in the Act (KSA 45-216). KORA requires each public agency to adopt procedures to be followed in requesting access to and obtaining copies of public records. The Senior Assistant Revisor noted this Committee is a public agency under the KORA.

Overview—Kansas Department of Corrections

The Secretary of Corrections (Secretary) provided information on various KDOC operations and issues.

Staffing Shortages and Impacts

The Secretary described current KDOC staffing issues, including critical staff shortages and vacancies, causes of recruiting and retention challenges, and the resulting impacts on public safety.

The Secretary stated supervision of juvenile and adult correctional populations directly impacts the safety of Kansas communities. He noted staffing shortages in the correctional field are being seen throughout the nation in local, state, and federal facilities.

The Secretary noted emerging challenges have been added to the the always-present challenges of employment in corrections. These include changing views on social justice, increased expectations for flexible work schedules and work-life balance, new expectations for work-from-home options, and diminishing numbers of people in the potential workforce. The Secretary noted some common strategies to address staffing challenges are to increase overtime; implement 12-hour shifts; close units or facilities; reduce programs and services for inmates; increase inmate time in cells; increase advertising and recruiting; increase caseloads and reduce supervision; and improve compensation with increased hourly wages, signing bonuses, and retention bonuses. The Secretary stated KDOC has not been able to increase wages or provide bonuses.

The Secretary described staffing shortage impacts on the agency, the employees, the inmates, and the public.

In the community corrections area, the majority of staff working with juvenile offenders and adult felony probationers are supervised by local community corrections agencies. The Secretary stated a pay increase for court services officers and the addition of 70 full-time equivalent positions within the Judicial Branch for court services officers, approved by the 2021

Legislature (in 2021 SB 159), creates competition and contributes to the workforce challenge in community corrections. The secretary noted that additionally, without adequate staff to provide effective programming and supervision, juvenile and adult facility populations are anticipated to increase.

The Secretary stated a shortage of parole officers is reducing the supervision of people on post-release supervision in the community. This shortage leads to high caseloads for parole officers, and effective behavior interventions cannot be maintained. Additionally, collaboration with families and service providers is declining, resulting in less support for the person on supervision.

The Secretary stated the adult programming and reentry area has seen more than 30.0 percent turnover of staff in FY 2021. The pandemic mitigation measures and this staff turnover have caused the number of people served to decline by one-third when compared to FY 2019.

The Secretary stated there is a 31.0 percent vacancy rate among uniformed staff at the KJCC and, although juvenile population projections indicate a need to open another housing unit soon, there is currently not adequate staff to do so.

The Secretary stated the adult correctional facility staffing shortages have required modified operations, including implementation of 12-hour shifts, consolidating housing units to shrink the footprint and therefore number of staff needed, and lockdowns imposed for safety of staff and residents. The Secretary said there is a “dire need” for staffing solutions because, as of the date of the meeting, the facilities had 405 vacancies among uniformed officer positions and an additional 119 positions on extended leave.

The Secretary also noted staffing shortages of the KDOC medical services contractor impact the daily care of residents at facilities.

The Secretary stated the agency is also experiencing a loss of experienced employees, resulting in a less effective workforce, an increase in overtime costs for FY 2022, some parole offices with no staff, lack of mentorship by managers and

supervisors due to them covering vacancies, exhausted staff, and increased use of employee counseling services provided through the Employee Assistance Program.

Capital Projects and Infrastructure

The Secretary reviewed the regional juvenile facilities study requested by the 2021 Legislature to explore repurposing the KJCC, establishing three or more smaller juvenile facilities, and future plans for the Larned Juvenile Correctional Facility and other underutilized correctional system facilities. The study results are to be submitted to the Legislature by July 1, 2022.

The Secretary stated that a proposed capital improvement project at the Topeka Correctional Facility is in the design and planning phase. This project is to improve medical and behavioral health and visitation for women inmates, and also to create a single point of entry to the facility. The Secretary stated the projects at the Lansing and Winfield facilities to repurpose buildings for substance abuse treatment and geriatric care are underway and should house residents by October 2022. Additionally, the new kitchen and dining renovation at Winfield is underway and should be completed in December 2022. These projects may be impacted by current supply chain disruptions.

The Secretary stated a contract for an independent conditions assessment of all KDOC facilities was awarded, and the preliminary findings assessed 254 structures built between 1860 and 2015. The final assessment report will guide the agency in planning for future bed utilization, establishing funding priorities, and identifying the most immediate safety and security needs. This assessment will aid the agency in determining the disposition of vacant structures, such as the old Lansing Penitentiary and former Topeka Juvenile Correctional Facility.

The Secretary stated the Career Campus Program at the Lansing Correctional Facility, which is an employer partnership providing job skill training for residents, is a success but needs more adequate space. Pursuant to 2021 HB 2401, the agency has established a nonprofit board to raise funds for construction of a 45,000-square-foot education and training center.

Corrections Updates

The Secretary gave an update on the first phase of replacing an obsolete information technology (IT) system used by local juvenile and adult community corrections agencies. The second phase will replace an obsolete IT system used at the KJCC and adult facilities.

The Secretary stated that there is an increased interest by private industry to hire residents and former residents of the facilities.

The Secretary updated the Committee on a pilot project at the Ellsworth Correctional Facility to photocopy incoming inmate mail to reduce the introduction of contraband into the facilities. Due to an increase in the introduction of illicit drugs into correctional facilities, KDOC has increased facility searches, recovery services through providers, training of residents as peer recovery coaches, staff training, and increased use of ion detection equipment.

Evidence-based Programs Account

The Secretary updated the Committee regarding expenditures from the Evidence-based Programs Account of the State General Fund (SGF), which supports community-based juvenile justice programs and efforts. Appropriations to this account were reduced, pursuant to 2021 HB 2007. For FY 2021, the account had an ending balance of \$21.5 million. A total of \$12.5 million SGF was appropriated to the account for FY 2022. If there are no further adjustments to this annual appropriation, the agency estimates current programs could be sustained until FY 2028.

Overview—Adult and Juvenile Community Corrections

Five representatives of adult and juvenile community corrections associations and agencies provided an overview. Community corrections agencies in Kansas are part of county governments and make up 31 statutorily mandated programs that provide community-based supervision of adults and juvenile offenders rather than incarceration.

The representatives highlighted the following current issues impacting the provision of public safety services in communities.

2016 SB 367 Juvenile Justice Changes

The presenters stated the enactment of 2016 SB 367, a juvenile justice reform bill, eliminated most out-of-home juvenile placements; however, the shift of funding to community corrections agencies for programing has not completely occurred, causing stress and friction. During the 2021 Legislative Session, the Legislature lapsed \$21.1 million of the approximately \$44.0 million in the Evidence-based Programs Account, savings from discontinuation of out-of-home placements. [Note: KSA 75-52,164 requires the determination of costs avoided from decreased reliance on juvenile incarceration.] The presenters stated there have been numerous efforts to shift or eliminate the funding and that those funds need to be invested wisely with KDOC and stakeholder input.

Adult Supervision Salary Issues

The presenters stated community corrections associations, advisory committees, and agencies are working with KDOC to address the need for increased grant funding to local units of government for adult community corrections. Community corrections agency employees are county employees, even though funding comes from the State for most agencies. The increase in grant funding for FY 2023 would help address increased caseloads, increased pay for employees to reduce turnover, and inflation costs, they said.

The presenters also provided information regarding changes in criminal law that impact the supervision population; funding related to 2003 SB 123 substance abuse treatment programs; and issues related to juveniles in the child welfare system, the criminal justice system, or the foster care system.

Overview—Kansas Judicial Council Report on Offender Registration

Four members of the Kansas Judicial Council's Advisory Committee on Offender Registration, including Representative Humphries, presented the Committee with recommendations to reform the Kansas Offender Registration Act (Act). During the 2021 Legislative Session, the Advisory Committee recommended the passage of 2021 HB 2349, to reform the Act by creating an exit mechanism for offenders; repeal registration requirements for juvenile sex offenders; reduce

penalties for registration violators; redefine violations of the Act; create a fee waiver process; amend registration requirements for specific sex offenses, drug offenses, and violent offenses; require single-point registration in county of residence only; allow parties to agree to registration for non-Act offenses; and clarify that municipal court convictions are not registrable under the Act. [Note: HB 2349 was stricken from the House calendar on March 5, 2021.]

Public Comment

The Executive Director of the Kansas Association of Community College Trustees addressed the Committee on behalf of the Governor's Council on Education regarding one-time expenditures that allow for additional educational programming at KDOC facilities. These expenditures total \$6.6 million for IT upgrades, tablet computers, and equipment purchases, and could be eligible for federal relief funding from American Rescue Plan Act moneys. If not, such SGF expenditures may qualify as state Maintenance of Effort required by the American Rescue Plan Act for higher education.

The Executive Director of the Kansas Children's Service League addressed the Committee about the League's evidence-based programming and noted limitations on use of the Juvenile Justice Improvement Fund, including how evidence-based programming is defined and expanding the eligibility of youth to include those who are eligible for level one diversion. [Note: The Juvenile Justice Improvement Fund was renamed as the Evidence-based Programs Account of the State General Fund by enactment of 2017 House Sub. for SB 42.]

The Campaign Director of Kansas Appleseed addressed the Committee regarding the Evidence-based Programs Account and asked that the \$21.1 million taken from the account be rededicated to youth justice spending. He also discussed the lack of mental health support for young people in crisis, elimination of fines and fees for justice-involved youth, and the lack of Kansas laws governing restraint of children in the courtroom.

A representative of TeamWorks addressed the Committee on their program, which provides

mentorship, employment, and independent living for youth.

A retired correctional officer from the Lansing Correctional Facility addressed the Committee regarding the lack of safety, security, and control at the facility. He discussed staffing shortages and other management issues of concern.

A youth leader from Progeny addressed the Committee and thanked lawmakers for the passage of 2016 SB 367 and urged the reallocation of \$21.0 million back to the Evidence-based Programs Account in the upcoming Legislative Session.

The President of Jobs for America's Graduates Kansas (JAG-K), with the principal of the Gardner-Lawrence High School at KJCC, provided an overview of the JAG-K program. The organization helps students prepare for a successful future through in-school programming that teaches leadership and career development skills. The principal requested additional funding for KJCC to support the JAG-K program.

Comments were submitted to the Committee in written-only format from the Executive Committee of the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention, requesting the decision to reduce moneys in the Evidence-based Programs Account be revisited; and representatives of the Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and the Kansas Peace Officers Association, regarding provisions of 2021 HB 2349.

October 27, 2021, Meeting

Overview—Compassionate and Medical Release

The Committee heard an overview on compassionate and medical release from two policy analysts from the Council of State Governments (CSG) Justice Center. The analysts defined medical parole, geriatric parole or parole for older adults, and compassionate release.

The CSG analysts presented information on parole and compassionate release policies in other states and requirements imposed on people seeking this kind of release. They stated many other states' policies also include victim

notification and offense carve-outs (which exclude those found guilty of certain criminal offenses), require offenders serving a defined portion of a minimum sentence, and define qualifying age-related infirmity or illness. In nearly all states, the final release decision is made by the paroling authority or the corrections department.

The CSG analysts answered Committee member questions regarding where the released person could be housed and cared for and how that could be funded.

CONCLUSIONS AND RECOMMENDATIONS

At the end of its October 27 meeting, following discussion, the Committee adopted the following recommendations.

The Committee requests Legislative Coordinating Council (LCC) approval for the filing of a bill that restores \$21.1 million SGF to the Evidence-based Programs Account, an amount lapsed in FY 2021. This bill would be introduced in both the Senate Committee on Ways and Means and the House Committee on Appropriations. The Committee requests LCC approval for the filing of a bill that would prohibit the physical restraint of juveniles in court appearances without a showing of just cause. [*Note: the LCC approved the filing of such bills by interim committees at their October 26, 2021, meeting.*]

The Committee recommends the KDOC Community and Field Services Division (Community Corrections) and the Secretary of Corrections immediately develop an incentives plan to include new-hire, retention, and referral bonuses, to be presented to the Strengthening People and Revitalizing Kansas (SPARK) Committee for payment from COVID-19 federal relief funds. The Secretary of Corrections should then come before the 2022 Legislature with a pay enhancement package to address wages, night differentials, and premium pay.

The Committee recommends strong support for a \$6.6 million proposal to use maintenance of effort funds for IT upgrades for Wi-Fi devices and tablet computers, as well as the equipment such as welding tools and simulators used for commercial

driver training for educational programs at correctional facilities. If maintenance of effort funds are not needed, then the Committee recommends the SPARK Committee approve use of federal American Rescue Plan Act of 2021 funds for those purchases.

The Committee expressed concern regarding expenditures from the Evidence-based Programs Account being limited only to programs identified in the annual budgeting process, and suggested that rolling grant application cycles be implemented. The Committee recommends the House Committee on Corrections and Juvenile Justice and the Senate Committee on Judiciary consider a bill that clarifies the distribution for funds from the Evidence-based Programs Account.

The Committee recommends allowing all KDOC employees to be included in the Kansas Public Employees Retirement System Corrections Plan, with first priority given to juvenile correctional officers.

The Committee encourages the Senate Committee on Judiciary to take action on 2021 HB 2030, which would allow for the release of an inmate with a terminal medical condition likely to cause death within 120 days rather than within 30 days pursuant to current law. The Committee notes the House vote on February 10, 2021, was 96 Yeas and 29 Nays.

The Committee recommends the Legislature consider eliminating fines and fees for justice-involved youth, to include expungement fees set by each county.

The Committee recommends KDOC conduct an outreach program, webinar, or campaign or some combination of those on how to apply for Evidence-based Program Account moneys.

The Committee recommends adding funding for the JAG-K program at the KJCC.

The Committee recommends KDOC submit an appropriation request for Career Technical Education facility renovation at the KJCC.

The Committee recommends support of the offender registration bill recommended by the Kansas Judicial Council's Advisory Committee on Sex Offenses and Registration.

The Committee recommends postponing considerations of changes to the Topeka Correctional Facility and the KJCC until the report on regional juvenile correctional facilities from Clark & Enersen is complete; it is due July 2022.

The Committee recommends the Legislature adopt the Kansas Sentencing Commission's policy recommendations regarding ten bills introduced in the 2021 Session:

- Establishing a more robust KDOC compassionate release policy, HB 2030;
- Incentivizing offenders to be successful in prison, HB 2031;
- Incentivizing offenders to be successful on probation, HB 2084;
- Modifying offender registries, HB 2092;
- Clarifying multiple sentencing of offenders, HB 2081;
- Early release for certain drug offenders, HB 2147;
- Sentencing proportionality for drug possession offenses, HB 2139;
- Sentencing drug grid modification to reflect sentencing realities, HB 2146;
- Sentencing nondrug grid modification to reflect sentencing realities, HB 2350; and
- Sentencing proportionality of property crimes, SB 5.

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Report of the Joint Committee on Fiduciary Financial Institutions Oversight to the 2022 Kansas Legislature

CHAIRPERSON: Representative Jim Kelly

VICE-CHAIRPERSON: Senator Jeff Longbine

OTHER MEMBERS: Senators Michael Fagg, Ty Masterson, and Jeff Pittman; and Representatives Gail Finney, Nick Hoheisel, Stephen Owens, Mari-Lynn Poskin (substitute member), and Rui Xu

CHARGE

Monitor and Make Recommendations on Fiduciary Financial Institutions in Kansas

Pursuant to provisions in KSA 2021 Supp. 46-4001 (2021 Session Law, Chapter 80, Section 29 [Senate Sub. for HB 2074]), the Committee is directed to:

- Monitor, review, and make recommendations regarding fiduciary financial institutions' operations in the state of Kansas;
- Monitor, review, and make recommendations regarding the FidFin Fiduciary Financial Institution Pilot Program;
- Receive a report from the Office of the State Bank Commissioner (OSBC) prior to December 31, 2021, which provides an update on the implementation of the of the Technology-enabled Fiduciary Financial Institutions Act and the FidFin Fiduciary Financial Institution Pilot Program. The report is to include recommendations; and
 - Include in its report recommendations from the OSBC for any legislation necessary to implement provisions of the Act.

December 2021

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Joint Committee on Fiduciary Financial Institutions Oversight

ANNUAL REPORT

Conclusions and Recommendations

The Joint Committee on Fiduciary Financial Institutions Oversight submits the following comments and recommendations:

- **Legislative intent.** On the subject of legislative intent, the Committee recommends and clearly states, that a permanent charter be issued no later than December 31, 2021, so that practical actions can be taken with the FidFin Fiduciary Financial Institution Pilot Program and other requirements. Addressing such actions would allow requirements and processes associated with the Technology-enabled Fiduciary Financial Institutions Act, including those items that remain at the discretion of the Commissioner (e.g., promulgation of agency rules and regulations and the timing of the examination and conclusion of the pilot program), to move forward.
- **Legislative proposal from the State Bank Commissioner.** The Committee recommends the draft legislation presented by the OSBC be introduced during the 2022 Session by the respective House and Senate financial institutions standing committees.

The Committee further recommends its report be submitted to the House Committee on Financial Institutions and Rural Development and the Senate Committee on Financial Institutions and Insurance to permit review and consideration of 2021 Senate Sub. for HB 2074 (Law) and its implementation.

Proposed Legislation: None.

BACKGROUND

The Joint Committee on Fiduciary Financial Institutions Oversight (Committee) was established by the enactment of 2021 Senate Sub. for HB 2074, Section 29, codified at KSA 2021 Supp. 46-4001. This nine-member joint committee is required to:

- Monitor, review, and make recommendations regarding fiduciary financial institutions' operations in the state of Kansas;
- Monitor, review, and make recommendations regarding the FidFin

Fiduciary Institution Pilot Program (pilot program); and

- Receive a report from the Office of the State Bank Commissioner (OSBC) prior to December 31, 2021, that provides an update on the implementation of the Technology-enabled Fiduciary Financial Institutions Act (TEFFI Act) and pilot program. The bill required the report to include recommendations from the OSBC for any legislation necessary to implement the provisions of the TEFFI Act.

The 2021 law also requires the OSBC to appear before the Committee annually and present a report on the fiduciary financial institution industry. The Committee is authorized to introduce legislation as deemed necessary in performing the Committee's functions.

The Legislative Coordinating Council authorized the Committee to meet on one day.

COMMITTEE ACTIVITIES

The Committee met on December 7, 2021, to review the provisions of the TEFFI Act and the oversight requirements assigned to the Committee and to receive updates on current fiduciary financial institutions' operation in the state from representatives of the fiduciary financial institution authorized by the legislation (The Beneficient Company Group, LP [Beneficient]) and the regulatory body authorized by the legislation (the State Bank Commissioner [Commissioner] and representatives of the OSBC).

Overview of the TEFFI Act; Role of the Committee

Committee staff from the Office of the Revisor of Statutes and the Kansas Legislative Research Department (KLRD) provided an overview of 2021 Senate Sub. for HB 2074 and provisions specific to the Committee as established in this act. A Senior Assistant Revisor outlined the TEFFI Act, stating it creates a new type of financial institution under Kansas law known as a technology-enabled fiduciary financial institution (often referred to as a "TEFFI") under the supervision of the OSBC. The bill became effective July 1, 2021. Among key provisions detailed, the bill:

- *Certificate of authority; role of State Banking Board and Commissioner.* Requires a TEFFI to apply for a certificate of authority from the State Banking Board. The bill provides specific requirements that must be satisfied before a charter is issued. Additionally, the Board is permitted to require fingerprinting and a criminal history record check of any officer, director, or other person associated with the fiduciary financial institution. The Board cannot approve any application until

Beneficient's conditional charter (as addressed in section 25 provisions) has been converted to a full charter and the Commissioner has completed a regulatory examination [Section 2];

- *Distributions.* Requires the TEFFI to make a distribution of cash or other assets to the Department of Commerce and to one or more qualified charities [Section 2]. It requires these distributions to be in an amount equal to 2.5 percent of the fiduciary financial institution's fidfin transactions (described below) during the calendar year [Section 11].
- *Fees.* Establishes a fee structure for fiduciary financial institutions. The initial fee is \$500,000, but an inactive TEFFI's fee could not exceed \$10,000. The bill provides that 75 percent of the fee paid would be remitted to the Bank Commissioner Fee Fund and 25 percent to the Technology-enabled Fiduciary Financial Institutions Development and Expansion Fund with the Department of Commerce (established in section 24). This section also provides for the assessment of examination fees by the Commissioner [Section 3];
- *FidFin transactions; powers.* Requires a TEFFI to report to the Commissioner its transactions (termed "fidfin transactions"). This section also provides standards for the Commissioner to evaluate a fiduciary financial institution's safety and soundness [Section 7]. The TEFFI is authorized to exercise powers relating to these transactions, receiving and managing alternative asset custody accounts, and engaging in trust business [Section 10];
- *Economic growth zone; Kansas TEFFI office.* Requires a fiduciary financial institution to maintain office space in an economic growth zone (defined as a community with a population of less than 5,000 located in a rural opportunity zone county or Harvey County) and to employ, engage, or contract with at least three employees to provide services for the

TEFFI in Kansas and to facilitate examinations required by the TEFFI Act [Section 9];

- *Rules and regulations.* Requires the Commissioner to adopt rules and regulations on or before January 1, 2022, as are necessary to administer the TEFFI Act and allows the OSBC to enter into contracts for technical assistance and professional services as necessary to administer the Act and meet this deadline [Section 22];
- *Conditional charter.* Requires the Commissioner, on July 1, 2021, to grant a conditional TEFFI charter to Beneficient and to establish a pilot program with Beneficient with a \$1.0 million initial fee and \$9.0 million distribution requirement for Beneficient under this program. In association with this conditional charter, the new law provides a community in Harvey County, selected by Beneficient, would be the first economic growth zone [Section 25];
 - Upon the issuance of the conditional charter, Beneficient is not permitted to commence fidfin transactions in the state until the earlier of December 31, 2021, or the date the Commissioner adopts rules and regulations. The Commissioner may extend the period before commencing fidfin transactions for a period not to exceed six months if the Commissioner submits a report to the Senate Committee on Financial Institutions and Insurance (Senate Committee) and the House Committee on Financial Institutions and Rural Development (House Committee) identifying the reasons such extension is needed [Section 25]; and
- *Tax credit.* Establishes an income and privilege tax credit beginning tax year 2021 for TEFFIs in an amount equal to the fiduciary financial institution's qualified charitable distributions during such taxable year if the TEFFI maintained its principal office in an economic growth zone. A

TEFFI, in any taxable year, would be required to pay the greater of the qualified charitable distributions made during such year or the tax liability imposed pursuant to the Kansas income tax or financial institutions' privilege tax [Section 28].

The KLRD Assistant Director for Research noted resources published on KLRD's committee page that included the enrolled version of 2021 Senate Sub. for HB 2074, the conference committee report brief for 2021 Senate Sub. for HB 2074, and links to the testimony submitted on the introduced versions of the bills that contained provisions pertaining to fiduciary financial institutions oversight (2021 HB 2398 and SB 288). The Assistant Director for Research outlined the bill provisions establishing the Committee and its responsibilities (described in the background section of this report). She also provided a timeline (Appendix A) outlining key provisions and their associated timeframes in the legislation.

Update on Fiduciary Financial Institutions' Operation in the State of Kansas

Beneficient Company Group, LP

The Beneficient Founder and Chief Executive Officer (CEO); President and Chief Fiduciary Officer (CFO); and Managing Director and Co-Head, Fiduciary Financial Institutions (Managing Director) provided an update to the Committee. In addition, a representative of Sage Law appeared on behalf of Beneficient and participated in the Committee discussion held with conferees. The presentation began with information regarding individuals serving on the Beneficient Board of Directors and its representatives in the state of Kansas. The presentation also addressed questions the applicant was asked to address by the Committee.

Implementation of the TEFFI Act; relationship with the OSBC. The Managing Director characterized the relationship with the OSBC as transparent, productive, and helpful; he noted numerous meetings, conversations, correspondence, and documents have been exchanged (*e.g.*, 98 requests and 100 documents submitted). He also noted, since July 2021, there have been at least ten meetings and numerous phone conversations; in addition, the OSBC sent a

team to Beneficient's Dallas office to meet its team and ensure questions were answered. The Managing Director stated Beneficient has fully implemented all of the TEFFI Act requirements for issuance of a charter. He confirmed the OSBC is also evaluating:

- Audited financial statement – The OSBC requested audited financial statements, and Beneficient has submitted a draft of those statements, along with managerial financial statements. The final audited financial statements are being held open until a large capital infusion is completed and the appropriate footnotes are added. It is anticipated the audited statements will be substantially and materially identical to the submitted draft; and
- Background checks – The applicant noted the Kansas Bureau of Investigation relies upon the Federal Bureau of Investigation (FBI) for fingerprint checks, and the FBI has not indicated how long, given a current backlog, the checks will take to process. Beneficient has suggested a number of alternatives to this fingerprint process; the OSBC is evaluating those alternatives. The Managing Director commented the background check provisions in the TEFFI Act are “permissive.”

Organization and transactions (Section 2(c) implementation). The Managing Director highlighted progress on individual requirements in the TEFFI Act, beginning with section 2(c) (KSA 2021 Supp. 9-2302(c)). Of the six requirements cited (e.g., TEFFI organization, name selection, articles of incorporation, commitment to make a qualified investment, transaction structure to ensure a charitable distribution, and consultation with the Department of Commerce regarding economic growth zones), he indicated all should be considered “complete.” On the topic of **qualified investments**, the Managing Director highlighted Beneficient's qualified investments (*i.e.*, in 10,000 square feet of commercial, industrial, multiuse, or multifamily real estate in the economic growth zone). To date, those investments include the following properties in Hesston, which is the designated community in Harvey County:

- 105 N. Main Street (Main Office) – 1,082 square feet;
- 108 N. Main Street (Conference Center – 1,800 square feet; and
- 117 N. Main Street (Proposed grocery store) – 4,100 square feet.

The Managing Director indicated Beneficient is negotiating with the City of Hesston to acquire a 22-acre abandoned neighborhood, which it intends to redevelop into a multipurpose commercial property; this acquisition would satisfy the remaining square footage requirement.

The Managing Director affirmed Beneficient's belief that the **application process** is complete, indicating that the charter application process is complete pending the OSBC evaluation of FBI fingerprinting and background check alternatives, and Beneficient is ready to commence operations and needs a final, permanent charter to be issued.

Economic growth zones. The President and CFO (President) addressed the economic benefits made available through the financing of alternative assets from investors across the country in the trusts holding these investments in Kansas (the TEFFI). He commented on Beneficient's meeting with officials of the Department of Commerce and the primary purposes of the economic growth zones within the TEFFI Act: administration of the Technology-enabled Fiduciary Financial Institutions Development and Expansion Fund and the facilitation of the development, growth, and expansion of fiduciary financial institutions, fidfin activities, and custodial services in the state of Kansas. The President reviewed the features and foundation of the economic growth zone, including the use of a tax-exempt entity, the governance component, expenditure oversight, annual reporting requirements, and the economic growth zone's economic interest. Addressing the topic of economic interest more specifically, the President noted Beneficient had indicated during committee hearings that it planned to distribute \$9.0 million upon final charter authorization (as a qualified distribution under the TEFFI Act). Given the transactions currently planned, he suggested those

transactions ready to close in December 2021 could generate an additional \$6.5 million.

Proposed legislation. The President stated Beneficient does not have any proposed changes to the TEFFI Act and it does not believe any changes are warranted, excepting minor administrative and technical clean-up. He acknowledged that the OSBC has a proposal and requested to defer comment on that proposal until the OSBC had presented its proposed changes. He stated Beneficient believes most of the proposed changes to be substantive in nature, which could adversely affect the TEFFI Act.

Charter status, pilot program. The President commented that timing is important (*i.e.*, when the program commences), given interest from other fiduciary financial institutions, and he reiterated the tie between the pilot program's start and the issuance of a "permanent" charter. Beneficient supports a permanent charter issued on or by December 31, 2021. If documents associated with the company reflect a "conditional" charter (issued June 30), the President stated, this would be a "non-starter" for Beneficient's customers; the applicant's customers will not close transactions without that charter in place, and Beneficient and the State of Kansas would lose credibility with the alternative asset industry if such charter is not issued in December 2021. The President outlined the intended purpose of the pilot program and stated the pilot program should enable Beneficient to operate upon issuance of a full final charter this month (anticipated by the applicant in December 2021) through 2022 calendar year, with an examination to be conducted at the end of this 12-month period. Following this examination (with the OSBC's readiness to regulate the industry), the pilot program would end, and other participants would be permitted to submit TEFFI charter applications.

TEFFI industry overview. The Beneficient Founder and CEO (CEO) provided an overview of the fiduciary financial institutions marketplace, highlighting the growth and projected future growth for the alternative asset industry, including the projections for the industry's assets under management (AUM). He noted that, as of December 31, 2020, U.S. investors and institutions held \$5.8 trillion in alternative assets; Beneficient's target market is \$1.7 trillion in AUM in the largely

underserved market for U.S. mid-to-high net worth (MHNW) individual investors and U.S. small-to-medium size institutional investors. The MHNW population is one of the fastest growing wealth segments, he continued, pointing to 2.3 times faster growth in MHNW allocation to alternatives compared to traditional asset investment over the period of 2003 to 2020. This alternative assets and wealth segment growth translates into an increased demand for liquidity. Given such growth, the CEO suggested the total alternative asset industry growth may total \$9.0 trillion in the future. The CEO also provided a comparative review of the alternative asset trust banking industry with state banks and other select lending laws (*e.g.*, credit card loan banking in South Dakota and industrial banks in Utah). It was estimated, the CEO concluded, that the opportunity for the alternative trust asset banking segment growth for Kansas (assuming 16 of the top firms, representing 80 percent of this segment, charter TEFFIs in Kansas) could generate \$2.8 billion per year in economic growth contributions and as much as \$7.0 billion in total gross domestic product for the state.

State Bank Commissioner

The Commissioner provided an update to the Committee. The OSBC General Counsel and Staff Attorney addressed specific questions and topics. The Deputy Commissioner for the Banking Division, the TEFFI examiner, and three members of the State Banking Board who comprise an *ad hoc* committee charged with overseeing the fiduciary financial institution application and chartering process also appeared via Webex.

The Commissioner reported on the status of implementation of the TEFFI Act requirements, specifically addressing the agency's implementation timeline for the requirements, the status of the agency's promulgation of rules and regulations, proposed legislative changes, the status of the pilot program and its anticipated start date, and the timeframe for the first examination by the OSBC before issuance of the formal charter.

Approach to regulation; implementation of the TEFFI Act. The Commissioner noted the new law established the OSBC as the sole regulatory body for TEFFIs chartered in Kansas; no federal counterpart exists for this type of institution. The OSBC serves as a financial regulator, overseeing

the activities of state banks and trust companies, mortgage companies, consumer credit companies, and other financial entities licensed in Kansas. In addition to working directly with Beneficient on its application, the OSBC has sought guidance and fielded questions from legal, accounting, academic, regulatory, and industry professionals. The Commissioner confirmed the OSBC, to date, has complied and met all of the deadlines imposed by 2021 Senate Sub. for HB 2074.

Issuance of conditional charter; application activities. The Commissioner indicated a conditional charter was granted on June 30, 2021, meeting the July 1, 2021, deadline specified in the TEFFI Act. He stated that since that time, several, but not all, of the application requirements contained in the TEFFI Act and also noted on the conditional charter have been satisfied. The Commissioner noted the phone calls, texts, emails, and in-person meetings, characterizing those communications and a staff trip to Beneficient's Dallas headquarters in November 2021 as "productive." The Commissioner then summarized the current state of the application as follows:

- A significant issue had been the affiliation between Beneficient and GWG Holdings, a publicly traded company determined to be facing potential severe adverse actions by the Securities and Exchange Commission/NASDAQ. The severing of this relationship was completed in November 2021, pursuant to actions taken by each company's board of directors and GWG's subsequent filing of a Form 8-K establishing a November 29, 2021, effective date;
- An item the OSBC was able to resolve, exclusively on behalf of this applicant, was the issue of the law allowing intangible assets as capital adequacy, this applicant's funding sources for fidfin transactions, the type of trust powers this applicant needs to conduct fidfin transactions, and the type of consideration used for those transactions;
- An item the Commissioner termed as a "key component creating delay" (in the application process) is the applicant's lack of complete and final financial statements.

The Commissioner stated no financial analysis or due diligence can be conducted until those statements are received. He confirmed unaudited managerial statements were submitted to the OSBC on December 1, 2021. It was noted time is needed to analyze those statements, and third-party accounting services may be required; and

- Another pending item that has "stymied" both the regulator and applicant is the background check provisions in 2021 Senate Sub. for HB 2074. To date, the Commissioner reported, the OSBC has received only five of the background checks, which are conducted by the FBI. Assistance has been sought from the Office of U.S. Senator Jerry Moran to expedite this process. The Commissioner stated the OSBC is exploring appropriate alternatives to complete this step.

Application approval; timeline. The Commissioner stated that although the agency's goal remains to provide the applicant authority to conduct business in an expeditious manner, it may be necessary for the OSBC to extend the time in which the applicant can begin the pilot program and commence fidfin transactions pursuant to requirements of section 25(d) of the TEFFI Act.

Agency rules and regulations; economic development provisions of the TEFFI Act. The Commissioner indicated fiduciary financial institution regulations have been drafted and submitted for review by the OSBC's third-party legal counsel. He noted that review is relatively complete, and it is anticipated review by internal counsel will be completed within the next week. The Commissioner acknowledged that discussions with Beneficient have helped provide clarity regarding some of the TEFFI Act's economic development provisions and how the applicant plans to comply with such provisions. He noted officials of the departments of Commerce and Revenue participated in those discussions.

Examination plan. The Commissioner indicated the OSBC examination staff anticipates conducting the first examination prior to issuance of the formal charter within 12 weeks of the TEFFI

conducting fidfin transactions. He stated this 12-week timeframe should allow Beneficient to have booked sufficient transactions for the OSBC to conduct a meaningful examination. Any examination conducted, whether before or after issuance of a formal charter, will address only compliance with state law (2021 Senate Sub. for HB 2074), information technology standards, and the applicable federal requirements (e.g., Anti-Money Laundering Act and Bank Secrecy Act regulations). The Commissioner noted the examination standards in 2021 Senate Sub. for HB 2074 preclude any safety and soundness determination that would meet the OSBC's internally accepted regulatory examination protocols for safety and soundness examinations for banks and depository institutions.

The Commissioner further explained the CAMELS (Capital adequacy, Asset quality, Management capability, Earnings, Liquidity, and interest rate Sensitivity) rating system and how that system could be applied to a TEFFI. He noted the rating system for trust companies, indicating neither rating system could be used in an examination of a TEFFI (as neither could accurately reflect some of the industry standards). The Commissioner stated the OSBC's examination activities will very likely be limited to a "Pass/Fail" conclusion based on compliance with 2021 Senate Sub. for HB 2074 and the applicable federal requirements for financial institutions.

Proposed legislation. The Commissioner concluded his formal remarks by noting the TEFFI Act (in section 29(f)(3)) charges the OSBC with the duty to provide recommendations to this committee on "any legislation necessary to implement provisions of" the TEFFI Act. A written bill draft was attached to the Commissioner's testimony, and he summarized the proposal as:

- Clarifying some issues unique to TEFFIs, including what the OSBC will evaluate during an exam, when the pilot program will end, what happens if a TEFFI fails or stops operating, that certain required notifications to the OSBC must be prompt and in writing, that a fidfin transaction is a sale from the perspective of the customer, and when the first yearly assessment will be due;

- Adding authority for the OSBC to set concentration limits for fidfin transactions based on asset class, geography, or industry sector, based on the unique risk for each category of transactions; and
- Harmonizing some provisions with existing approaches for banks and trust companies, specifically that initial fees are received at the time of application, how fees and assessments will be paid, the grounds for which an application can be denied, that the OSBC can examine a fiduciary financial institution's service providers, that the OSBC can require insurance and extra capital, that the OSBC can require disclosures to consumers, that assessments are allocated and paid in July, to what extent a TEFFI can engage in traditional trust business, and that fiduciary financial institutions are mandatory reporters for the purpose of elder abuse.

The Commissioner indicated the proposal also included some technical corrections and updates to language to better fit the TEFFI context. He noted Beneficient has agreed to several of the technical corrections and some of the items previously noted (assessment allocation and payment in July, engagement in trust business, and mandatory reporters).

Committee Discussion; Conversation with the Applicant and the Regulator

Following the formal presentations from the Beneficient representatives and the Commissioner, the Committee participated in a formal question-and-answer session with the applicant first and then the OSBC representatives. Discussion topics for the applicant included the impact of any proposed federal consideration on high wealth individuals and unrealized gains; the items delaying the issuance of the full charter and whether the financial statements and fingerprint checks were required or the TEFFI Act provided permissive authority; the timing of the pilot program and when and whether fidfin transactions could commence; the estimated growth from the original estimate for the qualified charitable contribution and industry changes; the process for resolving customer complaints; and the applicant's

transparency to its customers as well as the topic of intellectual property and proprietary software. The Sage Law representative addressed the timeline for the pilot program (during discussion, a 12-week period was suggested) and the need to proceed with the charter application process to make it clear that Beneficient holds a standard, not conditional, charter.

Discussion topics with the Commissioner and OSBC staff representatives included the timing of approval for the commencement of fidfin transactions (whether a six-month extension is needed) and the impact if such transactions cannot be audited as part of examination; how consumer complaints regarding TEFFIs would be addressed by the agency; the timeframe that would be in place prior to the first examination under charter and timing of the pilot program's provisions in the TEFFI Act (Section 25(f) of the TEFFI Act was referenced during this discussion); statutory requirements for background and fingerprint checks applicable to the provisions in the TEFFI Act; and the issue of reputational risk, from both the perspective of the applicant and the regulator, related to the timing of the charter.

The Commissioner confirmed in discussion that the pilot program started on July 1, 2021, with the issuance of the conditional charter on June 30. He further indicated he has no intention to stand in front of the progress, but must also take into consideration future TEFFIs and regulation of the industry, not just Beneficient. Committee members further discussed legislative intent surrounding the issuance of the full charter, the pilot program, and the commencement of fidfin transactions.

CONCLUSIONS AND RECOMMENDATIONS

Following the formal presentations and reflecting its discussion, the Committee submits the following comments and recommendations:

- **Legislative intent.** On the subject of legislative intent, the Joint Committee recommends, and clearly states, that a permanent charter be issued no later than December 31, 2021, so that practical actions can be taken with the pilot program and other requirements. Addressing such actions would allow requirements and processes associated with the TEFFI Act, including those items that remain at the discretion of the Commissioner (*e.g.*, promulgation of agency rules and regulations and the timing of the examination and conclusion of the pilot program), to move forward;
- **Legislative proposal from the State Bank Commissioner.** The Committee recommends the draft legislation presented by the OSBC be introduced during the 2022 session by the respective House and Senate financial institutions standing committees.

The Committee further recommends its report be submitted to the House Committee on Financial Institutions and Rural Development and the Senate Committee on Financial Institutions and Insurance to permit review and consideration of 2021 Senate Sub. for HB 2074 (Law) and its implementation.

Appendix A

Timeline of Select Provisions in the Act

Date Specified	Description
July 1, 2021	<p>The Bank Commissioner is directed to issue a conditional charter to The Beneficient Company (Beneficient) and establish a fidfin fiduciary institution pilot program with an economic growth zone designated in Harvey County. (The bill required the Bank Commissioner to grant this conditional fiduciary financial institution charter upon the filing of an application and satisfying requirements as detailed in the bill.)</p> <p>The bill requires every fiduciary financial institution (or “TEFFI”) be assessed an initial fee of \$500,000 to be remitted concurrently with the issuance of such fiduciary financial institution’s charter. [Note: See December 31 for additional information about related reporting requirements on the fiduciary financial institution.]</p>
December 31, 2021	Upon the issuance of the conditional charter , Beneficient will be subject to all requirements imposed on fiduciary financial institutions under the Act, but will not be permitted to conduct fidfin transactions, custodial services, or trust business in Kansas until the earlier of December 31, 2021, or the date the Bank Commissioner adopts rules and regulations.
December 31, 2021	The Joint Committee must receive a report from the OSBC prior to December 31, 2021, that provides an update on the Act’s implementation and pilot program, along with recommendations for any future legislation.
January 1, 2022	The Bank Commissioner is required to adopt rules and regulations on or before January 1, 2022, as necessary to administer the Act. (The OSBC is permitted to enter into contracts for technical assistance and professional services as necessary to administer the provisions of the act and to meet the specified deadline for adoption of the rules and regulations.)
January 10, 2022	The Bank Commissioner is required to submit a report, if the Commissioner chooses to extend the period of time in which Beneficient may not commence fidfin transactions, custodial services, or trust business in Kansas for a period not to exceed six months. Such report must be submitted to the chairperson of the Senate Committee on Financial Institutions and Insurance and the House Committee on Financial Institutions and Rural Development identifying the specific reasons for which such extension was necessary on or before January 10, 2022.
January 10, 2022	The OSBC, on or before January 10, 2022, is required to provide a report to the House Committee and the Senate Committee with an update on the progress of the pilot program. The report must include recommendations from the OSBC for any legislation necessary to implement the provisions of the Act.
January 1, 2023	For fiduciary financial institutions chartered after this date, the Department of Commerce will be authorized to publish one or more schedules (applicable distributions) in the <i>Kansas Register</i> as it deems reasonably necessary to facilitate economic growth and development in one or more economic growth zones.

Late June	The Bank Commissioner, prior to the beginning of each fiscal year, is required to make an estimate of fiduciary financial institution expenses to be incurred by the OSBC during such fiscal year in an amount not less than \$1.0 million.
December 1	The Bank Commissioner is required to transmit the statement of assessment December 1 or the next business day to each fiduciary financial institution.
December 31	The TEFFI is required to file a report with the Bank Commissioner regarding its fidfin transaction balances. The Commissioner must allocate and assess costs based on these reported balances.
December 31, 2020; taxable years commencing after such date	After December 31, 2020, a credit for the fiduciary financial institution's tax liability is allowed against its income and financial institutions' privilege taxes owed in an amount equal to the qualified charitable distribution. (Specified conditions must be met.)

Report of the Joint Committee on Information Technology to the 2022 Kansas Legislature

CHAIRPERSON: Representative Kyle Hoffman

VICE-CHAIRPERSON: Senator Mike Petersen

RANKING MINORITY MEMBER: Representative Pam Curtis

OTHER MEMBERS: Senators Tom Holland, Jeff Pittman, Dennis Pyle, and Caryn Tyson; and Representatives Kenneth Collins, Steve Huebert, and Rui Xu

CHARGE

Review, Monitor, and Report on Technology Plans and Expenditures

The Committee is directed to:

- Study computers, telecommunications, and other information technologies used by state agencies and institutions. The state governmental entities defined by KSA 75-7201 include executive, judicial, and legislative agencies and Regents Institutions;
- Review proposed new acquisitions, including implementation plans, project budget estimates, and three-year strategic information technology plans of state agencies and institutions. All state governmental entities are required to comply with provisions of KSA 75-7209 *et seq.* by submitting such information for review by the Committee;
- 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; and
- Report annually to the Legislative Coordinating Council and make special reports to other legislative committees as deemed appropriate.

December 2021

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Joint Committee on Information Technology

ANNUAL REPORT

Conclusions and Recommendations

The Joint Committee on Information Technology (Committee) submits the following recommendations and considerations to the 2022 Legislature:

- Legislation with similar contents to 2021 rs2422, which was considered by the Committee, should be introduced and assigned to the appropriate House committee for consideration during the 2022 Session;
- The work of the Kansas Task Force on Cybersecurity is important and the recommendations within the Task Force's final report should be reviewed by the Legislature. Further, the Committee encourages the Legislature to make cybersecurity a policy priority for the State of Kansas;
- Further study of ways state government can assist local entities regarding cybersecurity preparedness and adoption of technology should be considered;
- The State Board of Education should develop guidelines for information technology (IT) security for school districts and provide IT security training to school district employees;
- The process used to monitor the Unemployment Insurance Modernization project has been beneficial and it would be valuable to apply a similar process to other large scale state IT projects;
- More conversation between legislative committees and vendors submitting proposals for state IT projects should be explored;
- State IT leaders should explore ways to recruit and retain IT professionals and develop the State's IT professional talent pool; and
- The Committee commends the Kansas Legislative Office of Information Services on the implementation of the Virtual State House Project and its continued efforts to support remote participation in the legislative process.

Proposed Legislation: None.

BACKGROUND

The Joint Committee on Information Technology (Committee) has statutory duties assigned by its authorizing legislation in KSA 46-2101 *et seq.* The 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 Committee consists of ten members: five senators and five representatives. The duties assigned to the Committee by KSA 46-2101 and KSA 2018 Supp. 75-7201 *et seq.* are as follows:

- Study computers, telecommunications, and other information technology (IT) used by state agencies and institutions. The state governmental entities defined by KSA 75-7201 include executive, judicial, and legislative agencies and Kansas Board of Regents institutions;
- Review proposed new acquisitions, including implementation plans, project budget estimates, and three-year strategic IT plans of state agencies and institutions. All state governmental entities are required to comply with provisions of KSA 75-7209 *et seq.* by submitting such information for review by the 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 Legislative Coordinating Council (LCC) and make special reports to other legislative committees as deemed appropriate.

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

KSA 75-7210 requires the Executive, Judicial, and Legislative Chief Information Technology Officers (CITOs) to submit to the Committee annually all IT project budget estimates and revisions, all three-year plans, and all deviations from the state IT architecture. The Legislative CITO is directed to review the estimates and revisions, the three-year plans, and the deviations, and make recommendations to the 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

The Committee met during the 2021 Legislative Session on February 23 and May 26, 2021. In addition to these days, the Committee met during the 2021 Interim, as authorized by the Legislative Coordinating Council, on August 19, November 17, and December 15.

Election of Chairperson, Vice-chairperson, and Ranking Minority Member

At the February 23, 2021, meeting, the Committee elected a new chairperson, vice-chairperson, and ranking minority member for the 2021 calendar year.

Information Technology Legislation

At the February 23, 2021, meeting the Committee received a briefing on 2021 HB 2188 from Office of the Revisor of Statutes staff. The bill would allow the Committee to assess and provide recommendations for agency IT projects prior to the projects' submission to the Kansas Information Technology Office (KITO). The revisor also provided an overview of the current IT project approval by the KITO.

The Committee continued its discussion on pending IT legislation before the Legislature at the August 19, 2021, meeting. The three bills discussed were HB 2188, SB 249, and SB 250. The Chairperson also suggested that the Joint Committee look at combining HB 2188 and SB 249 into one bill that contained the best elements of both. Discussion also occurred on whether legislation should contain detailed instructions on when projects should come before the Committee or broader language that would be built upon by organizations such as the Information Technology Executive Council (ITEC).

The Committee continued its discussion on pending IT legislation at its November 17, 2021, meeting. Discussion was primarily on HB 2188 and SB 249 regarding Committee oversight of IT projects. Topics discussed included criteria to

trigger a review, the timeframe for the Committee to complete a review, what actions the Committee could take for projects that failed review, and how detailed the review should be. The discussion ended with the revisor being requested to draft a new bill combining elements of HB 2188, SB 249, and committee discussion into a new bill.

During the December 15, 2021, meeting the Committee heard draft legislation (rs2422), which combined elements of the three bills previously discussed. During discussion, the Committee made changes to the draft legislation regarding the newly proposed oversight mechanisms, what information is required to be reported to the Committee, when projects must be reported to the Committee, who is required to report on projects to the Committee, and which other legislative committees the Committee will be reporting its recommendations to. The Committee requested the revisor integrate the discussed changes into the draft legislation so it could be discussed in a meeting to be scheduled early in the 2022 Legislative Session, prior to introduction of the new bill.

Executive Branch Quarterly IT Project Reports

May 26, 2021

At the May 26, 2021, meeting, the Chief Information Technology Architect (CITA) from the Office of Information Technology Services (OITS) reviewed the Quarter 4, 2020, (October–December) and Quarter 1, 2021, (January–March) IT project reports. The CITA reported in Quarter 4, 2020, one project was in alert status. Projects are placed in alert status if they exceed 20 percent variance of one or more project performance metric (Schedule, Deliverable, Tasks, Resources, or Financial plan):

- The Department for Children and Families (DCF) Prevention and Protection Services (PPS) Comprehensive Child Welfare Information System (CCWIS) Planning Project was 33.0 percent behind on deliverables due to the COVID-19 pandemic.

The CITA cited three projects in caution status from the Quarter 4, 2020, quarterly report. Projects are placed in caution status if they exceed 10–19 percent variance of one or more project performance metric (Schedule, Deliverable, Tasks, Resources, or Financial plan):

- The Kansas Department of Health and Environment (KDHE) Bureau of Environment Remediation (BER) database;
- The KDHE Bureau of Water Environmental Protection Agency (EPA) E-Reporting Project; and
- The OITS Voice End User Device Refresh.

No information was provided as to why the projects were in caution status.

The CITA reported in Quarter 1, 2021, five projects were in alert status:

- The KDHE BER data management system was 26.0 percent behind on deliverables and anticipates completion in May;
- The KDHE Bureau of Water EPA E-Reporting Project was 20.0 percent behind on deliverables and completion was anticipated in September 2021;
- The OITS Voice End User Device Refresh is delayed due to the COVID-19 pandemic and teleworking;
- The Kansas Bureau of Investigation (KBI) DNA Data Bank Software Replacement is delayed due to prior commitments and other priorities within the agency; and
- The Kansas Virtual Statehouse Project is delayed due to backorders for parts needed to

complete elements within the Visitor Center Auditorium.

The CITA cited one project in caution status from the Quarter 1, 2021, quarterly report:

- The Kansas Department of Transportation (KDOT) Construction Management System (CMS) Replacement Implementation Effort is 12.0 percent over schedule due to needing additional time to perform setup for additional functionality that can only occur during the spring or fall when the system is not being utilized.

A demonstration by the CITA of the Kansas Information Technology Office Project Dashboard (Dashboard) was provided to the Committee. The Dashboard provides similar detail as what can be found in the quarterly reports, but makes it easier for individuals to review details for specific information on a project of interest and provides an “at-a-glance” overview of project status. The Dashboard also provides planned project cost and links to its specific page reference in the most recent quarterly report. At the time of this report’s publication, the dashboard can be accessed at: <https://ebit.ks.gov/kito/project-dashboard>.

August 19, 2021

At the August 19, 2021, meeting the CITA reviewed the Quarter 2, 2021, (April-June) IT project reports.

The CITA reported that the following six projects were in alert status:

- The Kansas Department for Aging and Disability (KDADS) Services State Hospital Infrastructure Upgrade is behind schedule due to changes in timeline due to an IT equipment shortage;
- The KDHE BER Database and EPA E-Reporting Project are behind schedule and deliverables due to business constraints

resulting from the COVID-19 pandemic and shifting agency priorities;

- The OITS Voice End User Device Refresh is behind schedule; the original end date was March 2021, which was moved to August 2021. The shift was due to constraints related to the COVID-19 pandemic. As of August 19, 2021, the project is complete;
- The OITS Data Center as a Service is behind schedule because tax filing deadline extensions due to the COVID-19 pandemic delayed the migration of the Kansas Department of Revenue (KDOR) data. The project is scheduled to be complete in September 2021;
- The Kansas Virtual Statehouse is behind schedule and behind on the financial plan; and
- The KDOT Equipment Management System is behind on its deliverables due to the short project duration. As of Aug 19, 2021, these delayed deliverables have been received.

The CITA reported the following three projects were in caution status:

- The KDHE Kansas Eligibility Enforcement System Hardware and Software Project is behind schedule due to the final phase being delayed due to a high number of defects. As of Aug 19, 2021, this project has been completed;
- The KBI DNA Databank is behind on its scheduled tasks. The core system is complete; and
- The KDOT Construction Management System is behind

schedule due to the complexity of migrating from a mainframe database.

November 17, 2021

At the November 17, 2021, meeting the CITA reviewed the Quarter 3, 2021, (July–September) IT project reports.

The CITA reported the following four projects were in alert status:

- The KBI DNA Databank was behind schedule and currently awaits one deliverable before reaching completion;
- The KDHE BER Database was behind schedule because of shortages and being shutdown due to the COVID-19 pandemic. The project is also behind on deliverables. Completion is anticipated in 2021;
- The KDOT Construction Management system is behind schedule and has over planned resource hours; and
- The KDOT Equipment Management System was behind schedule due to the specific windows in which it can be developed. It also has over planned resource hours.

The CITA reported the following projects were in caution status. Projects are placed in “caution” status if they exceed 10–19 percent variance of one or more project performance metric (Schedule, Deliverable, Tasks, Resources, or Financial plan):

- The OITS Integration Hub Project was behind schedule but was anticipated to be completed in 2021.

Executive Branch IT Update

May 26, 2021

At the May 26, 2021, meeting, the Secretary of Administration (Secretary), who also serves as the Chief Information Technology Officer (CITO) for the Executive Branch, updated the Committee on a number of IT-related initiatives, including:

- ITEC policy updates in the areas of project approval, status reporting, oversight, business contingency planning, business contingency implementation, and data administration;
- Ongoing migration of state data centers to the facility located in Overland Park. The project was reported to be 98.0 percent complete, with servers to be migrated and located with the Kansas Department of Corrections (expected completion June 1, 2021), Kansas Department of Labor (expected completion June, 2021), KDOR (expected start June 2021), and OITS (expected start after all other agencies have been migrated); and
- Overview OITS service rates for FY 2022 and 2023.

August 19, 2021

At the August 19, 2021, meeting, the Secretary updated the Committee on a number of IT-related initiatives, including:

- The Cybersecurity Task Force established by Executive Order 21-25. The Task Force is comprised of individuals from both the public and private sector and is tasked with providing the Governor with recommendations on the State’s cybersecurity practices. A preliminary report would be released in October 2021, with the final report being released in December 2021;

- Methodology for collapsing OITS from 29 to 15 rates for FY 2022 and FY 2023, and communication efforts to state agencies regarding services cost estimates. The Secretary reported Network and Telecommunications device rates would be reduced in FY 2022 and all other rates would remain unchanged. In FY 2023, rates would be adjusted to better align with costs, and rates would have a net increase of \$3.3 million dollars due to a vendor cost increase for the data center and O365 lines of service; and
- Organizational restructuring of OITS, which will see the creation of more client service-focused elements within OITS.

November 17, 2021

At the November 17, 2021, meeting, the Secretary updated the Committee on a number of IT-related topics such as:

- OITS having closed and vacated the Landon Data Facility as of October 1, 2021;
- An update regarding the Three-Year IT Plan initiative. The Secretary stated the plan is being tested this year on cabinet agencies, with the expectation that all Executive Branch agencies shall participate next year;
- ITEC seated two new members at the September meeting, including Secretary of Labor Amber Schultz and State Librarian Eric Norris. Mike Mayta with the City of Wichita was also retained on ITEC; and
- The Cybersecurity Task Force delivered its interim report to the Governor on October 5, 2021. The

final report is due to the Governor by December 5, 2021.

Legislative Branch IT Update

May 26, 2021

At the May 26, 2021, meeting the Legislative CITO provided an update on the Kansas Virtual Statehouse Project. The CITO stated that for the first time, residents can participate in the legislative process from anywhere in the state. Implementation of this project was done in 7 weeks and resulted in 2,510 total virtual meetings and 139,697 total meeting minutes during the 2021 Legislative Session.

The Director of Technical Services for the Kansas Legislative Office of Information Services (KLOIS) also provided an update on in-progress, upcoming, and completed IT hardware projects. In-progress projects include a legislative laptop refresh, Windows server upgrades for legislative staff agencies, networks switch upgrades for the Statehouse, audio system upgrades for committee rooms and legislative chambers, and upgrades to the new Webex system. Upcoming projects for the 2021 Interim include expansion of the data backup system, House voting system display board upgrades, legislative staff computer update, and a security assessment for legislative information systems.

Additionally, the Director of Application Services for KLOIS provided an update on the Kansas Legislative Information System and Services (KLISS) performance in the 2021 session, mid-session KLISS updates, and planned interim updates. Mid-session updates include: improvements to the Office of the Revisor of Statutes Lawmaking system, the Legislative Research Department's Decision Support system, General Orders interface and report functionality, and bill and resolution transparency functionality. Planned interim updates include: upgrades to the KLISS web-based framework for the Legislature's website, Chamber interfaces, Senate Voting System, and the Committee System; redesign of the Senate Journal application to simplify the creation process; analysis for a bill location report tool; testing of an updated OpenOffice client; Improved Data Archival solution; and a new

member interface tool to help legislators track legislative process information.

August 19, 2021

At the August 19, 2021, meeting the Legislative CITO discussed the support that KLOIS provided for the redistricting process, specifically the redistricting tour that occurred in early August. Updates were also provided on the June 15 ITEC meeting

Also at the August 19 meeting, the KLOIS Director of Technical Services provided an overview of active and upcoming projects. Active projects included: the Virtual Statehouse Project audio update; legislative committee room conference phone audio integration; and the legislative staff computer refresh. Upcoming projects included the first phase of a security assessment that will carry over into the 2022 Legislative Session. Completed projects include the Rubic Backup System expansion and the installation of new voting system display boards in the chamber of the House of Representative, of which the Committee received a demonstration.

The KLOIS Director of Application Services provided an overview of active, upcoming, and completed interim projects. Active projects include: web upgrades to keep systems up to date, maintain security, and allow for the integration of more modern applications such as a member interface; and an overhaul of the Senate Journal creation process. Completed projects included implementation of new KLISS builds for legislative divisions. Upcoming projects included creation of a member portal for legislators to use that would be designed and implemented during the 2022 Interim.

November 17, 2021

During the November 17, 2021, meeting, the Legislative CITO provided updates to the Committee on the information system request for proposal (RFP) and updates to the KLISS software system. At the direction of the Legislative Coordinating Council, KLOIS drafted an RFP seeking replacement of KLISS. The RFP was released on October 11, 2021, and no bids had yet been received, though some were expected by the close of the RFP on November 22, 2021. The

project would have a four-year implementation window. An overview of the KLISS system was also provided with a history of updates made to the system by the vendor and KLOIS since its inception. Further details were provided on updates made in 2020 and updates planned for the near future.

December 15, 2021

The Legislative CITO provided a further update on the KLISS RFP during the December 15, 2021, meeting. He stated the RFP closed on November 22, 2021, and that five vendors submitted proposals. The proposals were under review by a procurement team composed of members from the the Chief Clerk of the House, Legislative Administrative Services, Legislative Office of Information Services, Legislative Research Department, Office of the Revisor, and the Secretary of the Senate. The CITO stated that the procurement team would be reviewing vendor demonstrations next week from all five vendors, and he hopes to have a recommendation to the Legislative Coordinating Council by the start of the 2022 Session.

The Committee also discussed concerns with the new voting boards in the chamber of the House of Representatives. Members voiced concerns about issues during the 2021 Special Session regarding the boards correctly showing members who wished to speak. Concerns of general legibility were also voiced. KLOIS staff provided further information on how the issues are being resolved.

Redistricting Software Update

At the August 19, 2021, meeting, Kansas Legislative Research Department staff provided an overview on redistricting and the software used for the process.

Judicial Branch IT Update

May 26, 2021

At the May 26, 2021, meeting, the Judicial Branch CITO provided an update on the eCourt Case management System. Tracks 1 and 3 had been completed. Track 2 (Wichita, Judicial District 12 and 18) was scheduled to be completed in June 2021. Track 4 (Judicial Districts 1, 2, 3, 5, 7, and

29) was scheduled to be completed in August 2021. Track 5 (Judicial Districts 12, 15, 17, 20, 22, 23, and 28) was scheduled to be completed in February 2022. No updates for Track 6 (Judicial District 9, 16, 24, 25, 26, 27, and 30) or the Appellate Courts was provided.

August 19, 2021

At the August 19, 2021, meeting, the Judicial Branch CITO indicated the eCourt case management system is actively working within some judicial tracks, however several reporting function errors have been identified and the project has been paused until the developer has corrected the defects. At the time of the August 19 Committee meeting, payment of approximately \$2.0 million had been withheld by the Office of Judicial Administration (OJA) until corrections have been made.

The three major reporting issues the system is facing include: the E-citation system currently has an error relating to vehicle makes; export of the collections reports does not consistently run correctly; and the “Elevated Access” part of the external stakeholder access system is not functioning.

November 17, 2021

The Judicial Branch CITO provided further updates on the eCourt case management system at the November 17, 2021, meeting. He stated that work is progressing, with the new system being brought online in additional counties. The next collection of counties to be brought online will include Douglas County, Leavenworth County, and Wyandotte County. It was noted that due to technical aspects of their current systems, implementation in both Johnson and Sedgwick Counties will be delayed to allow for integration of the new system with other agencies within the counties.

IT Audits

May 26, 2021

At the May 26, 2021, meeting, Legislative Division of Post Audit (LPA) staff provided a monitoring report on the KBI’s Automated Biometric Identification System IT project. LPA has been monitoring this project since January

2020, and at the time of the May 26 Committee meeting, the project was still considered to be in the planning stage and was not being tracked as an active project by the KITO.

The project schedule was in caution status due to award of the associate contract being delayed, and the respective project deadline had not yet been updated.

August 19, 2021

In a closed session at the August 19, 2021, meeting, an IT auditor with LPA presented the results of IT security audits for KDADS; Blue Valley School District, Unified School District (USD) 229; and Emporia School District, USD 253.

November 17, 2021

At the November 17, 2021, meeting LPA staff provided an update on the monitoring report for the KBI’s Automated Biometric Identification System IT Project. LPA staff reported that the project’s scope, cost, and security were all in satisfactory status while the project’s timeline was in cautionary status. LPA staff stated that the timeline was behind primarily due to a two-month delay in the KBI signing the contract for the project. Completion of the project was scheduled for November 2022.

LPA staff also provided two audit reports for the Committee concerning school district IT security and delayed payments and fraud regarding the unemployment insurance system. The school district IT security audit was a limited scope audit seeking to address what IT capabilities and resources USDs have. The report stated that USDs are not required to implement any specific forms of IT security controls.

Furthermore, it was reported that of the 51.0 percent of USDs that responded to LPA, the majority reported lacking basic IT security controls such as security awareness training, confidential data encryption, computer vulnerability scans, or having an incident response plan. The USDs had stated that their most significant barrier was the hiring and retention of qualified IT staff.

The unemployment insurance audit addressed causes for the delay of payments from the Kansas Department of Labor (KDOL) to claimants throughout 2020 and into 2021, and sought to identify the amount of fraudulent payments made. LPA staff noted the delayed payments primarily were caused by an outdated IT infrastructure, with issues of staff training and capabilities due in part to the outdated IT infrastructure. The report found that the increased staff KDOL brought on during the COVID-19 pandemic appeared to have little to no impact on the responsiveness of the call center to claimant phone calls. LPA utilized machine learning to analyze claims and sought to determine payments likely to be fraud with a 95.0 percent confidence level. The report estimated approximately \$700.0 million had been paid out in fraud with approximately half being paid out in federal funds and half in state funds.

The Committee also received IT security audits from LPA staff for Wichita State University, KDOR, and the Kansas Racing and Gaming Commission in closed session.

December 15, 2021

During the December 15, 2021, meeting, LPA staff presented an IT audit report evaluating the statutory definition and monetary threshold for major IT projects. The audit was completed in April 2018, and discussion among the Committee primarily focused on whether anything had changed since the audit's findings and how the audit could help inform Committee discussion on proposed legislation.

COMMITTEE DISCUSSION

The Committee indicated it intended to meet in early January to conclude its work on a draft of IT-related legislation (rs2422).

COMMITTEE CONCLUSIONS AND RECOMMENDATIONS

At its meeting on December 15, 2021, meeting, Committee members discussed their conclusions and recommendations for the 2021 Legislature and agreed to the following:

- Legislation with similar contents to rs2422, which was considered by the Committee, should be introduced and assigned to the appropriate House committee for consideration during the 2022 Session;
- The work of the Kansas Task Force on Cybersecurity is important, and the recommendations within the Task Force's final report should be reviewed by the Legislature. Further, the Committee encourages the Legislature to make cybersecurity a policy priority for the State of Kansas;
- Further study of ways state government can assist local entities regarding cybersecurity preparedness and adoption of technology should be considered;
- The State Board of Education should develop guidelines for IT security for school districts and provide IT security training to school district employees;
- The process used to monitor the Unemployment Insurance Modernization project has been beneficial, and it would be valuable to apply a similar process to other large-scale state IT projects;
- More conversation between legislative committees and vendors submitting proposals for state IT projects should be explored;
- State IT leaders should explore ways to recruit and retain IT professionals and develop the State's IT professional talent pool; and

- The Committee commends the KLOIS on the implementation of the Virtual State House Project and their continued efforts to support remote participation in the legislative process.

Report of the Joint Committee on Kansas Security to the 2022 Kansas Legislature

CHAIRPERSON: Representative Eric Smith

VICE-CHAIRPERSON: Senator Mike Petersen

OTHER MEMBERS: Senators Rick Kloos, Virgil Peck, Jeff Pittman, and Mary Ware; Representatives Dave Baker, Michael Houser, Jarrod Ousley, and Louis Ruiz

CHARGE

Review Various Security Matters

KSA 2020 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. In addition, the Committee is authorized to:

- Hear testimony and formulate recommendations on state capabilities in the areas of:
 - Cybersecurity;
 - Implementation of updates to emergency communications capabilities across the state; and
- Address the safety of students and state employees.

December 2021

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Joint Committee on Kansas Security

ANNUAL REPORT

Conclusions and Recommendations

The Joint Committee on Kansas Security recommends several measures related to cybersecurity, cybercrime, and Capitol security:

- The Committee recommends increased attention to cybersecurity statewide. It notes increases in crimes related to cybersecurity, the personal information held by taxpayer-supported entities, and testimony it heard regarding specific vulnerabilities in state systems and needs for additional cybersecurity personnel and other capabilities. The Committee recommends the Legislature, particularly the House Committee on Appropriations and the Senate Committee on Ways and Means, consider recommendations of the Kansas Cybersecurity Task Force and other entities, such as the Kansas Information Security Office, that are reviewing cybersecurity in the state and the input of agencies, including those that presented testimony to this committee in determining legislative priorities to add cybersecurity capability in state agencies.
- The Committee recommends the House Committee on Judiciary and the Senate Committee on Judiciary review the penalties for crimes related to identity theft or fraud and determine whether penalties for those types of crimes should be increased.
- The Committee recommends the Kansas Bureau of Investigation develop and distribute protocols for documenting cybercrime for use by state agencies and encourages agency involvement with entities in the state working to address cybersecurity concerns.
- The Committee recommends emergency response training for legislators and legislative staff, coordinated through the Capitol Police, to include but not be limited to, active shooter response training. A drill also could be considered.
- The Committee recommends the Capitol Police evaluate the adequacy of security measures in the lower level of the Capitol Parking Garage.

Proposed Legislation: None.

BACKGROUND

The 2004 Legislature created the Joint Committee on Kansas Security (Committee) (KSA 2020 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 statute also directs the Committee to review and monitor federal moneys received by the State for the purposes of homeland security and other related security matters.

COMMITTEE ACTIVITIES

Granted two meeting days by the Legislative Coordinating Council (LCC), the Committee met on October 12 and 13, 2021. The meeting was held in the Statehouse, with limited participation via Webex.

The Committee heard presentations from representatives of the Kansas Highway Patrol (KHP) on Capitol security, license plate readers, and U.S. Department of Homeland Security funds received by the State; the Department of Administration, on state facility security; the Kansas Information Security Office within the Office of Information Technology Services, on activities of the Governor's Cybersecurity Task Force; the Office of the Secretary of State, on election security; the Adjutant General's Department, on emergency communications; the Legislative Division of Post Audit, on various recent information-security-related audits; the Kansas Department of Labor, on security and fraud prevention; and the Kansas Bureau of Investigation (KBI), on Kansas crime statistics and agency activities.

Some of those presentations were closed under the provisions of KSA 75-4319(b)(12)(C). Legislative staff were not present in the closed sessions.

Kansas Highway Patrol

Capitol Security

Information on security in and near the Capitol was presented by the captain of KHP Troop K, the

Capitol Police, in a closed session. Additional KHP personnel were present.

Automated License Plate Readers

The captain of KHP Troop G, which is assigned to the Kansas Turnpike, provided information on automated license plate readers (ALPRs). He described how ALPRs work and how they are used by law enforcement agencies. ALPRs take images of license plates and vehicles, those images of license plates are converted to license plate numbers, and the numbers are compared with license plate numbers of vehicles being sought by law enforcement agencies. The captain described, in general terms, how data are shared based on memoranda of understanding and how the data are protected on servers meeting law enforcement security standards. He also described, in general terms, how access to the data is restricted, based on the user's identity and role within the law enforcement agency and the purpose of the request, and how that access is monitored and audited. He stated the data are held for six months and then deleted in such a way that they cannot be retrieved.

The captain also described how ALPRs can assist law enforcement and three cases in which ALPR information was crucial to identifying the suspect's vehicle. In two of those cases, ALPR data helped locate crime victims; in the third, ALPR data were used to confirm an alibi in a homicide case.

It was noted 2021 SB 305 would require each law enforcement agency that deals with ALPR data to adopt and maintain written policy related to use of ALPR systems; prescribe requirements related to the collection, storage, and sharing of ALPR data; and create criminal penalties for unlawful acts related to ALPR-related data.

Federal Homeland Security Moneys

A KHP executive commander, a major, provided information on federal moneys directed to Kansas under the federal Homeland Security Grant Program and the Nonprofit Security Grant Program; the KHP is the governor-appointed state administrative agency for both.

The major stated the State receives approximately \$4.0 million a year through these grants. The KHP major provided information on projects currently funded, amounts provided to each region by type of project in FY 2020 and FY 2021, and equipment resources purchased. He stated that because some projects are multi-year, at the time of the meeting, the KHP was managing eight open programs totaling approximately \$25.5 million.

The KHP major described the process by which grant money projects or purchases are approved. The process includes priority-setting by local volunteer coordinating councils in the state's seven Homeland Security regions. Membership in those councils includes representatives of emergency response entities and other community partners. Regional projects are selected based on the Threat and Hazard Identification and Risk Assessment (THIRA) Stakeholder Preparedness Review process to address gaps in capabilities to reach targets that reflect preparedness goals in five areas: planning, organization, equipment, training, and exercises.

The KHP, in its role as state administrative agency, reviews the proposals for their fit with national THIRA priorities, and a senior advisory council further reviews the proposed projects. Once federal grant moneys are received, the KHP is responsible for oversight, program management, and communication among the entities, and it passes-through funds.

The major explained various constraints are placed on the uses. Federal requirements include that at least 25 percent must support law enforcement activities, 80 percent must be directed to local actions and purchases, and 20 percent may go to state agencies, and certain percentages are to address cybersecurity, protect soft targets, enhance information and intelligence sharing, combat domestic violent extremism, and address emergent threats. The Kansas target for funds to address cybersecurity is 25 percent, and additional Kansas priorities as defined by the Adjutant General, as the signing authority for the agreement, include enhancing the protection of soft targets, enhancing information and intelligence sharing, and addressing emergent threats and deployable resources.

He answered questions on topics including project selection, maintenance of equipment purchased, and protection of food-related assets.

State Facility Security

The Secretary of Administration, representatives of Burns & McDonnell, and representatives of the Department of Administration and the KHP were present for a closed session related to state facility security.

Kansas Cybersecurity Task Force

The Chief Information Security Officer (CISO) of the Office of Information Technology Services provided information on the Governor's Cybersecurity Task Force (Task Force) created by Executive Order 21-25. He reviewed the membership of the Task Force, noting the various types of private entities and governmental agencies represented. The CISO noted the Task Force created subcommittees: strategic vision and planning, statewide coordination and collaboration, cyberincident and disruption response, and workforce development and education. He also reviewed the charges to the Task Force, which include facilitating cross-industry and cross-government collaboration to mitigate cybersecurity risks related to critical infrastructure and protected systems, developing a coordinated and collaborative cyberresponse plan, and recommending cost-effective safeguards and resources to accomplish Task Force recommendations. The Task Force focuses on system-level responses, the CISO stated.

The CISO stated a preliminary Task Force report was delivered to the Governor on October 5 and a final report was due December 5, 2021.

Election Security

The Director of Elections of the Office of the Secretary of State (Office) noted the U.S. Department of Homeland Security (DHS) had designated election infrastructure as critical infrastructure. He described security as both systems and processes, including processes in law regarding voting.

The Director of Elections described various actions taken at the state level regarding election

security. He stated the Office works with a vendor to install security safeguards in each county for accessing the statewide voter registration system and described that system as one that may be accessed by each county and used in transferring registration when a voter moves.

He stated the Office has designated an election security specialist to lead election security initiatives and educate county election officials about election security topics.

Additionally, the Office works with DHS and the Kansas Intelligence Fusion Center for ongoing security reviews. In general terms, he described training provided to local officials in all Kansas counties by the Multi-State Information Sharing and Analysis Center, in partnership with the Kansas National Guard, the federal Cybersecurity and Infrastructure Security Agency, DHS, the Federal Bureau of Investigation (FBI), and the Elections Security Initiative before the 2020 primary elections. He noted security measures will need to change with new challenges in subsequent elections

In discussing voting machines, the Director of Elections stated it has been Office policy, since 2005, that no election machine or tabulator may be connected to the internet, and the Office planned to seek legislation to place this requirement in the statutes. He noted voting machines are purchased by the counties, but each machine must meet Office requirements, including that it be certified at the national level through the U.S. Election Assistance Commission. All access to a machine must be documented.

The Director of Elections stated he welcomes questions from the public regarding election security as opportunities to explain measures in place.

Representatives of the Kansas Association of County Clerks and Election Officials who were present were asked about their perspectives. They noted election officials know they can always improve but that mistrust and misinformation were obstacles to effectively doing their jobs. Steps in the election process such as vote tabulation and equipment testing open to view by the public were described.

Emergency Telecommunications Systems

The Statewide Interoperability Coordinator (Coordinator), Adjutant General's Department, reviewed the status and services of the Government Emergency Telecommunications Service (GETS) and FirstNet.

The Coordinator described the GETS as a DHS Cybersecurity and Infrastructure Security Agency service that prioritizes emergency response calls on congested wireline networks during a crisis or disaster. The service issues cards with access numbers and dialing instructions to those authorized for this priority; 1,874 cards have been issued to local agencies or individuals in Kansas. He listed participation numbers for other types of users within the state, such as 549 cards with state agencies or employees. The Coordinator said the State and the Cybersecurity and Infrastructure Security Agency are coordinating to increase the number of cards authorized in Kansas.

The Coordinator provided a brief history of FirstNet, an interoperable wireless communications platform specifically for first responders developed in a public-private partnership using a reserved portion the 700 MHz frequency (Band 14). Congress created the First Responder Network Authority in response to recommendations from the 9/11 Commission. The Coordinator stated AT&T received a 25-year contract to operate FirstNet.

The Coordinator provided lists of new Kansas FirstNet sites, which were identified by state and public safety stakeholders as priority locations; counties in which Band 14 was added to existing sites; and tribal nations with new tower sites. He stated coverage was expanded in the period of 2018-2020 but that the high Verizon market share for public safety broadband had slowed FirstNet adoption.

Information Security Audit Reports

Staff members of the Legislative Division of Post Audit (Post Audit) presented information on several information technology (IT) security audits recently completed by that agency:

- “School Districts’ Self-Reported IT Security Practices and Resources,” in open session; and
- IT security audits of Wichita State University, the Kansas Department of Revenue, and the Kansas Department for Aging and Disability Services, in closed sessions.

Information presented about the limited-scope audit “School Districts’ Self-Reported IT Security Practices and Resources” included that approximately half of all Kansas school districts responded to the Post Audit survey. Of those, nearly 60 percent reported they do not require IT security awareness training or require confidential data to be encrypted when sending it outside of the district’s network, 65 percent do not scan their computer systems for vulnerabilities as often as standards suggest, 69 percent did not have an incident response plan, and smaller districts lag behind large districts in implementing some security controls.

Several Post Audit staff were present during the closed sessions. Representatives of each agency for which an IT security audit was reviewed were present only when the audit on their agency was presented. The state CISO was present for presentations on the audits of the Kansas Department of Revenue and the Kansas Department for Aging and Disability Services.

Kansas Department of Labor Fraud Prevention Tools

The Chief of Staff for the Kansas Department of Labor presented information on online security and fraud prevention tools in a closed session. Also present in the closed session were the Secretary of Labor, the Deputy Secretary of Labor, and several other agency representatives.

In open session following the closed session, the Deputy Secretary discussed the differences between traditional fraud, such as wage fraud, and imposter fraud, which he described as primary during the COVID-19 pandemic.

Kansas Crime Statistics and Kansas Bureau of Investigation Activities

After the KBI Director presented introductory remarks, the agency’s Executive Officer provided information on various topics.

Violent crime. The Executive Officer stated the FBI had determined overall crime in the United States decreased from 2019 to 2020, but the number of violent crime incidents rose 5 percent, and the number of murders rose 29 percent. KBI data show violent crime in Kansas rose 24.4 percent and homicides rose 48.5 percent (from 130 to 193) from 2019 to 2020. The Executive Officer stated aggravated assaults and battery offenses, 11,201 of them, comprised 81 percent of total violent crime in Kansas in 2020.

He noted the numbers of rapes and robberies fell by 8.2 percent and 7.7 percent, respectively, from 2019 to 2020. He reviewed provisions of 2021 HB 2228, which would create and amend law related to sexual assault evidence kits and collection of evidence related to abuse or sexual assault, to incorporate current best practices into law. He also reviewed the activities of the two-month federal, state, and local law enforcement Operation Triple Beam in south central Kansas, stating the operation resulted in 1,072 arrests and the seizure of firearms, rounds of ammunition, various illegal substances, currency, and six vehicles.

Crimes against children. Information on crimes against children provided by the Executive Officer included that the State Child Death Review Board, in its 2021 report, recommended the Department for Children and Families (DCF) and law enforcement review and adopt a best-practices approach for investigations of allegations of child abuse and neglect. He stated the KBI had requested additional funding to expand the capacity of its investigations division to support a proposed collaborative effort between the KBI and DCF to help identify and investigate incidents that involve physical or sexual abuse of children.

The Executive Officer described the work of the agency’s Northeast Child Victims Task Force, whose members were trained in FY 2019 and began working cases in FY 2020; in FY 2021, the Northeast Child Victims Task Force worked 38

investigations and 4 limited assistance requests from local law enforcement agencies. The Executive Officer stated agents in the KBI Child Victims Unit are specifically trained and work crimes against children in the southeast and west regions of the state, but the capacity of the Child Victims Unit means it accepts only those cases that allege crimes under KSA 2020 Supp. 21-6627, sex-related crimes against children with mandatory minimum sentences of 25 or 40 years; the unit was involved in 21 investigations and 3 limited assistance requests in FY 2021.

A KBI Catholic Clergy Task Force, created at the request of the Attorney General in 2019, has initiated 122 investigations and examined 39,610 pages of records from the 4 Catholic dioceses in Kansas, the Executive Officer said.

Drug crimes. The Executive Officer stated illicit drugs have a direct association with both violent and property crimes; methamphetamine, synthetic opioids, and marijuana continue to be the top drug threats; and the Midwest High Intensity Drug Trafficking Area (made up of representatives of law enforcement agencies in Kansas, Illinois, Iowa, Missouri, Nebraska, North Dakota, and South Dakota) identified 770 drug trafficking organizations operating in its states in 2020.

He stated the KBI Special Operations Division opened approximately 200 narcotics investigations in FY 2021 and needs to build its investigative capacity.

Cybersecurity and cybercrimes. A KBI cybersecurity operations and response center is included in the KBI strategic plan, to complement the KBI Cyber Crime Unit added in 2020, the Executive Officer said.

He noted recent cases of cyberattacks included the compromise of a county sheriff's office email system and a ransomware attack on a county government's systems; the FBI's Internet Crimes Complaint Center received almost 800,000 complaints with reported losses exceeding \$4.0 billion in 2020, a 69 percent increase from 2019; and the KBI Cyber Crime Unit worked cooperatively with federal, state, and local authorities to review 291 FBI complaints plus additional business email compromises, computer

intrusions, denials of service, ransomware attacks, and phishing attempts in Kansas.

He stated the KBI is concerned about threats to state critical infrastructure such as the Kansas Criminal Justice Information System. He noted a shortage of qualified IT professionals in state government across the country, and that state agency files contain much personal data.

Use of force. The Executive Officer reported the KBI, in consultation with and with the support of the Attorney General, is leading an effort to build a functional data collection system to provide information on use-of-force incidents by and against Kansas law enforcement officers.

The data would be used to make informed decisions regarding training, policy, and best practices. He stated the KBI hopes the data will start to be collected in January 2022 and the data repository is expected to have a public-facing website.

Intelligence sharing. A gap occurs in the continuity of communication between intelligence gathering entities and local law enforcement, and the KBI will support creation of a 24/7 intelligence center, the Executive Officer said.

Property crime, specifically catalytic converter thefts. The Executive Officer stated property crimes declined 1.2 percent from 2019 to 2020, but thefts of catalytic converters from vehicles increased. He noted catalytic converters do not have serial numbers or other unique identifiers and contain the precious metals platinum, palladium, and rhodium.

Of the 104 scrap metal dealers registered as of October 6, 2021, with the state scrap metal reporting system that began operation in July 2020, 61 report transactions to the KBI; more than 2 million items were reported as sold to scrap metal dealers, including about 6,000 catalytic converters. He reported the KBI is working to improve the operation of the repository and the transmittal of information to local law enforcement in an effort to assist with criminal investigations and reduce scrap metal theft.

License plate readers. The Executive Officer stated the KBI has not deployed any ALPR cameras and does not own or maintain any ALPR data. He said the KBI believes ALPR data to be a beneficial investigative tool.

Recruitment. Law enforcement agencies across the country have issues with recruiting, including greater hesitancy because of the spotlight on law enforcement, and the KBI hopes the Legislature will support law enforcement in efforts to find a recruitment and retention solution, the Executive Officer stated.

CONCLUSIONS AND RECOMMENDATIONS

After discussion on topics including agency funding requests, emergency response training for legislators and staff within the Capitol, prosecution of cyber-related crimes, security of public servants, and sharing of information about security threats, Committee members agreed to the following:

- The Committee recommends increased attention to cybersecurity statewide. It notes increases in crimes related to cybersecurity, the personal information held by taxpayer-supported entities, and testimony it heard regarding specific vulnerabilities in state systems and needs for additional cybersecurity personnel and other capabilities. The Joint Committee recommends the Legislature, particularly the House Committee on Appropriations and the Senate Committee on Ways and

Means, consider recommendations of the Kansas Cybersecurity Task Force and other entities, such as the Kansas Information Security Office, that are reviewing cybersecurity in the state and the input of agencies including those that presented testimony to this committee in determining legislative priorities to add cybersecurity capability in State agencies.

- The Committee recommends the House Committee on Judiciary and the Senate Committee on Judiciary review the penalties for crimes related to identity theft or fraud and determine whether penalties for those types of crimes should be increased.
- The Committee recommends the KBI develop and distribute protocols for documenting cybercrime for use by state agencies and become more involved with entities in the state working to address cybersecurity concerns.
- The Committee recommends emergency response training for legislators and legislative staff, coordinated through the Capitol Police, to include but not be limited to active shooter response training. A drill also could be considered.
- The Committee recommends the Capitol Police evaluate the adequacy of security measures in the lower level of the Capitol Parking Garage.

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Report of the Alvin Sykes Cold Case DNA Task Force to the 2022 Kansas Legislature

CO-CHAIRPERSONS: Senator Kellie Warren and Representative Fred Patton

OTHER LEGISLATIVE MEMBERS: Senator David Haley and Representative John Carmichael

OTHER NON-LEGISLATIVE MEMBERS: Alice Craig, Audrey Cress, Darrin Devinney, Justin Edwards, Jeff Hahn, Brian Hill, Robert Jacobs (designee for Kirk Thompson), Robert Lee, Reid Nelson, Jacquelyn Rokusek, and Cory Sheedy

CHARGE

As directed by KSA 2020 Supp. 21-6901 (and as amended by provisions of 2021 HB 2077, which updated the name and duration of the former Kansas Closed Case DNA Task Force), this task force, in consultation with practitioners and experts, is to develop a plan to ensure uniform statewide policies and procedures that address, at a minimum:

- Timely receipt of the data relating to hits to the combined DNA index system (CODIS) from the forensic laboratory;
- Directly connecting the data relating to the hits to the relevant case files;
- Proper policies and procedures to ensure all hits are accounted for and followed up on;
- Procedures to address how the key parties can conduct a reasonable and timely investigation into the significance of the hits; and
- Sharing the hits in data from both solved and unsolved cases with other key parties, including the relevant prosecutors' offices, the original defense attorney and the last known attorney of record, crime victims and surviving relatives, and a local organization that litigates claims of innocence.

December 2021

Alvin Sykes Cold Case DNA Task Force

FINAL REPORT

Conclusions and Recommendations

Protocol for Cold Case CODIS Hits

Each law enforcement agency should develop a protocol for notifying the prosecuting agency of a criminal case of any corresponding Laboratory Information Management System (LIMS) report when a cold case Combined DNA Index System (CODIS) hit occurs. The Task Force also recommends the Kansas County and District Attorneys Association (KCDAA) develop a “Best Practices for Prosecutors” regarding the protocol for cold case CODIS hits. The Legislature should continue to monitor the implementation of these protocols.

Because the prosecuting agency has an ongoing ethical duty to disclose the LIMS report to the last counsel of record for the defendant, the prosecuting agency should promptly determine whether there is an immediate investigative reason not to turn the information over to defense counsel.

The criminal case investigation should be concluded within a reasonable time and, at the conclusion of the investigation by law enforcement, the LIMS report should be transmitted to the defense counsel of record regardless of the investigative result. If defense counsel of record is unavailable, the district court should appoint counsel to review the CODIS hit.

Education

The Kansas Bureau of Investigation (KBI) currently provides training through the Kansas Law Enforcement Training Center to all law enforcement officers about the availability of the LIMS portal. It has become apparent that not all prosecutors may be aware of its availability. By extension, defense counsel has also been unaware of its existence.

- The KBI has committed to providing repeat and ongoing training to prosecutors and law enforcement across Kansas regarding the availability and use of the LIMS portal.
- The KBI should provide training on CODIS and LIMS through the State Board of Indigents’ Defense Services and the Kansas Association of Criminal Defense Lawyers (KACDL).
- The KCDAA is encouraged to offer such training to its membership once every four years, at a minimum, coinciding with the election of new county and district attorneys.
- The KCDAA should also remind its members of the obligation to provide these reports as part of the ongoing discovery process required by *Brady v. Maryland*, 373 US 83 (1963) and statute.

With the knowledge of the existence of the LIMS portal, defense counsel will be better able to make specific requests of prosecutors to check for the availability of updated reports related to their clients’ cases.

Proposed Legislation: None. [Note: A minority of the Task Force members expressed a need to enact the above recommendations into law.]

BACKGROUND

Bills enacted in 2019 and 2021 established and provided direction to the Task Force.

In 2019, enacted HB 2290, among other things, established the Kansas Closed Case Task Force (Task Force) (codified at KSA 2019 Supp. 21-6901). HB 2290 directed the Task Force to, in consultation with practitioners and experts, develop a plan to ensure uniform statewide policies and procedures that address, at a minimum:

- Timely receipt of the data relating to hits to the combined DNA index system (CODIS) from the forensic laboratory;
- Directly connecting the data relating to hits to the CODIS to the relevant case file;
- Proper policies and procedures to ensure all hits are accounted for and followed up on;
- Procedures to address how the key parties can conduct a reasonable and timely investigation into the significance of the hits; and
- Sharing the hits in data from both solved and unsolved cases with other key parties, including the relevant prosecutors' offices, the original defense attorney and the last known attorney of record, crime victims and surviving relatives, and a local organization that litigates claims of innocence.

HB 2290 required the Task Force to complete a plan for implementation of a protocol relating to hits to closed cases, including a mechanism to ensure uniform compliance at the local law enforcement level, by October 1, 2020. The bill also required the Task Force, on or before December 1, 2020, to submit a report containing a

plan for uniform implementation of the protocol throughout the state, including articulated benchmarks to facilitate and measure adoption, and directed that this report be posted on a public website maintained by the Kansas Bureau of Investigation (KBI) and presented to the Governor, the Speaker of the House of Representatives, and the President of the Senate.

HB 2290 specified the 15 voting members of the Task Force, as follows:

- The chairperson of the standing Senate Committee on Judiciary;
- The ranking minority member of the standing Senate Committee on Judiciary;
- The chairperson of the standing House Committee on Judiciary;
- The ranking minority member of the standing House Committee on Judiciary;
- The Governor or the Governor's designee;
- The Attorney General or the Attorney General's designee;
- The Director of the KBI or the Director's designee;
- The state CODIS administrator as designated by the Director of the KBI Forensic Science Laboratory;
- A sheriff as designated by the Kansas Sheriffs Association;
- A chief of police as designated by the Kansas Association of Chiefs of Police;
- A prosecutor as designated by the Kansas County and District Attorneys Association;

- The executive director of the State Board of Indigents' Defense Services (BIDS) or the executive director's designee;
- The president of the Kansas Bar Association or the president's designee;
- The director of victim services of the Department of Corrections or the director's designee; and
- One member designated by the Governor who represents an organization that litigates claims of innocence.

HB 2290 designated the chairperson of the Senate Committee on Judiciary and the chairperson of the House Committee on Judiciary as co-chairpersons of the Task Force. The bill required the Task Force to hold its initial meeting on or before October 1, 2019.

The Task Force held its initial meeting on September 25, 2019. At that meeting, a legislator member and a representative of the Midwest Innocence Project presented an overview and background of the legislation creating the Task Force, and a representative of the KBI presented an overview of CODIS and current practices for CODIS hit dissemination.

Following the initial meeting, a subcommittee of the Task Force met and prepared a memorandum containing a proposed report to submit to the Legislature to complete the charge of HB 2290. However, before the full Task Force could meet and consider the proposed report, the COVID-19 pandemic began and prevented the Task Force from completing its work by the deadlines established in HB 2290.

In 2021, enacted HB 2077, among other things, made the following adjustments to the Task Force:

- Renamed it the Alvin Sykes Cold Case DNA Task Force;

- Adjusted the designee provision related to the CODIS administrator member of the Task Force;
- Removed or updated outdated language;
- Extended the deadline for completion of a plan for implementation until October 1, 2021, and the deadline for submission of the required report until December 1, 2021;
- Extended the expiration date for the Task Force from December 30, 2020, until December 30, 2021; and
- Provided for staff support for the Task Force by the Office of Revisor of Statutes, the Legislative Research Department, and the Division of Legislative Administrative Services.

These changes are codified at KSA 2021 Supp. 21-6901.

TASK FORCE MEETINGS IN 2021

Following the 2021 Session, the Legislative Coordinating Council approved two meeting days for the Task Force, which met on August 19 and September 15, 2021.

August 19, 2021

At the August 19 meeting, the subcommittee members presented the memorandum they had prepared with a proposed report to the Legislature. [Note: The memorandum is attached to this report as Appendix A.]

In discussing the process leading to the memorandum, the subcommittee members noted they had found a lack of information regarding the process in place related to CODIS hits, as well as the factors that may cause a delay in a hit or the reporting of a hit.

The subcommittee discussed the importance of using the Laboratory Information Management System (LIMS), software the KBI utilizes to log

evidence and report results for forensic testing, including DNA reports. Prosecutors have access to LIMS through the Kansas Criminal Justice Information System, and LIMS data may be searched by KBI case number, suspect name, submitting agency case number, or a combination. Prosecutors have access to all reports submitted in their jurisdiction, including any new CODIS hits on old cases. The subcommittee also noted limitations on access to reports generated from CODIS, such as federal restrictions, must also be taken into consideration.

Due to the limited information available on the use of CODIS and LIMS within the criminal justice system, the subcommittee focused its proposed recommendations on education and training, including:

- Mandatory training by the KBI for law enforcement;
- Education of prosecutors through the Kansas County and District Attorneys Association (KCDAA) regarding the availability of LIMS; and
- Education for defense counsel on the availability of LIMS information, although the discovery obligation associated with the information rests with the prosecutor.

One subcommittee member stated the focus of the memorandum was on first steps to be taken, and there could be additional clarification or strengthening needed, especially regarding access and education for defense counsel.

Task Force members then discussed whether additional requirements were needed to ensure that law enforcement agencies provide adequate notification to interested parties of generated CODIS reports received by the agencies.

At a member's request, a Co-chairperson asked staff to provide Task Force members with information regarding cold cases that DNA information had helped resolve. [Note: This information was provided via email following the meeting and is included with the minutes for the

August 19 meeting.] The Co-chairperson then asked the subcommittee and other Task Force members to consider the proposed recommendations and what changes might be needed before adopting them at the September meeting of the Task Force.

September 15, 2021

At the September 15 meeting, the subcommittee members presented a revised memorandum containing additional recommendations for law enforcement agency protocols for cold case CODIS hits, transmission of information to defense counsel, and KBI training on CODIS and LIMS through BIDS and KACDL. [Note: The revised memorandum is attached to this report as Appendix B.]

Task Force members then asked questions of the subcommittee members and discussed various related topics, including the following:

- Whether a specific time frame for notification is needed or would be too difficult given the differences among cases;
- Who should be notified on behalf of the defendant if defense counsel of record on the case is no longer available, and whether a court should appoint counsel or notify the defendant directly in such a case;
- Whether legislation is needed to help implement the Task Force recommendations, or if implementation should be left to development of agency protocols and best practices by the KCDAA; and
- What ethical duties prosecutors have to provide CODIS result information to defendants.

Following the discussion, the Task Force, by consensus, modified the subcommittee's revised proposed recommendations to:

- Add language recommending the KCDAA develop best practices for prosecutors;

- Add language recommending the Legislature continue to monitor the implementation of the protocols;
- Clarify that prosecuting agencies have an ongoing ethical duty to disclose the information to last counsel of record for the defendant;
- Add language stating the investigation should be concluded within a reasonable time;
- Add language stating that the district court should appoint counsel to review the CODIS hit if defense counsel of record is unavailable; and
- Add language reflecting that a minority of Task Force members believe there is a need to enact these recommendations into law.

CONCLUSIONS AND RECOMMENDATIONS

The Task Force developed its recommendations over two meetings in which a subcommittee of Task Force members presented proposals for discussion (attached to this report as Appendix A and Appendix B). Following discussion on these proposals, the Task Force made the following recommendations. [Note: For the sake of clarity and consistency, the wording of some recommendations in this report has been modified from the version approved by the Task Force at the September 15, 2021 meeting (attached as Appendix C), but no substantive changes have been made.]

Protocol for Cold Case CODIS Hits

Each law enforcement agency should develop a protocol for notifying the prosecuting agency of any LIMS report. The Task Force also recommends the KCDAAs develop “Best Practices for Prosecutors” regarding the protocol for cold case CODIS hits. The Legislature should continue to monitor implementation of these protocols.

Because the prosecuting agency has an ongoing ethical duty to disclose the information to the last counsel of record for the defendant, the prosecuting agency should promptly determine whether there is an immediate investigative reason not to turn the information over to defense counsel. The investigation should be concluded within a reasonable time and, at the conclusion of the investigation by law enforcement, the report should be transmitted to the defense counsel of record regardless of the investigative result. If the defense counsel of record is unavailable, the district court should appoint counsel to review the CODIS hit.

Education

The KBI currently provides training through the Kansas Law Enforcement Training Center to all law enforcement officers about the availability of the LIMS portal. It has become apparent that not all prosecutors may be aware of its availability. By extension, defense counsel has also been unaware of its existence.

The KBI has committed to providing repeat and ongoing training to prosecutors and law enforcement across the state regarding the availability and use of the LIMS portal.

The KBI should provide training on CODIS and LIMS through BIDS and KACDL.

KCDAAs are also encouraged to offer such training to its membership once every four years, at a minimum, coinciding with the election of new county and district attorneys.

KCDAAs should also remind its members of the obligation to provide these reports as part of the ongoing discovery process required by *Brady v. Maryland*, 373 US 83 (1963) and statute.

With the knowledge of the existence of the LIMS portal, defense counsel will be better able to make specific requests of prosecutors to check for the availability of updated reports related to their clients’ cases.

[Note: A minority of the Task Force members expressed a need to enact the above recommendations into law.]

MEMO

TO: The Honorable Fred Patton and members of the Closed Case Task Force
FROM: Professor Alice Craig, Jeff Hahn, Darrin Devinney and Justin Edwards
RE: Proposed report to the Legislature of the State of Kansas

Mr. Chairman and members of the Task Force,

The above-named have discussed issues related to the reporting of “closed case” DNA (and other forensic testing) reports. To better focus our response to the legislature, we have attempted to identify the primary issue and determine if there are areas of improvement to ensure no person who may have been wrongly convicted is left without immediate access to testing results.

To that end, we propose the following response to the legislative mandate provided in HB2290.

ISSUE:

Are there CODIS “hits” that are not being communicated to prisoners, in a timely manner, which would exonerate them or cast doubt on their conviction?

BACKGROUND:

The Combined DNA Index System (CODIS) is the FBI’s “program of support for criminal justice DNA databases as well as the software used to run these databases.”¹ The FBI grants state and local agencies access to this database, which allows them to compare unknown DNA samples to persons whose known DNA sample has been taken and submitted to the CODIS database.

When evidence is collected and submitted for DNA testing, if a sufficient sample of DNA is left behind and no known contributor has been identified, the sample can be submitted for comparison against the CODIS database. In Kansas, the agency primarily responsible for submission into the CODIS database is the Kansas Bureau of Investigation (KBI). There are two regional laboratories, in Sedgwick and Johnson Counties, which can submit samples to be compared against the database.

¹ <https://www.fbi.gov/services/laboratory/biometric-analysis/codis/codis-and-ndis-fact-sheet#:~:text=What%20is%20CODIS%3F%20CODIS%20is%20the%20acronym%20for,as%20the%20software%20used%20to%20run%20these%20databases>. Last accessed September 24, 2020

When an alert to a potential match is noted by the CODIS software, it produces a “hit” report, which is then reported by the KBI to the local law enforcement agency that submitted the DNA for comparison. The local agency is then requested to obtain a known sample of the suspect’s DNA for confirmation, as CODIS hits are not confirmatory.

DISCUSSION:

There are many situations where a CODIS “hit” may arise, but most often these hits will occur either during the active investigation of a case, or when previously untested DNA is ordered tested post-conviction. In either of these situations, these forensic reports are routinely provided through the discovery process.

The previously unknown scenario arose when a since-closed case resulted in a CODIS hit from a previously submitted piece of evidence. Imagine the following hypothetical: An investigation produces multiple pieces of evidence capable of being tested for the presence of DNA. All but one of those pieces of evidence generate a DNA profile consistent with the known profile of the defendant. The remaining piece of evidence has a DNA profile suitable for submission to CODIS and is submitted to the KBI. Defendant’s case proceeds to trial, resulting in a conviction and a sentence. Years later, a new investigation generates a new CODIS “hit” report on the original evidence. Who is given the new CODIS results?²

The concern of some is that nothing happens with that report and potentially exculpatory evidence is not provided to an incarcerated defendant.

The KBI utilizes Laboratory Information Management Systems (LIMS) software to log incoming evidence and report out results for all forensic testing, including DNA reports. This software allows KBI scientists to log incoming evidence, track its progress through the agency, and submit reports to law enforcement through a portal. Once the report is ready, submitting agencies can log in to the portal and retrieve the report. In the above scenario, the KBI notifies the agency involved in the current submission but also provides a report to the agency that submitted the original piece of evidence to CODIS through LIMS.

Prosecutors have access to the LIMS system through the Kansas Criminal Justice Information System (KCJIS) portal. The LIMS database is searchable by KBI case number, suspect name and/or submitting agency case number. Even if the submitting law enforcement agency fails to obtain the report in a timely manner, the prosecutor can access the LIMS portal and obtain a copy of the same report, enabling expedient discovery. Prosecutors can see all reports submitted in their jurisdiction and will have access to any new CODIS hits even on old cases.

PROPOSED CHANGES:

² One important consideration involves who is allowed access to the report. 34 USCA §12592(b)(3) limits CODIS access to state and local labs which agree to restrict the release of DNA identification information. Violation of these restrictions can result in the loss of access to the database by the KBI.

The KBI currently provides training through the Kansas Law Enforcement Training Center (KLETC) to all law enforcement about the availability of the LIMS portal. It has become apparent that not all prosecutors may be aware of its availability. By extension, defense counsel have been unaware of its existence.

- The KBI has committed to providing repeat and ongoing training to prosecutors and law enforcement across the State of Kansas about the availability and use of the LIMS portal.
- The Kansas County and District Attorneys Association (KCDAA) is encouraged to offer such training to its membership on no less than a quadrennial schedule, coinciding with the election of new county and district attorneys.
- KCDAA should also remind its members of the obligation to provide these reports as part of the ongoing discovery process required by *Brady v. Maryland* and statute.
- Armed with the knowledge of the existence of the LIMS portal, defense counsel will be better able to make specific request of prosecutors to check for the availability of updated reports related to their clients' cases.

CONCLUSION:

The above-named believe increased training and better awareness of the LIMS portal will significantly reduce the potential risk of exculpatory forensic reports not being provided to incarcerated persons. We recommend the Task Force adopt these recommendations as its own and report back to the Kansas Legislature with a recommendation to end the Task Force.

MEMO

TO: The Honorable Fred Patton and members of the Closed Case Task Force

FROM: Alice Craig, Jeff Hahn, Darrin Devinney and Justin Edwards

RE: September 2021 Proposed report to the Legislature of the State of Kansas

Mr. Chairman and members of the Task Force,

The above-named have discussed issues related to the reporting of “closed case” DNA (and other forensic testing) reports. To better focus our response to the legislature, we have attempted to identify the primary issue and determine if there are areas of improvement to ensure no person who may have been wrongly convicted is left without immediate access to testing results.

To that end, we propose the following response to the legislative mandate provided in HB2290.

ISSUE:

Are there CODIS “hits” that are not being communicated to prisoners, in a timely manner, which would exonerate them or cast doubt on their conviction?

BACKGROUND:

The Combined DNA Index System (CODIS) is the FBI’s “program of support for criminal justice DNA databases as well as the software used to run these databases.”¹ The FBI grants state and local agencies access to this database, which allows them to compare unknown DNA samples to persons whose known DNA sample has been taken and submitted to the CODIS database.

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DISCUSSION:

There are many situations where a CODIS “hit” may arise, but most often these hits will occur either during the active investigation of a case, or when previously untested DNA is ordered tested post-conviction. In either of these situations, these forensic reports are routinely provided through the discovery process.

The previously unknown scenario arose when a since-closed case resulted in a CODIS hit from a previously submitted piece of evidence. Imagine the following hypothetical: An investigation produces multiple pieces of evidence capable of being tested for the presence of DNA. All but one of those pieces of evidence generate a DNA profile consistent with the known profile of the defendant. The remaining piece of evidence has a DNA profile suitable for submission to CODIS and is submitted to the KBI. Defendant’s case proceeds to trial, resulting in a conviction and a sentence. Years later, a new investigation generates a new CODIS “hit” report on the original evidence. Who is given the new CODIS results?²

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PROPOSED CHANGES:

Protocol for Cold Case CODIS Hits

Each Law Enforcement Agency should develop a protocol for notifying the prosecuting agency of any LIMS report.

The prosecuting agency should promptly determine if there is an immediate investigative reason not to turn the information over to defense counsel. At the conclusion of the investigation by law enforcement, the report should be transmitted to the defense counsel of record regardless of the investigative result. The prosecuting agency has an on-going duty to disclose the information to counsel of record for the Defendant as part of discovery.

Education

The KBI currently provides training through the Kansas Law Enforcement Training Center (KLETC) to all law enforcement about the availability of the LIMS portal. It has become apparent that not all prosecutors may be aware of its availability. By extension, defense counsel has been unaware of its existence.

- The KBI has committed to providing repeat and ongoing training to prosecutors and law enforcement across the State of Kansas about the availability and use of the LIMS portal.
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- The Kansas County and District Attorneys Association (KCDA) is encouraged to offer such training to its membership on no less than a quadrennial schedule, coinciding with the election of new county and district attorneys.
- KCDA should also remind its members of the obligation to provide these reports as part of the ongoing discovery process required by *Brady v. Maryland* and statute.
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CONCLUSION:

The above-named believe increased training and better awareness of the LIMS portal will significantly reduce the potential risk of exculpatory forensic reports not being provided to incarcerated persons. Protocols should be formulated to ensure that both the prosecuting agency and corresponding defense counsel have the opportunity to evaluate any CODIS hit to ensure proper functioning of the justice system. We recommend the Task Force adopt these recommendations as its own and report back to the Kansas Legislature with a recommendation to end the Task Force.

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PROPOSED CHANGES:

Protocol for Cold Case CODIS Hits

Each Law Enforcement Agency should develop a protocol for notifying the prosecuting agency of any LIMS report. **The Task Force recommends the Kansas County and District Attorneys Association (KCDA) develop a Best Practices for Prosecutors.**

The prosecuting agency has an on-going **ethical** duty to disclose the information to **last** counsel of record for the Defendant. The prosecuting agency should promptly determine if there is an immediate investigative reason not to turn the information over to defense counsel. **The investigation should be concluded within a reasonable time.** At the conclusion of the investigation by law enforcement, the report should be transmitted to the defense counsel of record regardless of the investigative result. **If defense counsel of record is unavailable, the District Court should appoint counsel to review the CODIS hit.**

Education

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Report of the Capitol Preservation Committee to the 2022 Kansas Legislature

CHAIRPERSON: Jennie Chinn

LEGISLATIVE MEMBERS: Senator Elaine Bowers; and Representatives Fred Patton and Valdenia Winn

NON-LEGISLATIVE MEMBERS: Chase Blasi, Melinda Gaul, Tim Graham, Will Lawrence, Sharon Wenger, and Larry Wolgast

EX OFFICIO MEMBERS: Frank Burnam and Peter Jasso

CHARGE

Review Various Issues Regarding the Capitol

Pursuant to KSA 75-2269, the responsibilities of the Committee are:

- Approving all proposals for renovation of all areas of the Capitol, the Capitol Visitor Center, and the grounds surrounding the Capitol to ensure the historical beauty of the areas are preserved;
- Preserving the proper decor of such areas;
- Assuring any art or artistic displays are historically accurate and have historic significance;
- Overseeing the location and types of temporary displays and revolving displays in the Capitol including the visitor center; and
- Overseeing the reconfiguration or redecoration of committee rooms within the Capitol.

December 2021

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Capitol Preservation Committee

ANNUAL REPORT

Conclusions and Recommendations

The Capitol Preservation Committee:

- Recommends the installation of the Kansas Gold Star Memorial;
- Approves the temporary installation of the Hungry Heartland exhibit in the Capitol, and recommends the Director of Facilities and Property Management, Department of Administration, work with the Director of Legislative Administrative Services on installation dates and logistics;
- Recommends the installation of a Commemorative Suffragist Monument with more study through a subcommittee. The subcommittee shall meet and make recommendations to the full Committee before the end of the year. The subcommittee members appointed are: the Committee Chairperson, (to serve as chairperson of the subcommittee); Senator Bowers, Representative Winn; the Director of Facilities and Property Management, Department of Administration; and the Director of the Kansas Creative Arts Industries Commission;
- Recommends legislation be drafted to authorize the installation of the 1st Kansas (Colored) Infantry mural in the Capitol; and
- Recommends a subcommittee be created to further discuss the future of *Ad Astra* Plaza. The subcommittee members appointed are: Senator Bowers (to serve as chairperson of the subcommittee); the Chairperson; the Director of Facilities and Property Management, Department of Administration; and Larry Wolgast (Governor's appointee).

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 Capitol Visitor Center, and the Capitol grounds to ensure the historical beauty of those areas are preserved, preserve the proper decor of those areas, assure any art or artistic displays are historically accurate and have historic significance, approve the location and types of temporary displays, and oversee the reconfiguration of committee rooms within the Capitol. As provided by KSA 75-2269, the Division of Legislative Administrative Services is responsible for implementing the recommendations of the Committee.

The Committee is composed 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 Kansas Creative Arts Industries Commission. The Governor has the authority to appoint the chairperson from the Committee's membership.

COMMITTEE ACTIVITIES

The Committee met on October 12, 2021, at the Capitol. During the meeting, the Committee heard proposals for the permanent installment of a Kansas Gold Star Memorial, a temporary exhibition of *Hungry in the Heartland*, and the permanent installation of a Commemorative Suffragist Monument. The Committee received follow-up information on previously proposed projects on the 1st Kansas (Colored) Infantry, *Ad Astra* Plaza, and conservation of the Overmyer murals, and an update on Capitol signage.

Proposed Projects

Kansas Gold Star Memorial

The Executive Director of the Governor's Military Council provided an overview of a proposed permanent installation of a memorial to Kansas Gold Star families to be placed on the grounds of the Capitol along the Veterans' Walk. Kansas is one of the only states that does not have a Gold Star family memorial. The Executive Director provided a drawing and a picture showing examples of existing memorials in other states and stated the goal was to have a memorial that is simple and tasteful, with a plaque on a granite base, which would reflect the tone and theme of the Veterans' Walk.

The Executive Director stated the goal for installation is no later than late summer 2022. Recognizing this is an aggressive timeline, it was explained to the Committee that a Gold Star Memorial Fundraising Committee has been formed and is in the process of soliciting donations for the entire cost of the memorial. The Executive Director listed four legislators that are serving on the Fundraising Committee, and he stated he is working with them to have the proper legislation drafted and introduced to authorize the placement of the memorial.

Hungry Heartland Exhibit

The Associate Professor and Photography Area Coordinator, Art Department, Kansas State University (K-State), provided an overview of the proposed temporary photography exhibit in the Capitol. The *Hungry Heartland* exhibit is a multimedia project primarily led by students in

three different K-State departments — art, English, and journalism. These students researched regional experiences of food insecurity and areas known as “food deserts,” which the U.S. Department of Agriculture describes as areas where populations live more than 1 mile from a grocery store in an urban area, or more than 10 miles from a grocery store in a rural area.

The students visited Republic, Cloud, and Jewell counties to document by different methods food insecurity and food deserts. In one instance, they spent time at a small, rural community grocery store that acts as a community hub. The students met with local residents and had discussions about the logistics and challenges of stocking fresh, nutritious food.

The Associate Professor shared several photographs and stated there would be at least 20 to 30 panels that could be displayed and video to play, depending on available technology and display space. The proposed temporary exhibit would be installed for two to four weeks, depending on availability of space in the Capitol.

Commemorative Suffragist Monument

A representative of the League of Women Voters Kansas and American Association of University Women of Kansas provided an overview of the proposed permanent installation of the Commemorative Suffragist Monument in the Capitol or on the Capitol grounds.

The proposed monument would honor the role that Kansas women played in the formation of the state and commemorate Kansas women who had statewide and national impact or importance in achieving women's right to vote. The proposed monument would be a work of art, but no specific artistic medium or design was proposed.

The representative welcomed the Committee's input and asked for the Committee's assistance in appointing a selection panel to choose a Kansas artist and monument design. The budget for the monument is \$35,000. There is no deadline for using the funding, as it was privately donated by an individual in honor of their mother.

Updates on Previously Proposed Projects

1st Kansas (Colored) Infantry Mural

The Chairperson provided an overview of the 1st Kansas (Colored) Infantry mural that was proposed over 25 years ago. The legislation to authorize the mural was not passed by the Legislature, and no legislation has been introduced in many years. The Chairperson said one reason the mural has not moved forward is that no financing partner has been identified, as it is unlikely the Legislature would appropriate funds for the mural.

Ad Astra Plaza Project

The Chairperson and Senator Bowers provided an update on the *Ad Astra* Plaza project. The artist agreed to provide a small copy of *Ad Astra* (the statue that caps the dome of the Capitol) for free; however, the artist has since passed away. The agreement was verbal, and the family wants the State to honor the original contract, which requires payment for the *Ad Astra* copy. The current plaza has bricks from people that donated money toward the *Ad Astra* copy, along with an empty pedestal. The Committee discussed the possibility of funding options.

Conservation of Overmyer Murals

The Director of Facilities and Property Management, Department of Administration, discussed upcoming conservation work on the Overmyer murals in the rotunda of the first floor of the Capitol. A conservation service from Colorado has agreed to do conservation work at a cost of \$9,000 – \$12,000 that will take five to seven days of work.

The Overmyer murals are different from the other murals in the Capitol, in that they are painted directly on the plaster. Staff members trained in conservation at the Kansas State Historical Society will oversee the work, and the Department of Administration will help set up scaffolding and any other equipment the conservators will need. The conservation is expected to happen in summer 2022.

Capitol Signage

The Director of Facilities and Property Management, Department of Administration,

discussed the new signage that will be placed outside the Capitol that will direct visitors on the Capitol grounds to the entrance of the Capitol Visitor's Center. In addition, there are plans to replace the currently blue signs with bronze-colored signs. The large metal sign next to the entrance of the Capitol parking garage is also scheduled to be replaced with a more appropriate sign.

CONCLUSIONS AND RECOMMENDATIONS

Following discussion, the Committee made the following conclusions and recommendations:

- The Committee recommends the installation of the Kansas Gold Star Memorial;
- The Committee approves the temporary installation of the Hungry Heartland exhibit in the Capitol, and recommends the Director of Facilities and Property Management, Department of Administration, work with the Director of Legislative Administrative Services on installation dates and logistics;
- The Committee recommends the installation of a Commemorative Suffragist Monument with more study through a subcommittee. The subcommittee shall meet and make recommendations to the full Committee before the end of the year. The subcommittee members appointed are: the Chairperson, (to serve as chairperson of the subcommittee), Senator Bowers, Representative Winn, the Director of Facilities and Property Management, Department of Administration, and the Director of the Kansas Creative Arts Industries Commission;
- The Committee recommends legislation be drafted to authorize the installation of the 1st Kansas (Colored) Infantry mural in the Capitol; and
- The Committee recommends a subcommittee be created to further discuss the future of *Ad Astra* Plaza.

The subcommittee members appointed are: Senator Bowers (to serve as chairperson of the subcommittee); the Chairperson; the Director of Facilities and Property Management, Department of Administration; and Larry Wolgast (Governor's appointee).

Report of the Health Care Stabilization Fund Oversight Committee to the 2022 Kansas Legislature

CHAIRPERSON: Marvin Kleebl

OTHER MEMBERS: Senators Cindy Holscher and Gene Suellentrop; and Representatives Henry Helgeson and Richard Proehl

NON-LEGISLATIVE MEMBERS: Darrell Conrade; Dennis George; Douglas Gleason, MD; Kevin McFarland; James Rider, DO; Jerry Slaughter

CHARGE

Review the Status of the Health Care Stabilization Fund

This Committee annually reviews the operation of the Health Care Stabilization Fund, reports, and makes recommendations regarding the financial status of the Fund.

December 2021

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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: whether the Committee should continue its work and whether a second, independent analysis of the Health Care Stabilization Fund (HCSF or Fund) is necessary. This oversight committee continues in its belief 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 insurance marketplace, which allows for more affordable coverage to health care providers in Kansas. The Committee is satisfied with the actuarial analysis presented and does not request the independent review.

The Committee considered information presented by the Board of Governors' representatives, including its required statutory report; the Board's actuary; and health care provider and insurance company representatives. The Committee acknowledges its role to provide oversight and monitoring of the HCSF, including legislative actions and other contemporary issues affecting the soundness of the HCSF, and agreed on the following recommendations and comments:

- **Actuarial report and status of the HCSF; income and rate level indications.** The Committee notes the report provided by the Board of Governors' actuary characterized 2021 as having "mixed results," which leaves the Fund at a slightly worse position at June 30, 2021, than had been previously forecasted. While surcharge revenue slightly exceeded the forecast, this positive indicator was weighed down by the significant increase in the reserves on known claims (from \$40.83 million to \$63.45 million). On the topic of investment income, the other source of revenue for the Fund, the Committee acknowledges the concerns regarding the recent flattening of investment income and the most recent decrease in yield from 2.85 to a projected 2.70 percent.
- **Implementation of 2021 House Sub. for SB 78.** The Committee recognizes the following implementation steps taken to date and encourages continued conversation with the Commissioner of Insurance to ensure smooth implementation of the law and no impacts on health care providers, other than as intended by the law :
 - The forms have been prepared, the rates have been properly submitted and approved by the Commissioner, and the Board of Governors has had its own study and subcommittee that has looked specifically at rate level indications.

The Committee further notes the Board selected Version 1 of two proposals submitted by the actuary for the calendar year (CY) 2022 rate level; these proposals reflected enactment of this 2021 law. This decision will result in a 48.0 percent reduction for health care providers from the CY 2021 HCSF rates.

- **HCSF investment policy and strategies.** The Committee recognizes 2021 House Sub. for SB 78 presents an opportunity for the Board of Governors to review its investment policy and to take into account both short-term and long-term considerations, including those specific to the provision of tail coverage and future liabilities but also the changes in rate levels and the expectations in this rate environment for health care providers. The Committee encourages the Board to look at its investment policy and strategies with this lens, as well as the requirements currently provided in statute [KSA 40-3406].
- **Marketplace conditions; emerging headwinds.** The Committee acknowledges the concerns presented by a health care insurer, health care provider representatives, and the Board of Governors' Chief Counsel. It submits a related comment regarding the COVID-19 pandemic. Among ongoing and emerging items contributing to the overall hardening of market conditions, the Committee cites continuing contraction in the reinsurance marketplace, which impacts policy pricing and affordability for health care providers and also dictates underwriting restrictions. In both Kansas and the national experience, insurers and the Board continue to highlight the increasing frequency and severity of medical malpractice claims, which contributes to rising legal costs and resources expended. Commenting further on litigation and the legal environment for these claims, the Committee notes the open question following the 2019 *Hilburn* decision, regarding whether the cap on noneconomic damage is constitutional as it applies to medical malpractice actions and a related consideration of the cap on wrongful deaths in Kansas. The Committee also recognizes growing concerns regarding cyberinsurance costs in light of costly ransomware attacks as well as the increased reliance on telehealth solutions and how to adequately insure and understand providers' standard of care wherever the health care service is provided.
- **COVID-19 concerns.** The Committee requests special consideration be given to the present impacts and potential longer-term challenges to the affordability and availability of professional liability insurance. The Committee notes current concern seen in the non-renewal of policies for nursing facilities in Kansas; these facilities have sought and will seek coverage in the Availability Plan, creating both short- and longer-term impacts on the affordability of coverage. The Committee also acknowledges the 41 cases attributed to COVID-19 that have been filed to date and have been termed "very expensive to defend." The Committee recognizes there has been no impact on the ability to file cases, but there have been postponements and delays in those trials.
- **Professional liability coverage for certain birth centers.** The Committee recognizes the issues and possible solutions offered in submitted comments, including:
 - Discussion regarding how these types of birth centers could be regulated as a health care/ medical care facility rather than as a maternity center within child care facility regulations; and
 - Acknowledgment that the Board of Governors is continuing to study the corporate practice of medicine and may make recommendations on that topic.
- **Fund to be held in trust.** The Committee recommends the following language to the Legislative Coordinating Council, 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 (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 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 (excepting University of Kansas faculty and resident self-insurance programs reimbursement). Furthermore, as set forth in the Health Care Provider Insurance Availability Act, 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 HCSF shall remain therein and not be credited to or transferred to the SGF or to any other fund.

The Committee requests its report be directed to the standing committees on health, insurance, and judiciary, as well as to the appropriate subcommittees of the standing committees on appropriations.

Proposed Legislation: None.

BACKGROUND

The Health Care Stabilization Fund Oversight Committee (Committee) was created by the 1989 Legislature and is described in KSA 2020 Supp. 40-3403b. The 11-member Committee consists of 4 legislators; 4 health care providers; 1 insurance industry representative; 1 person from the general public with no affiliation with health care providers or 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 and to make recommendations to the Legislature regarding the HCSF.

The Committee met November 16, 2021.

COMMITTEE ACTIVITIES

Report of Willis Towers Watson

Fund Position

The Willis Towers Watson actuarial report serves as an addendum to the reports provided to the HCSF Board of Governors on February 16, April 19, and July 19, 2021. The actuary addressed

forecasts of the HCSF’s position at June 30, 2021, based on the company’s annual review, along with the prior estimate for June 2021. In 2020, the estimate of the HCSF-held assets as of June 30, 2021, was \$302.68 million, with liabilities of \$261.34 million, and with \$41.34 million in reserve (2020 Study). As of June 30, 2021, the HCSF held assets of \$303.34 million, liabilities of \$264.71 million, and \$38.62 million in reserve. The actuary noted, based on the analysis provided to the Board of Governors, the HCSF needs to raise its surcharge rates by 3.3 percent for calendar year (CY) 2022 in order to maintain its unassigned reserves at the expected year-end CY 2021 level (estimated \$39.0 million). The report separately addressed the impact of new law (House Sub. for SB 78) on the Fund.

Liabilities

The actuary reviewed the HCSF’s liabilities as of June 30, 2021. The liabilities highlighted included claims made against active providers (losses) as \$90.7 million; associated defense costs (expenses) as \$14.3 million; claims against inactive providers, as known on June 30, 2021, as \$8.5 million; tail liability of inactive providers as \$145.7 million; future payments as \$9.2 million; claims handling as \$9.3 million; and other liabilities, described as mainly plaintiff verdicts on appeals, as \$100,000. Total gross liabilities were

\$277.7 million; the HCSF is reimbursed \$13.0 million for the KU/WCGME (University of Kansas/ Wichita Center for Graduate Medical Education) programs, for a final net liability of \$264.7 million.

Rate Level (Surcharge) Indications

The actuary also reviewed the HCSF's rate level (surcharge) indications under existing law for CY 2022, noting the indications assume a break-even target. He highlighted payments, with settlements and defense costs of \$37.09 million; change in liabilities of \$2.21 million; administrative expenses of \$2.05 million; and transfers to the Kansas Department of Health and Environment (KDHE) assumed to be \$200,000 (assuming no transfers to or from the Health Care Provider Availability Plan [Availability Plan]). In total, the cost for the HCSF to break even is \$41.55 million. The actuary noted the HCSF has two sources of revenue: its investment income (assumed to be \$8.08 million based on 2.70 percent yield) and surcharge payment from providers (\$33.47 million needed to break even). He explained the rate-level indication and noted that rates need to be raised an estimated 3.3 percent in order to achieve break-even status.

Loss Experience

The actuary reported on trends in the HCSF's loss experience for active and inactive providers from CY 2015 through CY 2020. He explained the settlement payment activity increased over time through CY 2019 and then dropped in CY 2020 to only \$18.45 million (\$26.62 million in CY 2019). The actuary indicated this decline could be attributed to the shutdown in the claims resolution process that began late first quarter of CY 2020.

The actuary highlighted the large increase in the reserves on known claims going from \$40.83 million in 2019 to \$63.45 million in CY 2020. He stated the trend on inactive providers is less concerning; those reserves increased but remained at a level below year-end CY 2017 and CY 2018. The actuary indicated the large increase in the reserves on known claims for active providers is a cause for concern and why the overall condition reported in this year's review was a little worse than anticipated.

Investment Yield

The actuary also reported on the investment yield the HCSF has earned and the Fund's relative yield on its assets over the last several years. He noted the effective yield has decreased over the last seven to eight years, flattening out to the range of approximately 2.7 percent. The actuary explained based on this trend, the company has been lowering its assumption over the last several years regarding what the HCSF will earn going forward. He indicated in their latest review conducted earlier this year, the assumed future investment yield rate was lowered from 2.85 percent in their 2020 study to 2.70 percent. (Testimony also indicated a 10 basis point change in the assumed rate would cause a 0.9 percent change in the CY 2022 indication.)

Impact of House Sub. for SB 78 (2021 Law)

The actuary addressed these key features of the law:

- Primary coverage limits increase from \$200,000 per claim and \$600,000 annual aggregate to \$500,000 per claim and \$1.5 million annual aggregate;
- Fund coverage will be \$500,000 per claim, with an annual aggregate of \$1.5 million; and
- New limits do not apply to claims occurring prior to 2022 policy effective dates.

The actuary also addressed the impact on HCSF costs, noting the company's analysis shows that the Fund's costs will eventually decrease by 48.0 percent as a result of the new law. However, most (estimated 90 percent) of the claims exceeding \$200,000 that occur in CY 2022 will be reported some time after CY 2022, which means these claims will remain the responsibility of the Fund until health care providers procure coverage in CY 2023 and subsequent years. This factors into the savings estimate, as the initial savings to the Fund in CY 2022 will be much less (estimated at 5.0 percent). The savings are expected to increase significantly in CY 2023 and 2024. The actuary noted these aspects of the Fund's operating costs

are unaffected by the law change: tail coverage, transfer to/from the Availability Plan and KDHE, and operating expenses.

The actuary reviewed the **CY 2022 rate level indications (surcharge)** submitted to the Board of Governors, which reflect these changes to law. The actuary provided the Board with two sets of rates to consider:

- Version 1: Reflecting the long-term eventual savings rate of House Sub. for SB 78, a 48.0 percent reduction from CY 2021 HCSF rates; and
- Version 2: Considering the delayed impact of the House Sub. for SB 78 cost reductions, a 5.0 percent reduction from 2021 HCSF rates.

The actuary estimated the use of Version 1 rates would cost the Fund approximately \$34.0 million over the five-year period of CY 2022-2026 as compared to using Version 2 rates. The Board chose to use the Version 1 rates for CY 2022.

Indications by Provider Class

The actuary provided an overview of indications by provider class (review of classes 1-30, the number of providers in each class, the CY 2021 rate, and the CY 2022 rate). The actuary indicated for CY 2022, Classes 1 through 14 pay a flat dollar amount; and those providers' rates will decrease "considerably" for CY 2022. For example, for Class 3 (physicians, minor surgery), the CY 2021 rate using the assumption of \$800,000/\$2.4 million Fund coverage and two years of Fund compliance, would be \$2,144; the CY 2022 rate would be \$1,112.

Classes 15 through 24 providers (e.g., Availability Plan insureds; professional corporations; certain facilities including nursing facilities; physician assistants and nurse midwives) pay a percentage of their basic coverage premium; and those percentages also decrease considerably. The actuary explained for this group, the company is assuming these providers' basic coverage premiums will be increasing as a consequence of the law change, so they will generally pay a lower percent on a higher basic coverage premium.

For example, for Class 21 (physician assistants), the CY 2021 percentage rate would be 38.0 percent; the CY 2022 percentage would be 15.0 percent.

Discussion

The actuary characterized the CY 2020 results for the HCSF as a "mixed" experience. He explained that surcharge revenue came in slightly higher than anticipated; however, reserves on the open claims at year-end CY 2020 were much higher than at year-end CY 2019. The actuary noted some of this impact on reserves is related to much lower payments in CY 2020 compared to the CY 2019 experience, which may be due to the shutdown in the claims settlement process due to the COVID-19 pandemic. The actuary further explained if claims are not being paid out, the reserves will naturally be higher at year-end because new claims are coming in without other claims getting resolved and paid. He also stated the investment yield seems to have flattened out in the mid to high 2.0 percent range. The actuary concluded, given these indications, the HCSF's financial position at June 30, 2021, was "a little worse" than the company had forecasted and presented to the Committee in October 2020.

Committee members and the actuary discussed the investment yield assumption and the present (November 2021) interest rate environment. The actuary confirmed the 2.70 percent yield was still a reasonable assumption. On the topic of the investment of HCSF moneys, the Committee, the actuary, and the Executive Director of the HCSF (agency) discussed the Board's investment policies and the requirements in the Health Care Provider Insurance Availability Act (HCPIAA) [KSA 40-3406]. KSA 40-3406 permits, after consultation with the Board of Governors, the Director of Investments with the Pooled Money Investment Board (PMIB) to invest and reinvest the HCSF in U.S. Treasury securities, federal agency securities, repurchase agreements (overnight), high grade commercial paper, and high grade corporate bonds. The investment of the Fund would be done in accordance with the PMIB investment policies.

The Executive Director indicated the Board of Governors reviews and passes policy on investments. He explained that presently, the Board has a very conservative investment policy.

Responding to a question regarding the direction from statute and the Board's own policy, the Executive Director indicated it is a combination of the two, resulting in a conservative investment policy reviewed by the Board. A Committee member requested the Board review its investment policy to ensure the policy continues to fit the needs of the HCSF.

Comments

In addition to the report from the Board of Governors' actuary, the Committee received information from Committee staff detailing resource materials provided for its consideration, including the Kansas Legislative Research Department's *FY 2022 Appropriations Report* outlining the actual and approved Board of Governors' expenditures and the Committee's conclusions and recommendations from its most recent annual report. The information also included a KLRD memorandum outlining amendments to the HCPIAA contained in a larger insurance subject-related bill passed by the 2021 Legislature (House Sub. for SB 78). In review of the memorandum, the analyst summarized the changes, including professional liability insurance coverage options for defined health care providers, the liability of the HCSF as both an agency and a fund, and membership of the Board of Governors. She noted the Committee had reviewed similar legislation at its last meeting (2020 SB 493). The Governor approved House Sub. for SB 78, and the bill became law effective July 1, 2021.

Committee staff also reviewed recent updates to telemedicine law and requirements on health care providers. The Revisor reviewed both SB 283 and Senate Sub. for HB 2208. SB 283 amended KSA 48-963 to allow an out-of-state physician to treat Kansas patients via telemedicine if that physician holds a temporary emergency license that is granted by the State Board of Healing Arts (pursuant to KSA 48-965). The Revisor indicated that changes made to these two referenced statutes were signed into law on April 1, 2021, and are set to expire March 31, 2022. Section 10 of Senate Sub. for HB 2208 allowed an out-of-state physician to treat Kansas patients via telemedicine upon receipt of a telemedicine waiver issued by the State Board of Healing Arts. The Revisor noted provisions relating to telemedicine in this bill are not specifically tied to the COVID-19 pandemic and do not have a specified expiration date.

Chief Counsel's Update

The Deputy Director and Chief Counsel for the Board of Governors addressed the FY 2021 medical professional liability experience (based on all claims resolved in FY 2021, including judgments and settlements). She characterized FY 2021 as an "odd year" due to the COVID-19 pandemic, and said it would be difficult to draw any conclusions from the FY 2021 data. She stated four medical malpractice cases, involving a total of four Kansas health care providers, were tried to juries during FY 2021. The Chief Counsel noted during most of this fiscal year, the courts were closed due to the COVID-19 pandemic. The trials were held in the following jurisdictions: Sedgwick County (2), Neosho County (1), and Douglas County (1). Of the four cases tried, all four cases resulted in defense verdicts.

The Chief Counsel highlighted the claims settled by the HCSF, noting in FY 2021, 50 claims in 40 cases were settled involving HCSF moneys. Settlement amounts incurred by the HCSF totaled \$17,352,000 (these figures do not include settlement contributions by the primary or excess insurance carriers). She noted this is 23 fewer cases and almost \$10.0 million dollars less than the previous fiscal year. She explained there are two likely reasons for this decrease: the COVID-19 pandemic and last year's increased claims and settlement experience with more than \$27.0 million incurred. The Chief Counsel further

explained that in her experience, usually when there is a large year of costs, the next year's costs tend to be much smaller.

The Chief Counsel also reported on the severity of the claims. She noted that while there were 23 fewer settlements involving the HCSF this past fiscal year compared to FY 2020, about the same number of cases fell into the high category of settlements between \$600,000 and \$1.0 million. Of the 50 claims involving HCSF moneys, the HCSF incurred \$17,352,000; the primary insurance carriers contributed \$8,800,000 to these claims. The Chief Counsel reported 44 claims were for excess professional liability coverage, and 6 of those claims involved inactive Kansas health care providers for which the HCSF provided tail coverage. In addition, excess insurance carriers provided coverage for five claims for a total of \$7,650,000. For the 50 claims involving the HCSF, the total settlement amount was \$33,802,000. The Chief Counsel reported in addition to the settlements involving HCSF contributions, the HCSF was notified that primary insurance carriers settled an additional 98 claims in 88 cases. The total amount of these reported settlements was \$9,336,634.

The Chief Counsel also reported on the number of HCSF total settlements and verdicts by fiscal year, noting that from FY 2009 through FY 2015, there was a seven-year decrease in the number of new claims. She highlighted the modest increase for FY 2016 through FY 2019, which was to be expected because five categories of new health care providers were added to the HCSF in 2014. The Chief Counsel's report indicated for FY 2021, there were 318 new medical malpractice cases. She noted Kansas district courts require all cases to be filed online, so the COVID-19 pandemic did not have any impact on the ability to file cases. In response to a question, she confirmed the tolling of the statute of limitations has ended.

Adult Care Homes and Claims

The Chief Counsel addressed the number of COVID-related claims and how those claims could be affected by the actions the Legislature took to provide some immunity to certain health care providers. She indicated in FY 2020, there were 20 cases filed against adult care homes (nursing facilities) that alleged negligence on the part of the

adult care homes resulting in deaths of COVID-19 patients. In FY 2021, 21 cases were filed against adult care homes. The Chief Counsel noted the 2020 Special Session law, which provided some immunity granted to certain health care providers like hospitals and physicians. She further explained nursing facilities were given an affirmative defense on two different kinds of claims. If a nursing facility had to reaccept a COVID-19 patient or if it provided care to a COVID-19 patient in its facility, the adult care home had an affirmative defense provided.

Legislation passed in 2021 provided some additional immunity if the facility was found to be in substantial compliance with all of the federal regulations and state regulations. She confirmed there have not been any additional cases filed recently. The Chief Counsel stated she has heard anecdotally there could be claims in certain facilities outside of the adult care homes, such as small hospitals, where it may be alleged that patients did not receive the top care because of all the additional COVID-19 restrictions that their health care providers were required to have in place. She also addressed the level of concern about adult care homes' liability, stating it will be very expensive to defend these types of claims.

Self-insurance Programs

The Chief Counsel also addressed the self-insurance programs and reimbursement for KU Foundations and Faculty and residents. She reported the FY 2021 KU Foundations and Faculty program incurred \$1,763,603.18 in attorney fees, expenses, and settlements; \$500,000 came from the Private Practice Reserve Fund, and \$1,263,603.18 came from the State General Fund (SGF). She projected the FY 2022 experience would likely see fewer settlements involving the KU full-time faculty, but there would be an increase in attorney's fees and expenses due to the increase in the number of claims.

In regard to the self-insurance programs for the KU/WCGME resident programs, including the Smoky Hill residents in Salina, the total amount for FY 2021 was \$748,420.73. The Chief Counsel indicated the cost of the program in FY 2020 was half of that for FY 2019, and FY 2021 saw another decrease. She stated this decrease was primarily due to the decline in the number of claims seen in

the last few years, but FY 2021 had an increase in the number of claims. She said this increase is not yet of concern given the historical experience in FY 2008 to FY 2010, where the program averaged about 30 claims per year. The Chief Counsel also noted there were several lawsuits in the past year in which the plaintiff attorneys named between 10 and 20 defendants in a single suit. She noted in one suit, for example, there are five residents in training named as defendants. The Chief Counsel stated that in these instances, she expects these residents will be dismissed from the case, but it takes a lot of time and energy and attorneys' fees and expenses for that to occur.

The Chief Counsel provided a list of the historical expenditures by fiscal year for the KU Foundations and Faculty program and the residents in training since the inception of the two self-insurance programs. She reported the ten-year average for the program cost for the Faculty and Foundations self-insurance programs is about \$1.8 million per year; FY 2021 was slightly under this average. For the residency program, the ten-year average cost is about \$985,000; FY 2021 represented a decrease. The Chief Counsel next provided information about moneys paid by the HCSF as an excess carrier. She reported for FY 2021, there was one claim against a resident in which the HCSF paid \$800,000. For the Faculty and Foundations, there were three claims for a total amount of \$290,000.

Discussion

During Committee discussion, the Chief Counsel confirmed the SGF reimbursement amount for the administration of the self-insurance programs is an estimate that is set each year when the HCSF (agency) budget goes before the Legislature. A Committee member commented on the overall environment and stability afforded to Kansas health care providers through the HCSF, HCPIAA, and a primary coverage that still maintains coverage for COVID-19. The member also expressed appreciation that there is coverage to defend adult care homes and possibly some of the smaller rural hospitals in Kansas.

In response to a question regarding excess coverage and the impact of 2021 House Sub. for SB 78, the Chief Counsel indicated the residents in training and the faculty members' policies renew

on July 1 of each year. She explained any claims for care that arose after July 1, 2022, the amount that the HCSF is reimbursed from the Private Practice Reserve Fund or the SGF will increase.

Medical Malpractice Insurance Marketplace; Availability Plan Update

The President and Chief Executive Officer, Kansas Medical Mutual Insurance Company (KAMMCO), reviewed the status of the Availability Plan, overall market conditions in Kansas, and issues and topics of concern to insurers. The KAMMCO conferee outlined the number of plan participants over time, beginning with July 1, 1990, when KAMMCO became the servicing carrier. He pointed to the "swings" in the marketplace and explained how difficult market conditions contribute to increased participation in the plan (it is more difficult to secure coverage in the commercial marketplace). The conferee addressed the types of insureds currently in the plan, noting there are now 49 long-term care facilities, which is up from 20 in the prior year, and 8 two years prior. The transfer from the HCSF (described in the Executive Director's report) is, in large part, a direct result of COVID-19-related claims for the adult care homes that moved into the Availability Plan because their coverage was not renewed by their insurance carriers. The conferee also addressed the provided October 1, 2021, risk count for plan insureds, which outlined physician and surgeon risks and the number of individuals insured (e.g., emergency medicine—no major surgery, 12 individuals and family practice or general practice—no surgery, 42 individuals).

Reinsurance Industry; Claims Environment and COVID-19 Impact

The KAMMCO conferee highlighted the continuing withdrawal of reinsurance companies, which in turn creates challenges ("contraction") in the professional liability marketplace. Changes like this in the marketplace compounded with other market conditions will continue to have a rippling effect throughout the entire industry in the next few years. The KAMMCO conferee noted the two significant factors affecting the business of insurers in this marketplace: the frequency of claims and the severity of those claims.

He noted frequency of claims on a national basis, not just in Kansas, has remained fairly constant over the last several years. What has changed is the severity of those claims, not just the severity of the amounts paid in settlements or judgments, but also the legal costs of handling those claims has increased. He further explained those costs have also been affected by the COVID-19 pandemic. In discussion with the Committee, the KAMMCO conferee indicated it is hard to know what COVID-19 will mean, in these next few years, to the insurance industry. He noted the courts have been closed, cases are delayed, and the statute of limitations have been tolled for a year by the Kansas Supreme Court. He said this translates to uncertainty—reinsurers get uneasy, market conditions continue to constrict, prices go up, and underwriting conditions become more difficult. This will likely also translate to more activity in the HCSF and in the Availability Plan.

Other Contemporary Issues

The KAMMCO conferee addressed legal issues, noting the question of the constitutionality of the cap on noneconomic damages remains unresolved (*Hilburn* decision). He pointed to recent developments in the filing of statements of monetary damages, a requirement on the plaintiffs' bar. Previously, a statement of monetary damages in a particular case might have been \$4.0 million to \$8.0 million, where now, those statements show \$40.0 million to \$80.0 million. He noted one case where the statement of monetary damages is \$100.0 million. The KAMMCO conferee also noted a recent jury verdict in a wrongful death case in excess of the policy limits of the insured. The damages requested for wrongful death (the case was in south central Kansas) by the plaintiff was \$500,000. The conferee noted the cap on wrongful death in the state of Kansas of \$250,000. He commented that it appears the stated objective of the plaintiff's attorney and the plaintiffs' bar is to use the *Hilburn* decision to strike down the cap on wrongful death. The next topic addressed was cyberinsurance. The KAMMCO conferee indicated cyber extortion or ransomware at some of the Kansas hospitals started out at \$10,000 or \$15,000; ransomware attacks are now generally in the millions of dollars. On the topic of telehealth, he noted health care provider licensing laws have been adjusted on at least a temporary basis to allow for telehealth services, including practice by out-

of-state providers. The KAMMCO conferee cautioned, however, that the standard of care and protocols for telehealth services delivery has not been developed. This topic will be an emerging issue in professional liability cases (*i.e.*, defending actions where the care was "provided").

New Law and Compliance

The KAMMCO conferee and the Committee discussed the effect of the decrease in the HCSF's surcharge rates on professional liability insurance rates in the marketplace (those offered by primary carriers, like KAMMCO). The conferee indicated for CY 2022, KAMMCO's rate increase is essentially offset by the HCSF's surcharge rate decrease. He also noted all of the carriers writing professional liability for health care, both hospitals and physicians, have made their policy form changes and rate changes with the Insurance Department have been filed, approved, and the companies are ready to transition forward effective January 1, 2022.

Committee members and the KAMMCO conferee further discussed the hardening market on a nationwide level. The frequency of the severity of claims was highlighted; the concept of "social inflation" as it applies to determining a "reasonable" judgment was established as a contributing factor to large verdicts nationwide. The KAMMCO conferee also spoke to the current low-yield environment; revenue that cannot be made up from investments has to then come from policyholders. He characterized the present conditions as the front edge of a hardening market, but not yet in a hard market. Other topics discussed included the permissible investments of the HCSF moneys and states' actions to address legal challenges, including caps on noneconomic damages and wrongful death (such actions could be addressed in state statute or in the state's constitution).

Comments from Health Care Providers

The Executive Director of the Kansas Medical Society (KMS) addressed the establishment of the HCSF, noting KMS was the institution that brought forth the legislation establishing the HCSF, and the Fund has continued to serve exactly as it was intended. She noted the balance achieved through both the establishment of the Fund and

professional liability insurance coverage requirement on defined health care providers and the cap on noneconomic damages (then set at \$250,000).

The Executive Director commented on 2021 House Sub. for SB 78, stating the bill offered the opportunity to rebalance the participation of the private insurers, as well as the HCSF and to take into consideration the increase in the severity of claims. The bill addresses this rebalance through significant changes in the minimum coverage requirements. The Executive Director described the process to bring legislation forward; KMS worked with the trial bar, brought the changes before them, and sought their input; in addition, all defined health care providers were consulted regarding the proposed changes to the HCPIAA. She further noted the majority of Kansas physicians were already buying million-dollar policies, so this really does not represent a change in the provider's overall coverage; it just repositions how the provider accesses that insurance between the private and the public market. The Executive Director then commented the overall cost should be about the same, if not going down over time, as those claims are better managed.

The KMS Executive Director supported the continuation of the Committee and its oversight and indicated there is no need for an independent actuarial analysis at this time. Similarly, submitted testimony from the Kansas Association of Osteopathic Medicine (KAOM) supported the continued operation of the HCSF and annual actuarial analysis by the Board of Governors. The KAOM requested the Committee continue to maintain language in its report regarding the purposes of the HCSF and continuing to credit its reserves and revenues to the HCSF (Fund held in trust recommendation). The KAOM addressed the current medical malpractice environment and the uncertainty created by both *Hilburn* and the COVID-19 pandemic. One issue requested for continued monitoring was telehealth concerns, namely out-of-state physicians and other defined health care professional providing telehealth services and ensuring their payment into the HCSF.

The Chief Executive Officer and co-founder of New Birth Center, a health care consultant and business owner, and a professional liability

insurance specialist addressed the challenges of obtaining adequate coverage for stand-alone birth centers. The New Birth Center CEO stated the medical malpractice carrier servicing certified nurse midwife (CNM) and maternity center businesses notified their company that it would no longer serve New Birth Center's business as of July 1, 2021; the servicing carrier chose to no longer cover CNMs not employed by physicians or maternity centers. A separate issue related to coverage for maternity centers was highlighted—to date, there are no admitted carriers to provide medical malpractice coverage to New Birth Center (insurance carriers must be admitted by the Commissioner of Insurance to write this coverage in Kansas). This leaves only the Availability Plan for such coverage, which was accessed to provide facility malpractice coverage that is required by KanCare and commercial health insurance companies for maternity care facilities. The New Birth Center CEO asked the Committee to support or remain neutral on the addition of maternity centers as defined health care providers in KSA 40-3401 and to assign a task force representing providers, brokers, underwriters, HCSF, KAMMCO, and the Department of Insurance to present policy and regulatory options to this Committee. The insurance agent noted this type of business does not have a history of claims. She stated she was able to write CNMs who are employed by physician groups or hospitals easily with multiple carriers. She characterized differences between working with the Availability Plan and with insurers like KAMMCO and Medical Protective; the plan does not provide risk management assistance or quality improvement counseling like a standard carrier would provide. She also stated the change in the primary limit (House Sub. for SB 78), absent changes to include stand-alone birth centers, will put independent nurse midwives at an even greater financial disadvantage with the resulting premium increases.

The health care consultant further addressed the need to better address birth centers in Kansas law, including the addition to defined health care providers in the HCPIAA. She cited present definitions in Chapter 65 of the *Kansas Statutes Annotated* (65-502—excluded from the definition of “medical care facility”) and article 4 in the *Kansas Administrative Regulations* (28-4-1300). The consultant provided other definitions for birth centers present in the National Fire Protection

Association Life Safety Code (3.3.33 Birth Center), the North American Industry Classification system (NAICS—621498—All other outpatient care centers), and Ohio law (Chapter 2, “Freestanding birthing center”).

During Committee discussion, it was determined there is currently one stand-alone birth center in the Kansas City area. The Committee, the individuals representing the concerns of New Birth Center and birth centers generally, and the Executive Director of KMS discussed the options available to secure professional liability insurance coverage. It was noted one option could be available, following the conclusion of the Board of Governors required study and recommendations, through provisions in the HCPIAA created in 2019; those provisions relate to the corporate practice of medicine (a corporation was permitted to employ physicians or other health care providers). If such corporations were permitted to secure HCSF coverage, this avenue could be opened to facilities like New Birth Center. Other options discussed included the ability to secure coverage through an admitted carrier and changes to other definitions and classifications in Kansas law applicable to maternity centers.

Board of Governors’ Statutory Report

The Executive Director of the HCSF provided a brief history of the HCPIAA, noting that when this law was passed in 1976, it had three main functions: a requirement that all health care providers, as defined in KSA 40-3401, maintain professional liability insurance coverage; creation of a joint underwriting association, the 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 HCSF to provide excess coverage above the primary coverage purchased by health care providers and to serve as a reinsurer of the Availability Plan.

The Executive Director provided the Board of Governors’ statutory report (as required by KSA 40-3403(b)(1)(C) and issued October 1, 2021). The FY 2021 report indicated:

- Net premium surcharge revenue collections amount to \$33,582,227. The lowest surcharge rate for a health care

professional was \$100 (a first-year provider selecting the lowest coverage option) and the highest surcharge rate was \$19,295 for a neurosurgeon with two or more years of HCSF liability exposure (selecting the highest coverage option). Application of the Missouri modification factor for this Kansas neurosurgeon (if also licensed to practice in Missouri) would result in a total premium surcharge of \$25,084 for this health care provider;

- The average compensation per settlement was \$347,040 (40 cases involving 50 claims were settled). These amounts are in addition to compensation paid by primary insurers (typically \$200,000 per claim). Total claims expenditures for FY 2021 amounted to \$21,453,297; and
- The balance sheet, as of June 30, 2021, indicated total assets of \$313,929,994 and total liabilities of \$267,109,185.

Health Care Provider Insurance Availability Plan

The Executive Director’s presentation also included an update on the Availability Plan. The Executive Director reported that as of October 25, 2021, there were 352 plan participants, including 198 physicians, 8 physician assistants, 11 nurse anesthetists, 2 chiropractors, and 13 nurse midwives, as well as 29 professional corporations and 59 facilities (the physician total includes 31 residents in training who are employed via “moonlighting”). He noted that without the Availability Plan, these health care providers would be unlikely to provide patient care within the state. It was noted that the HCSF will transfer \$933,354 to the Availability Plan this year (the HCSF is required by law to transfer the net loss, when losses exceed income for the plan, to the Availability Plan).

Contemporary Issues

The Executive Director provided an update on 2021 House Sub. for SB 78, including the requirements for the purchase of coverage. He reported the HCSF agency is updating all of its forms and preparing for the changes specified in the law. The Executive Director also noted the

Hilburn decision and indicated the Board of Governors continues to receive information from various parties and its actuary regarding how this decision could possibly impact medical malpractice coverage in the future. He pointed to the historical overview of the HCPIAA in his written report and commented on the successful public-private partnership established in this act and the reliable source of compensation provided.

CONCLUSIONS AND RECOMMENDATIONS

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 HCSF is necessary. This oversight committee continues in its belief the Committee serves a vital role as a link among the 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 insurance 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, including its required statutory report; the Board of Governors' actuary; and health

care provider and insurance company representatives.

The Committee acknowledges its role to provide oversight and monitoring of the HCSF, including legislative actions and other contemporary issues affecting the soundness of the HCSF and agreed on recommendations and comments regarding the following:

- Actuarial report and status of the HCSF, and income and rate level indications;
- Implementation of 2021 House Sub. for SB 78;
- HCSF investment policy and strategies;
- Marketplace conditions and emerging headwinds;
- COVID-19 concerns;
- Professional liability coverage for certain birth centers; and
- Fund to be held in trust.

The Committee requests its report be directed to the standing committees on health, insurance, and judiciary, as well as to the appropriate subcommittees of the standing committees on appropriations.

Report of the Kansas Criminal Justice Reform Commission to the 2022 Kansas Legislature

CHAIRPERSON: Marc Bennett

VICE-CHAIRPERSON: Representative Stephen Owens

OTHER LEGISLATIVE MEMBERS: Senators David Haley and Rick Wilborn; and Representative Gail Finney

NON-LEGISLATIVE MEMBERS: Chief Todd Ackerman [until 9/8/21], Jennifer Baysinger, Honorable Glenn Braun, Sheriff Bill Carr, Honorable Marty Clark until [5/1/21], Professor John Francis, Chad Harmon, Chief Jeff Hooper [since 10/6/21], Spence Koehn, Honorable Rustin Martin [since 6/23/21], Tabitha Owen, Sylvia Penner, Bill Persinger, Professor Jean Phillips, Pastor Adrion Roberson, Jennifer Roth, and Shelly Williams

NON-VOTING EX OFFICIO MEMBERS: Derek Schmidt, Attorney General; Scott Schultz, Executive Director, Kansas Sentencing Commission; and Jeff Zmuda, Secretary of Corrections

CHARGE

The Commission is directed to:

- Analyze the sentencing guideline grids for drug and nondrug crimes and recommend legislation to ensure appropriate sentences;
- Review sentences imposed for criminal conduct to determine proportionality compared to sentences for other criminal offenses;
- Analyze diversion programs utilized throughout the state and recommend legislation that:
 - Requires pre-filing and post-filing diversion be an option in all counties;
 - Establishes minimum statewide standards for diversion; and
 - Provides a method for sealing or otherwise removing diversion records from criminal records;

- Review supervision practices for offenders who serve sentences for felony offenses on community supervision, including supervision by court services, community corrections, and parole;
- Discuss and develop detailed recommendations for legislation that establishes research-based standards and practices for all community supervision programs that:
 - Provide for incentives for compliant offenders to earn early discharge from supervision;
 - Create standardized terms and conditions for community supervision and provide for a method that courts may utilize to use special terms as indicated through the introduction of compelling evidence;
 - Create standardized effective responses to behavior through a system of incentives and graduated sanctions; and
 - Provide for a means to consolidate concurrent supervision into one supervision agency; and
- Monitor the implementation of previously endorsed Commission recommendations, including those developed through justice reinvestment, and receive updates, review data, and identify opportunities for coordination, collaboration, or legislation as needed.

December 2021

Kansas Criminal Justice Reform Commission

FINAL REPORT

Conclusions and Recommendations

The Commission wishes to acknowledge the contributions made to the work of this Commission by the late Reginald Robinson, former Commission facilitator, and Representative Russ Jennings.

The Commission adopted the following recommendations. Additional discussion, observations, and topics for further study related to the recommendations may be found in the Conclusions and Recommendations section at the end of this report.

Pre-filing diversions. Permit pre-filing diversions to be filed with the district court, subject to database availability, for all misdemeanor and nonperson severity level 9 and 10 offenses, with the following exclusions:

- Domestic violence;
- Traffic violations;
- Driving while under the influence; and
- Sex offenses, including misdemeanor sex offenses.

Any legislation should encourage district and county attorneys to offer pre-filing diversions only to those individuals who appear to have a viable chance of success completing a diversion program. Court costs would be assessed for pre-filing diversions, a portion of which would be allocated to the Office of Judicial Administration (OJA) to cover the costs for tracking pre-filed diversions. The Kansas Bureau of Investigation (KBI) would record pre-filing diversions in the same manner that post-filing diversions are recorded.

Guidelines for consolidating supervision of persons under multiple supervision terms.

Adopt the following guidelines for consolidating supervision under multiple supervision terms:

- Between district courts, the longest underlying incarceratory sentence is controlling;
- If a new sentence would place a person under supervision on concurrent supervision, control of the case should be determined after considering these factors:
 - Unless the severity of a new offense impacts the level of supervision, the defendant should remain under the supervision of the originating entity throughout the length of the sentence;
 - If the severity of a new offense requires a higher level of supervision, control of the case should be given to the appropriate supervision entity and remain in place through the end of the supervision sentence;

- If concurrent supervision involves multiple cases with equal sentences, the supervision entities involved must agree on a controlling case after considering these factors:
 - The residency of the person on supervision;
 - The ability of the person to travel to and from their residence and place of employment or school to the offices of the supervising authority;
 - The resources for residential and nonresidential sanctions or rehabilitative treatment available to the various courts with supervising authority; and
 - The level of supervision and resources available to the person on supervision by each supervising entity;
- The supervising entity enforces any financial obligations including those imposed by a concurrent court, according to these guidelines:
 - Set a payment schedule consistent with ability to pay;
 - Apportion payments for each case; and
 - Allow one supervision fee, only for the entity providing supervision;
- The supervising officer enforces all conditions of supervision;
- Sanctions for violations of the conditions of supervision shall be imposed solely by the controlling case supervision entity. If supervision is revoked, all pertinent information shall be shared with the corresponding entities for appropriate action to be taken;
- The court with jurisdiction of the controlling case determines when supervision will be terminated;
- The Kansas Department of Corrections (KDOC) and OJA should enter into an agreement whereby a person on parole or post-release supervision who is simultaneously under the supervision of OJA shall be supervised exclusively by either KDOC or OJA:
 - The supervising authority will provide notice and supervision history documentation to the concurrent supervision entity upon initiation of revocation proceedings so the concurrent supervision entity can notify the appropriate court or Prisoner Review Board;
 - The supervising entity will provide notice and supervision history documentation to the concurrent supervision entity 30 days prior to the termination of supervision so that supervision of the person can transfer to the court or Prisoner Review Board for any remaining term of supervision;
- Prior to supervision responsibilities being transferred, the originating supervision entity is responsible for ensuring the risk and needs assessment and all data in the case file are current; and
- Upon transfer of supervision, the receiving entity has responsibility for overseeing supervision conditions and updating risk and needs assessments and the case plan as indicated.

Standards for communication in dual supervision cases. OJA Court Services (Court Services) KDOC Community and Field Services Division (Community Corrections), and KDOC Prisoner Review Board and Parole Services (KDOC) should develop standards for communication in dual supervision cases that include the following:

- The process for transfer should include the following information:
 - Journal entry;
 - Pre-sentence investigation;
 - Risk assessment;
 - Specialized assessments; and
 - Conditions of probation;
- Multidisciplinary team meetings should be scheduled by risk level. Prior to the meeting, a list of persons under supervision to be discussed should be distributed to appropriate supervisors or officials:
 - Monthly for high-risk persons under supervision;
 - Bimonthly for moderate-risk persons under supervision; and
 - Quarterly or as needed for low-risk persons under supervision;
- Agencies should outline expectations and processes for sharing case management progress based on the supervising entity's policies and procedures related to conditions of probation and release; progress reports, which include violation reports; incentives and sanctions; and information sharing with law enforcement;
- Supervising entities should have access to client information maintained by other supervising entities; and
- Points of contact should be identified for dispute resolution within KDOC and OJA to resolve disagreements between entities.

Proportional penalties. Decrease the penalties from drug grid level 5 to be similar to nondrug level 8 for proportionality reasons by supporting the passage of provisions included in 2019 HB 2047 and 2021 HB 2139.

Felony loss threshold. Increase the felony loss threshold from \$1,000 to \$1,500 on 11 property crimes by supporting the passage of provisions in 2020 HB 2485 and 2021 HB 2028.

Prior convictions — domestic violence designation. Make domestic battery qualifying prior convictions include prior convictions with a domestic violence designation by supporting the passage of provisions in 2020 HB 2518 and 2021 HB 2029.

Drug and nondrug sentencing grid amendments. Amend the drug grid and nondrug grid by expanding presumptive probation and border box zones, in order to better reflect actual sentencing and reduce downward departures; and continue to ensure adequate prison capacity for people convicted of off-grid and other extremely serious crimes by supporting the passage of provisions of 2021 HB 2146 and 2021 HB 2350.

Compassionate release. Implement a more open and expanded compassionate release program by supporting the passage of provisions of 2020 HB 2469 and 2021 HB 2030.

Sentencing grid consolidation. Combine the drug and nondrug sentencing grids instead of utilizing separate drug and nondrug grids.

Penalty for noncompliance with Kansas Offender Registration Act. Decrease the penalty for noncompliance with the Kansas Offender Registration Act, as proposed in 2021 HB 2349.

Exit mechanism for certain registered offenders. Add an exit mechanism to the Kansas Offender Registration Act for non-violent offenders to be removed from the offender registry.

Online offender registry search. Request the KBI change its default setting on the online offender registry from having all categories checked for search purposes to having the users check the boxes for the categories they are interested in and that KBI track how many users search each category.

Co-responder Program Advisory Board. Create a statewide advisory board to monitor the development and implementation of co-responder programs across Kansas.

Training for law enforcement, probation officers, parole officers, and licensed mental health providers. Expand the use of crisis intervention training, implicit bias training, diversity training, de-escalation training, and encourage “guardian” training as opposed to “warrior” training for existing officers through the Kansas Commission on Police Officers’ Standards and Training (KSCPOST) and for new officers graduating from the Kansas Law Enforcement Training Center. Such expanded training should also be offered by KDOC and OJA for probation officers, parole officers, and licensed mental health providers.

KSCPOST membership. Expand the membership of KSCPOST to enhance its diversity.

Criminal street gang — bail. Amend KSA 21-6316 to change the requirement that bail be “at least \$50,000” when a criminal street gang member is arrested for a person felony to a requirement that bail be “appropriately set.”

Criminal street gang definitions. Reevaluate the definitions related to criminal street gangs found in KSA 21-6313.

Offenses eligible for incentives and early discharge from probation. Incentives and early discharge from probation should include both misdemeanor and felony offenses.

KSA 21-6608(d) amendments not recommended (amendatory language shown below). The House Committee on Corrections and Juvenile Justice should not move forward with certain amendments to KSA 21-6608(d) as proposed in 2021 HB 2084, specifically:

- On pages 2-3, amending KSA 21-6608(d): “In addition to the provisions of subsections (a), a defendant *may be discharged* early from probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction *if such defendant is found to be in substantial compliance with the conditions of such supervision. The court shall set a hearing at sentencing for the date when the defendant will have served 50% of such defendant’s term of supervision to determine if a defendant has been in substantial compliance with the defendant’s conditions of supervision.*”

The court shall grant such discharge unless the court finds by clear and convincing evidence that denial of such discharge will serve community safety interests.”

- On page 3, adding (e): “A defendant shall earn credit to reduce such defendant’s term of probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction when the defendant has substantially complied with the conditions of such defendant’s supervision. A defendant shall be awarded seven days earned discharge credit for each full calendar month of substantial compliance with the conditions of such defendant’s supervision.”
- On page 3, adding (f): “The Kansas sentencing commission shall adopt procedures and forms to standardize the process for calculating earned discharge credit pursuant to this section.”
- On page 3, adding (g): “The following factors apply and may be considered in determining whether substantial compliance with supervision exists: (1)(A) History of compliance with terms and conditions of supervision; (B) payment of fines, costs and restitution; and (C) successful completion of any required treatment program. (2) Completion of all terms and conditions of supervision is not required. (3) Offenders subject to the provisions of K.S.A. 2020 Supp. 21-6824, and amendments thereto, shall not be eligible for early discharge.”

KSA 21-6608(d) amendments recommended (amendatory language shown below).

Amend KSA 21-6608(d) by striking the following language:

- “A defendant who has a risk assessment of low risk, has paid all restitution and has been compliant with the terms of probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction for a period of 12 months shall be eligible for discharge from such period of supervision by the court.”

Amend KSA 21-6608(d) by adding the following language:

- A defendant who has a history of compliance with terms and conditions of supervision;
- Has successfully completed any required treatment or programming;
- Has completed 75% of their required supervision period except when prohibited by statute;
- After a review of all fines, costs, and restitution, may be eligible for discharge from such period of supervision by the court; and
- Early termination from probation shall be retroactive.

The intention of these amendments is to provide supervision officers a path to recommend early termination of probation following these benchmarks and not to limit the power of the court to terminate probation at any point.

4:1 Behavior Management System. Implement the 4:1 Behavior Management System developed by Carey Group Publishing statewide to guide and track responses to defendant prosocial and violation behaviors.

Sanctions and incentives structure. Encourage KDOC and OJA to collaborate on a sanctions and incentives structure to be used within the criminal justice system.

Standardized terms and conditions of supervision. Adopt the following standardized terms and conditions statewide:

- Obey all laws and ordinances and report any law enforcement contact within 24 hours or the next business day to your supervision officer;
- Do not engage in physical violence or threats of violence of any kind. If convicted of a felony or prohibited by law, do not use, purchase, or possess dangerous weapons including firearms while on supervision;
- Report to your supervision officer as directed and be truthful in all matters;
- Remain within the state of Kansas and other specified area as defined by your supervision officer;
- Reside at your approved residence unless given permission by your supervision officer to relocate. Notify your supervision officer within 24 hours of any emergency changes in residence and/or contact information;
- Do not possess, use, or traffic in any illegal drugs or controlled substances. Do not possess or consume any form of alcohol or intoxicating substance and do not enter any establishment where alcohol is sold and/or consumed as the primary business. You may possess and use medications as prescribed to you by a licensed medical practitioner;
- Submit to any form of alcohol/substance use testing at the direction of a supervision officer and do not alter or tamper with the specimen or test;
- Participate in assessments, treatment, programming, and other directives by the Court or your supervision officer;
- Pay restitution, court costs, supervision fees, and other costs as directed by the Court or your supervision officer; and
- You are subject to searches of your person, effects, vehicle, residence, and property by your supervision officer and any other law enforcement officer based on reasonable suspicion that you violated conditions of supervision or engaged in criminal activity.

BACKGROUND

In 2019, the Legislature enacted HB 2290, codified at KSA 21-6902, establishing the Kansas Criminal Justice Reform Commission (Commission) and directed the Commission to address various specified issues involving the Kansas criminal justice system. The bill required the Commission to:

- Analyze the sentencing guideline grids for drug and nondrug crimes and recommend legislation to ensure appropriate sentences;
- Review sentences imposed for criminal conduct to determine proportionality compared to sentences for other criminal offenses;

- Analyze diversion programs and recommend options to expand diversion programs and implement statewide standards;
- Review community supervision levels and programming available for those serving sentences for felony convictions;
- Study and make recommendations for specialty courts statewide;
- Survey and make recommendations regarding available evidence-based programming for offenders in correctional facilities and in the community;
- Study Kansas Department of Corrections (KDOC) policies for placement of offenders and make recommendations for specialty facilities, including geriatric, health care, and substance abuse treatment facilities;
- Evaluate existing information management data systems and recommend improvements that will allow criminal justice agencies to more efficiently evaluate and monitor the efficacy of the criminal justice system; and
- Study other matters that, as the Commission determines, are appropriate and necessary to complete a thorough review of the criminal justice system.

The bill required the Commission to submit a preliminary report, which was submitted to the 2020 Legislature on December 1, 2019, and a final report to the 2021 Legislature.

Subsequently, the 2021 Legislature passed HB 2077, which amended the charge to the Commission with respect to diversion programs and supervision:

- **Diversion programs.** The bill amended the requirement related to analysis of diversion programs to require the Commission analyze diversion programs utilized throughout the state and make recommendations for legislation that:

- Requires pre-filing and post-filing diversion to be an option in all counties;
- Establishes minimum statewide standards for diversion; and
- Provides a method for sealing or otherwise removing diversion records from criminal records.
- **Supervision.** The bill amended the requirement related to review of supervision levels and programming for offenders on community supervision for felony offenses by requiring the Commission to:
 - Review the supervision practices for offenders who serve sentences for felony offenses on supervision by Court Services, Community Corrections, and KDOC; and
 - Discuss and develop detailed recommendations for legislation that establishes research-based standards and practices for all community supervision programs that:
 - Provide for incentives for compliant offenders to earn early discharge from supervision;
 - Create standardized terms and conditions for community supervision and provide for a method that courts may utilize to use special terms as indicated through the introduction of compelling evidence;
 - Create standardized effective responses to behavior through a system of incentives and graduated sanctions; and
 - Provide for a means to consolidate concurrent supervision into one supervision agency.

In addition, 2021 HB 2077 required the Commission to monitor the implementation of previously endorsed Commission recommendations and removed the statutory study requirements relating to specialty courts, evidence-based programming, specialty correctional facilities, and information management data systems. The bill also removed the requirement that the Commission study other matters it determines to be necessary.

ORGANIZATION

KSA 21-6902, as amended by 2021 HB 2077, establishes the following voting members and appointing authorities for the Commission:

- One member of the Senate, appointed by the President of the Senate;
- One member of the Senate, appointed by the Minority Leader of the Senate;
- One member of the House of Representatives, appointed by the Speaker of the House of Representatives;
- One member of the House of Representatives, appointed by the Minority Leader of the House of Representatives;
- One member of the Judicial Branch Court Services, appointed by the Chief Justice of the Supreme Court;
- One criminal defense attorney or public defender, appointed by the Governor;
- One public defender appointed by the Executive Director of the Board of Indigents' Defense Services;
- One county or district attorney from an urban area and one county attorney from a rural area, each appointed by the Kansas County and District Attorneys Association;
- One sheriff and one chief of police, each appointed by the Attorney General;
- One professor of law from the University of Kansas School of Law and one professor of law from Washburn University School of Law, each appointed by the deans of such schools;
- One drug and alcohol addiction treatment provider who provides services pursuant to the certified drug abuse treatment program, appointed by the Kansas Sentencing Commission;
- One district judge, appointed by the Kansas District Judges Association;
- One district magistrate judge, appointed by the Kansas District Magistrate Judges Association;
- One member representative of the faith-based community, appointed by the Governor;
- One member of a criminal justice reform advocacy organization, appointed by the Legislative Coordinating Council (LCC);
- One mental health professional, appointed by the Kansas Community Mental Health Association; and
- One member representative of Community Corrections, appointed by the Secretary of Corrections.

Non-voting ex officio members of the Commission include:

- The Attorney General, or the Attorney General's designee;
- The Secretary of Corrections, or the Secretary's designee; and
- The Executive Director of the Kansas Sentencing Commission, or the Executive Director's designee.

KSA 21-6902 also requires the Governor to appoint a facilitator to assist the Commission in developing a project plan and carrying out the duties of the Commission in an orderly fashion. This position has been vacant since October 2020.

The initial appointments to the Commission were completed by August 1, 2019.

Chris Mechler was replaced by Amy Raymond as the Judicial Branch Court Services officer member after the November 2019 meeting; Spence Koehn was appointed to replace Amy Raymond as the Judicial Branch Court Services member before the April 2020 meeting.

Chad Harmon replaced Brenda Salvati as the drug and alcohol addiction treatment provider member at the June 2020 meeting. Reggie Robinson served as the facilitator until September 2020. Judge Marty Clark was replaced by Judge

Rustin Martin as the district magistrate judge member prior to the June 2021 meeting. Jennifer Roth was appointed as the public defender member after the June 2021 meeting. Chief Jeff Hooper replaced Chief Todd Ackerman as the chief of police member after the September 2021 meeting.

Staff and meeting support for the Commission was provided by the Division of Legislative Administrative Services, the Kansas Legislative Research Department (KLRD), and the Office of Revisor of Statutes.

SUBCOMMITTEES

KSA 21-6902 authorizes the Commission to organize and appoint such task forces or subcommittees as may be deemed necessary to discharge the duties of the Commission.

At its June 28, 2021, organizational meeting, the Commission voted to establish six subcommittees to study specific topics assigned by KSA 21-6902, as amended by 2021 HB 2077. The subcommittees are as follows:

- Consolidation of Supervision (renamed Dual Supervision in September 2021);
- Diversion;
- Proportionality and Sentencing;
- Race in the Criminal Justice System;
- Research-Based Incentives; and
- Standardized Terms and Conditions.

After each subcommittee was established, Commission members volunteered to serve on specific subcommittees. In addition, each subcommittee chose to add non-voting ex officio members on an *ad hoc* basis to assist with their work.

In July 2021, the LCC approved 18 meeting days, including use of Statehouse facilities and technology for subcommittees to meet during the 2021 Interim. Subcommittees met at least monthly via videoconferencing with access provided to the public at the Statehouse or another pre-determined

public location. One subcommittee chose to meet via Zoom without use of Statehouse facilities or technology for all of its meetings, while the other five subcommittees utilized such assistance for at least one meeting.

Each subcommittee produced a final report, including recommendations it proposed the Commission consider for adoption as part of this report.

The Commission considered these proposed recommendations at its November 15 and November 22, 2021, meetings, as discussed below. The final reports produced by each subcommittee are attached to this report in the Appendix.

COMMISSION MEETINGS

In addition to the initial organizational meeting that took place on June 28, 2021, the LCC approved six additional meeting days for the Commission during the 2021 Interim, and the Commission met seven times prior to the submission of this report:

- June 28, 2021;
- July 19, 2021;
- August 16, 2021;
- September 20, 2021;
- October 18, 2021;
- November 15, 2021; and
- November 22, 2021.

JUNE 28, 2021

Discussion on KSA 21-6902, as amended by 2021 HB 2077

An Assistant Revisor of Statutes provided an overview of changes made to the Commission by 2021 HB 2077 (HB 2077) and gave an update on the legislation requested by the Commission during the 2021 Legislative Session.

The Assistant Revisor stated a few additional bills were not specifically requested by the Commission but may be of interest to members.

Chairperson Marc Bennett requested the Assistant Revisor provide the Commission with a list of pending legislation of interest to the Commission before the next meeting.

Identification of Subcommittees to Address Commission Charge in KSA 21-6902

Chairperson Bennett opened discussion on how to handle the topics listed as the Commission's charge in KSA 21-6902, as amended by HB 2077. He stated the process of creating subcommittees for each topic and having them report back to the Commission on a monthly basis worked well during the 2020 Interim. As a result, the Commission agreed to create six subcommittees: one to study sentencing and proportionality topics; one to study diversion topics; three to study various aspects of supervision; and one to study the impact of race in the criminal justice system. Membership of each subcommittee was established, as well as identifying the facilitators who would set up the initial meeting of each subcommittee. Chairperson Bennett noted that each subcommittee would be allowed to add *ad hoc* members to carry out its work and to determine its chairpersons.

Discussion of Goals for the December 2021 Final Report

Chairperson Bennett outlined the expectations for subcommittees and noted each subcommittee chairperson would be tasked with preparing and presenting a report detailing its recommendations to the Commission in November.

JULY 19, 2021

Discussion on Approved Meeting Days and Future Meeting Dates

KLRD staff provided an overview of LCC approval of meeting dates for the Commission and its various subcommittees for the rest of 2021. Staff stated the LCC approved a total of 24 meeting days for the Commission, allocating 18 days for subcommittees' use of the Statehouse and related technology services. Chairperson Bennett stated subcommittee meetings do not have to be held in the Statehouse, and any such meetings would not require LCC approval and would not be counted against the 18 days. Regardless of where the meetings take place, Chairperson Bennett

advised members that KLRD staff must be notified by the subcommittee chairperson in order to send out proper public notice of the meetings.

Discussion on Kansas Open Meetings Act and Kansas Open Records Act Requirements for Subcommittee Meetings

An Assistant Revisor of Statutes provided an overview of the Kansas Open Meetings Act and the Kansas Open Records Act as a reminder of the rules for subcommittees to follow when scheduling and holding meetings.

Discussion on Subcommittee Membership

Chairperson Bennett stated that at the June meeting, the Commission designated six separate subcommittees, and following the pattern of previous interims, the full Commission will meet monthly until October, and the subcommittees will hold as many meetings as needed to get their work done prior to November. Commission members in attendance volunteered to serve on specific subcommittees, and a few other members expressed a desire via email to join subcommittees following the meeting. Three *ad hoc* members were added to the Race in the Criminal Justice System Subcommittee after they expressed interest following the meeting.

Reports of Subcommittees

Research-Based Incentives Subcommittee. Subcommittee chairperson Spence Koehn stated discussion focused on the purpose of the subcommittee. Council of State Governments (CSG) staff attended the meeting and planned to provide information on what other states are doing for compliance at the next meeting. He stated the goal for the next meeting is to review the notes of the supervision subcommittee from last year so that current subcommittee members understand what was discussed last year and what still needs to be accomplished.

Mr. Koehn also stated subcommittee members agreed to invite the president of the Kansas Association of Court Services Officers and a representative of the Kansas Community Corrections Association to serve as *ad hoc* members of the subcommittee.

Consolidation of Supervision Subcommittee. Subcommittee chairperson Professor John Francis agreed the group needed to examine mechanisms to consolidate concurrent supervision terms when multiple agencies are supervising one person on post-release and to recommend related policy. He stated one of the issues discussed was developing a structure in which jurisdiction would stay with the sentencing court even though supervision may be transferred. Currently, this is done as a courtesy, but the subcommittee hopes to build on the practice. He also stated CSG staff provided the subcommittee with information on how the State of Ohio consolidates supervision. It uses severity of sentencing as the metric; however, this subcommittee is looking at the possibility of using risk assessment as a metric instead.

Chairperson Bennett stated the subcommittee might also address how to consolidate supervision among federal, state, and municipal court jurisdictions. Professor Francis responded the subcommittee did discuss municipal courts last year and decided there might not be an attainable legislative resolution. Sheriff Bill Carr also noted the hesitancy of the subcommittee taking action on municipal court recommendations last year due to the lack of input from municipalities on the subcommittee and Commission.

Proportionality and Sentencing Subcommittee. Subcommittee chairperson Chief Todd Ackerman noted the subcommittee had not yet met but at the upcoming meeting scheduled, it planned to review last year's final report, the expectations for the report this year, and a PowerPoint presentation regarding disproportionality created by the Kansas Sentencing Commission.

Standardization of Terms and Conditions Subcommittee. Subcommittee chairperson Shelly Williams stated the subcommittee had not yet met but the members were sent the minutes from last year's subcommittee meetings for review. She noted KLRD staff provided legislative history of KSA 21-6607 so the subcommittee could see what changes had been made to the statute over time.

Diversion Subcommittee. Subcommittee chairperson Bill Persinger stated the subcommittee discussed judicial and statutory limits on programs

that can make a difference in criminal records, incarceration, recovery, and rehabilitation. CSG staff stated it is prepared to assist the subcommittee with review of what the research shows regarding diversion programs.

Race in the Criminal Justice System Subcommittee. Chairperson Bennett, chairperson of the subcommittee, stated the group agreed to add a representative of the Prisoner Review Board and a representative of Johnson County Pretrial Services as *ad hoc* members of the subcommittee. Members discussed whether they could incorporate standards such as banning chokeholds and making a duty to intervene mandatory by statute or require such training and continuing education for law enforcement officers.

Chairperson Bennett stated the subcommittee also discussed the possibility of more formal de-escalation training within law enforcement agencies. Other items discussed were possibly amending or repealing a statute requiring bond to be set at a certain amount when someone is designated a gang member and the potential use of co-responder programs in which officers respond with a mental health clinician or social worker in certain situations where mental health issues may be a factor.

Chairperson Bennett noted that he believes the Commission is aware of the utility of such programs at this point but would like to hear more about potential impediments to implementation of programs statewide.

Discussion on Bureau of Justice Assistance Subaward Options

Chairperson Bennett recognized CSG staff to advise the Commission on the Bureau of Justice Assistance (BJA) subaward options. Staff noted the state has the opportunity to apply for up to \$500,000 in subaward funds from BJA. Options include funding a Justice Reinvestment Initiative coordinator who would coordinate activities among the Commission, the Kansas Sentencing Commission, and other related agencies. Another option for spending the subaward would cover purchases, training, and data system upgrades and modifications, such as the Carey Group Publishing 4:1 Behavior Management System.

Chairperson Bennett voiced a concern whether the Commission has the authority to accept the BJA subaward due to its very specific role granted to it by the Legislature. CSG staff responded the grant would sit with a state agency, likely KDOC, and the state would be expected to make the commitment upfront and be reimbursed by subaward funds. The Commission would not make any decision on whether the subaward should be accepted, but to recommend how funds should be spent.

AUGUST 16, 2021

Reports of Subcommittees

Diversion Subcommittee. Mr. Persinger reported additional persons had been added to the subcommittee as *ad hoc* members. He stated members have discussed the legal issues of pretrial diversion filing, uniform reporting, and the privacy of records. He noted the subcommittee believes public safety is the first priority while the second priority is to find ways to move people out of jail and into recovery or other forms of rehabilitation. Mr. Persinger reports the subcommittee is trying to learn more about what is being done in current diversion programs in the state and considering scalability of such programs for small, medium, and large population areas.

Proportionality and Sentencing Subcommittee. Chief Ackerman reported the group reviewed the border box briefly and discussed the Kansas Offender Registration Act (Registration Act) at length. He noted subcommittee member Jennifer Roth has a number of ideas from a public defender's perspective and that Sheriff Carr and Ms. Roth will create a list for further discussion at the next meeting.

Research-Based Incentives Subcommittee. Mr. Koehn reported the group has added the president of the Kansas Association of Court Services Officers and a member of the Kansas Community Corrections Officers Association as *ad hoc* members and Ms. Roth as a voting member of the subcommittee. Mr. Koehn stated the subcommittee has focused most of its attention on reviewing relevant pending legislation such as a bill that would give a 50.0 percent time served review hearing for all offenders, as well as a 7-day credit for each 30 days of substantial compliance.

The subcommittee also discussed average lengths of probation around the country, which is three years, compared to Kansas' one-year average. Mr. Koehn noted CSG staff will report on what incentives have worked well and which have not shown results in other states at the next subcommittee meeting.

Standardization of Terms and Conditions Subcommittee. Mr. Koehn, reporting for the group on behalf of Ms. Williams, stated the subcommittee reviewed examples of probation conditions across the state, which included 66 different conditions imposed by Court Services, Community Corrections, and KDOC. He stated subcommittee members also reviewed best practices for conditions of probation, current Kansas statutes, and the conditions that are common throughout the state. Mr. Koehn noted there is no single document outlining best practices for supervision terms anywhere in the state, according to CSG staff. Mr. Koehn also reported the subcommittee agreed changes need to be made to improve consistency in supervision conditions throughout the state. Finally, Mr. Koehn reported the goal of the subcommittee for the next meeting is to narrow down the number of general conditions that should be included statewide using a standard form.

Consolidation of Supervision Subcommittee. Mr. Koehn, reporting for the group on behalf of Professor Francis, stated the subcommittee is focusing on cases that are supervised by more than one entity and determining which should be the controlling supervision entity when that occurs. Mr. Koehn noted members also discussed whether an offender's supervision term should be determined by risk or by sentence length when multiple supervision terms exist. After reviewing the Ohio model legislation provided by CSG staff, members discussed potential complicating factors if Kansas were to adopt a similar model.

Race in the Criminal Justice System Subcommittee. Chairperson Bennett reported the subcommittee identified some of the high-priority issues discussed last year that should not get lost in this year's discussion, specifically related to law enforcement training regarding de-escalation; standardization of law enforcement policies;

legislation regarding gang designations; and the impact of traffic stops on people of color.

Discussion on Bureau of Justice Assistance Subaward Options

Chairperson Bennett recognized CSG staff to speak on the BJA subaward options. Staff stated it would like to postpone this discussion to allow time for subcommittees to develop recommendations to inform the decision on how to spend the subaward.

SEPTEMBER 20, 2021

Reports of Subcommittees

Diversion Subcommittee. Mr. Persinger stated the subcommittee discussed what successful diversion programs looked like and held some technical discussions on the feasibility of such programs. Chairperson Bennett stated there was a consensus among members that it would be difficult to establish statewide diversion standards due to the inconsistent access to services and resources across the state. The subcommittee also discussed the need for a mechanism to grant a diversion without associating it with a crime charged, as under current law, prosecutors are not supposed to offer these type of diversions because there is no way to ensure transparency and equity in their application. In response to this, subcommittee members discussed the possibility of creating a distinct diversion case number to memorialize such diversions, but the feasibility of this must be further studied by Office of Judicial Administration (OJA). Finally, the subcommittee discussed what types of cases these diversions should be used for.

Consolidation of Supervision Subcommittee. Professor Francis first noted the name of the subcommittee had been changed to Dual Supervision due to the incorrect impression among some that the purpose of the subcommittee was to consolidate supervising agencies. Professor Francis stated the subcommittee reviewed data provided by CSG staff that found between 1,500 and 3,600 offenders in Kansas are on supervision with more than one court or agency, which undoubtedly has resulted in duplication of resources. Professor Francis stated CSG has been working with the subcommittee to gather information on how dual supervision works in

other states. CSG staff also noted CSG had conducted focus groups on the topic with chief court services officers (CSOs) around the state and would be sharing suggestions made during those groups with the subcommittee at the next meeting.

Proportionality and Sentencing Subcommittee. Ms. Roth reported the subcommittee is prepared to resubmit some of the suggestions the subcommittee made last year, as well as make new recommendations related to the penalties for failing to register pursuant to the Registration Act. Ms. Roth stated they also discussed whether an exit mechanism should exist for persons to eventually get off of the registry.

Jessica Domme, designee for the Attorney General, stated because Chief Ackerman is no longer employed as a police chief, the Office of Attorney General must appoint a replacement to comply with the statutory guidelines, but that Sheriff Carr has stated his intention to prepare the subcommittee report in the interim.

Race in the Criminal Justice System Subcommittee. Chairperson Bennett stated the group had not met since the last Commission meeting.

Research-Based Incentives Subcommittee. Ms. Williams, reporting on behalf of Mr. Koehn, stated CSG staff provided the subcommittee with research that shows early discharge is effective and has a positive impact on recidivism, but there is a lack of research on individual incentives. The subcommittee also reviewed the violations and noncompliance behavior grid used by KDOC. CSG staff noted this subcommittee will also receive an update regarding the information it has collected from chief CSOs relating to early discharge and incentives.

OCTOBER 18, 2021

Reports of Subcommittees

Diversion Subcommittee. Professor Jean Phillips reported the subcommittee was charged with looking at the following topics:

- Whether diversions should be sealed;

- Whether there should be statewide standards for post-filing diversions; and
- Whether pre-filing diversions should be allowed.

Professor Phillips stated the subcommittee decided against sealing diversions because the information needs to be available to prosecutors, and once an individual has successfully completed diversion, it is not accessible to the public. Professor Phillips stated the subcommittee decided against recommending statewide standards for post-filing diversions because that discretion should remain with the prosecutor based upon individual counties and needs. Professor Phillips stated the subcommittee agreed that legislation should be drafted to enable pre-filing diversions and the need to track such diversions. The subcommittee agreed pre-filing diversions would not be available for certain offenses or offenders who are not viable candidates for diversion.

Standardized Terms and Conditions Subcommittee. Ms. Williams reported the remaining subcommittee tasks include reviewing the final list of general conditions of supervision; finalizing the languages for searches and seizures and for waiving extradition; refining the sanctions and incentives language; and finalizing the financial obligations page. Additional recommendations the subcommittee plans to work on include fees, training, and statutory amendments to KSA 21-6607.

Proportionality and Sentencing Subcommittee. Sheriff Carr reported the subcommittee plans to recommend modifying the penalty for unlawful tampering with electronic monitoring devices; increasing the felony loss threshold for property crimes; including prior convictions with a domestic violence designation as a qualifying prior conviction under the domestic battery statute; combining the drug and nondrug sentencing grid into one grid; and implementing a compassionate release program. Sheriff Carr also stated the subcommittee discussed an option for modifying the Kansas Bureau of Investigation's (KBI) offender registry web interface to allow a user to distinguish between, sex, drug, and violent offenders when conducting a search on the database.

Race in the Criminal Justice System. Chairperson Bennett stated the subcommittee has been monitoring other subcommittee activity to ensure it is consistent with any recommendations this subcommittee might make. Other items the subcommittee continues to discuss are the current Kansas Commission on Police Officers' Standards and Training (KSCPOST) curriculum as it relates to the role race plays in the criminal justice system, and the possibility of enhancing the data that gets recorded by law enforcement when they have any contact with individuals rather than just when the officer makes an arrest. Chairperson Bennett stated the subcommittee will discuss the impact of gang lists at the next meeting. Chief Hooper stated he is a KSCPOST commissioner and would have some insight to share on KSCPOST's behalf at the next meeting if desired by the subcommittee.

Research-Based Incentives Subcommittee. Mr. Koehn reported the subcommittee had agreed to not recommend the passage of 2021 HB 2084 regarding automatic judicial review of 50.0 percent of supervision term served due to its fiscal impact. The subcommittee also decided it would not recommend the alternative early discharge option of allowing a 7-day credit for each 30 days of substantial compliance contained in that bill because it would be too burdensome to keep track of by supervision officers. Mr. Koehn stated the subcommittee also discussed what kind of standards could be implemented to ensure incentives are consistent throughout the state. One consideration the subcommittee discussed was making the 4:1 incentive system being rolled out by KDOC for those on parole available for offenders statewide and for OJA and KDOC to collaborate on a grid of incentives for both misdemeanors and felonies.

Dual Supervision Subcommittee. Professor Francis reported the subcommittee has been reviewing and discussing information compiled by CSG staff in developing a framework to address dual supervision cases. Professor Francis stated the subcommittee hopes that one of the benefits of reducing duplication of services and expenditures in these cases is cost-savings to the State. He noted the subcommittee is proposing to have the agency that imposes the most serious sentence be the controlling supervision agency due to the fact that such agency will likely have more resources

available for the offender. Professor Francis also noted another issue discussed by the subcommittee is the need for more efficient and standardized protocol for communication in dual supervision cases.

Chairperson Bennett asked Commission members if there was anything else left to discuss by the group before subcommittees begin to submit their recommendations. Representative Finney responded that she believes the Commission should hear from the Governor's Commission on Racial Equity and Justice (CREJ). Chairperson Bennett noted that report had been published earlier in the year and could be distributed to members. In addition, he welcomed a representative of CREJ to attend the next Race in the Criminal Justice System Subcommittee meeting to present its report. Chief Hooper stated he had reviewed the CREJ report as a KSCPOST commissioner and could provide his insights as well.

NOVEMBER 15, 2021

Discussion and Consideration of Subcommittee Recommendations

Chairperson Bennett stated the reports submitted by the subcommittees and a KLRD memorandum summarizing each subcommittee's recommendations had been distributed to Commission members and the public distribution list via email a week prior to this meeting. He stated the Commission would review the recommendations of five subcommittees (Diversion, Dual Supervision, Proportionality and Sentencing, Research-Based Incentives, and Standardized Terms and Conditions) at this meeting, and subsequently vote on which recommendations to approve as a Commission. The recommendations of the Race in the Criminal Justice System Subcommittee would be considered and voted on at the November 22, 2021, meeting.

The chairpersons of each subcommittee briefly summarized the recommendations contained in their respective reports. Following discussion, the Commission voted to approve all of the recommendations contained in the Diversion, Dual Supervision, and Standardized Terms and Conditions subcommittee reports.

The Commission voted to approve all recommendations of the Proportionality and Sentencing Subcommittee with the exception of a recommendation related to judicial review of 50.0 percent probation term served contemplated by 2021 HB 2084, as it conflicted with a recommendation made by the Research-Based Incentives Subcommittee.

Following discussion on a recommendation in the Research-Based Incentives Subcommittee report regarding a proposed amendment to KSA 21-6608, Mr. Koehn agreed to submit an amended report with modified language based on the Commission's discussion to be discussed and voted on at the November 22 meeting.

NOVEMBER 22, 2021

Discussion and Consideration of Subcommittee Recommendations

Chairperson Bennett stated the Commission must consider the Race in the Criminal Justice System subcommittee report as well as discuss and approve the amended language drafted by Mr. Koehn for the Research-Based Incentives Subcommittee report. Chairperson Bennett noted that Judge Glenn Braun had contacted him after the last meeting to add to the discussion regarding diversion to suggest the Legislature look into standardizing diversion fees across the state. Mr. Koehn described the changes he made to the subcommittee report with regard to language of KSA 21-6608(d). The Commission voted to approve the report in its entirety with that change.

Chairperson Bennett summarized the recommendations contained in the Race in the Criminal Justice Subcommittee report, and discussion on each recommendation followed. The Commission voted to adopt each of the subcommittee's recommendations, with modifications suggested by Commission members with respect to recommendations related to officer training and criminal street gang membership.

Sheriff Carr proposed adding a statement to the final report acknowledging the contributions of former Commission facilitator Reginald Robinson and Representative Russ Jennings to the Commission's work.

CONCLUSIONS AND RECOMMENDATIONS

Each subcommittee was asked to develop its own recommendations for approval by the full Commission and to include these recommendations in a subcommittee report (attached to this report in the Appendix).

At its November 15 and 22, 2021, meetings, the Commission discussed and approved the following recommendations based upon the subcommittees' proposals. The wording of some recommendations in this report was modified from the version submitted by the subcommittee for clarity and consistency.

[*Note:* The page numbers listed after each subcommittee heading indicate the corresponding page number of the Appendix in which the reports appear.]

DIVERSION SUBCOMMITTEE (APPENDIX PAGES 2-5)

- Legislation should be drafted to permit pre-filing diversions that are filed with the district court, subject to database availability, for all misdemeanor and nonperson severity level 9 and 10 offenses, with the following exclusions:
 - Domestic violence;
 - Traffic violations;
 - Driving while under the influence; and
 - Sex offenses, including misdemeanor sex offenses;
- The legislation should encourage district and county attorneys to offer pre-filing diversions only to those individuals who appear to have a viable chance of success;
- Court costs should be assessed for pre-filing diversions, a portion of which should be allocated to OJA, to cover the costs for tracking pre-filed diversions; and
- The KBI should record pre-filing diversions in the same manner that post-filing diversions are recorded.

In addition to these recommendations, the subcommittee made the following observations:

- It would be difficult to establish statewide standards for post-filing diversions because individual counties have different needs and issues, and it is important that prosecutors have the discretion to appropriately resolve a criminal case according to the community's needs. The inconsistent access to services and resources across various areas of the state also would make it difficult to impose statewide standards; and
- For criminal history records, the current KBI procedure for diversion records strikes the appropriate balance between privacy and the need for prosecutors to have access to information about prior diversions.

DUAL SUPERVISION (APPENDIX PAGES 6-14)

- Adopt the following guidelines for consolidating supervision of persons under multiple supervision terms:
 - Between district courts, the longest underlying incarceratory sentence is controlling;
 - If a new sentence would place a person under supervision on concurrent supervision, control of the case should be determined after considering these factors:
 - Unless the severity of a new offense impacts the level of supervision, the defendant should remain under the supervision of the originating entity throughout the length of the sentence;
 - If the severity of a new offense requires a higher level of supervision, control of the case should be given to the appropriate supervision entity and remain in place through the end of the supervision sentence;
 - If concurrent supervision involves multiple cases with equal sentences, the supervision entities involved must agree on a controlling case after considering these factors:
 - The residency of the person on supervision;

- The ability of the person to travel to and from their residence and place of employment or school to the offices of the supervising authority;
- The resources for residential and nonresidential sanctions or rehabilitative treatment available to the various courts with supervising authority;
- The level of supervision and resources available to the person on supervision by each supervising entity;
- The supervising entity enforces any financial obligations including those imposed by a concurrent court, according to these guidelines:
 - Set a payment schedule consistent with ability to pay;
 - Apportion payments for each case; and
 - Allow one supervision fee, only for the entity providing supervision;
- The supervising officer enforces all conditions of supervision;
- Sanctions for violations of the conditions of supervision shall be imposed solely by the controlling case supervision entity. If supervision is revoked, all pertinent information shall be shared with the corresponding entities for appropriate action to be taken;
- The court with jurisdiction of the controlling case determines when supervision will be terminated;
- KDOC and OJA should enter into an agreement whereby a person on parole or post-release supervision who is simultaneously under the supervision of OJA shall be supervised exclusively by either KDOC or OJA:
 - The supervising authority will provide notice and supervision history documentation to the concurrent supervision entity upon initiation of revocation proceedings so the concurrent supervision entity can notify the appropriate court or Prisoner Review Board;
 - The supervising entity will provide notice and supervision history documentation to the concurrent supervision entity 30 days prior to the termination of supervision so the supervision of the person can transfer to the court or Prisoner Review Board for any remaining term of supervision;
- Prior to supervision responsibilities being transferred, the originating supervision entity is responsible for ensuring the risk and needs assessment and all data in the case file are current; and
- Upon transfer of supervision, the receiving entity has responsibility for overseeing supervision conditions and updating risk and needs assessments and the case plan as indicated;
- Adopt recommendations of the Standardized Terms and Conditions Subcommittee related to creating statewide conditions of probation;
- Court Services, Community Corrections, and KDOC should develop recommended standards for communication, including:
 - The process for transfer should include the following information:
 - Journal entry;
 - Pre-sentence investigation;
 - Risk assessment;
 - Specialized assessments; and
 - Conditions of probation;
 - Multidisciplinary team meetings should be scheduled by risk level. Prior to the meeting, a list of persons under supervision to be discussed should be distributed to appropriate supervisors or officials:
 - Monthly for high-risk persons under supervision;
 - Bimonthly for moderate-risk persons under supervision; and
 - Quarterly or as needed for low-risk persons under supervision;
 - Agencies should outline expectations and processes for sharing case management progress based on the supervising entity's policies and procedures related to conditions of

- probation and release; progress reports, which include violation reports; incentives and sanctions; and information sharing with law enforcement;
 - Supervising entities should have access to client information maintained by other supervising entities; and
 - Points of contact should be identified for dispute resolution within KDOC and OJA to resolve disagreements between entities.

PROPORTIONALITY AND SENTENCING (APPENDIX PAGES 15-47)

- Decrease the penalties from drug grid level 5 to be similar to nondrug level 8 for proportionality reasons by supporting the passage of provisions included in 2019 HB 2047 and 2021 HB 2139;
- Increase the felony loss threshold from \$1,000 to \$1,500 on 11 property crimes by supporting the passage of provisions in 2020 HB 2485 and 2021 HB 2028;
- Make domestic battery qualifying prior convictions include prior convictions with a domestic violence designation by supporting the passage of provisions in 2020 HB 2518 and 2021 HB 2029;
- Amend the drug grid and nondrug grid by expanding presumptive probation and border box zones, in order to better reflect actual sentencing and reduce downward departures; continue to ensure adequate prison capacity for people convicted of off-grid and other extremely serious crimes by supporting the passage of provisions of 2021 HB 2146 and 2021 HB 2350;
- Implement a more open and expanded compassionate release program by supporting the passage of provisions of 2020 HB 2469 and 2021 HB 2030;
- Propose combining both sentencing grids instead of utilizing drug and nondrug grids;
- Allow early discharge from prison for nonviolent drug offenders after 50 percent of sentence is served as contemplated in 2020 HB 2484 and 2021 HB 2147;
- Decrease the penalty for the offense of noncompliance with the Kansas Offender Registration Act, as proposed in 2021 HB 2349;
- Add an exit mechanism to Kansas Offender Registration Act for non-violent offenders to be removed from the offender registry; and
- Request the KBI change its default setting on the online offender registry from having all categories checked for search purposes to having the users check the boxes for the categories they are interested in and that KBI track how many users search each category.

RACE IN THE CRIMINAL JUSTICE SYSTEM (APPENDIX PAGES 48-58)

- Create a statewide advisory board to monitor the development and implementation of co-responder programs across Kansas;
- Expand the use of crisis intervention training, implicit bias training, diversity training, de-escalation training, and encourage “guardian” training as opposed to “warrior” training for existing officers through Kansas Commission on Police Officers’ Standards and Training (KSCPOST) and for new officers graduating from the Kansas Law Enforcement Training Center. Such expanded training should also be offered by KDOC and OJA for probation officers, parole officers, and licensed mental health providers;
- Expand the membership of KSCPOST enhance its diversity;
- Amend KSA 21-6316 to change the requirement that bail be “at least \$50,000” to a requirement that bail be “appropriately set;”

- Reevaluate the definitions related to criminal street gangs found in KSA 21-6313;

In addition to these recommendations, the subcommittee made the following observations:

- The Governor’s Commission on Racial Equity and Justice (CREJ) should be acknowledged for its exhaustive work and would draw particular attention to those areas of overlap between this Commission and CREJ such as co-responder programs and enhanced training for law enforcement;
- The expanded use of co-responder programs would be beneficial to Kansans but the following issues must first be resolved:
 - Consistent funding sources for the implementation of co-responder programs and the hiring and retention of appropriately-trained mental health professionals; and
 - A deficit of qualified mental health professionals in both rural and urban areas of the state;
- The Legislature should review the report published by CSG entitled “Kansas Justice Reinvestment Initiative Co-Responder Programs— Focus Group Summary” attached as an appendix to this report for detailed suggestions regarding the implementation and expansion of co-responder programs;
- The subcommittee recognizes the exhaustive work of the Pretrial Justice Task Force chaired by Judge Karen Arnold-Berger, which published its report in November 2020; and
- More data needs to be collected by law enforcement when engaging with civilians, and such data needs to be maintained in an accessible, statewide database.

RESEARCH-BASED INCENTIVES (APPENDIX PAGES 59-62)

- Incentives and early discharge from probation should include misdemeanor and felony cases;
- The House Committee on Corrections and Juvenile Justice should not move forward with certain amendments to KSA 21-6608(d) as proposed in 2021 HB 2084, specifically:
 - On pages 2-3, amending KSA 21-6608(d): “In addition to the provisions of subsections (a), a defendant *may be discharged* early from probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction *if such defendant is found to be in substantial compliance with the conditions of such supervision. The court shall set a hearing at sentencing for the date when the defendant will have served 50% of such defendant’s term of supervision to determine if a defendant has been in substantial compliance with the defendant’s conditions of supervision.* The court shall grant such discharge unless the court finds by clear and convincing evidence that denial of such discharge will serve community safety interests.”
 - On page 3, adding (e): “*A defendant shall earn credit to reduce such defendant’s term of probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction when the defendant has substantially complied with the conditions of such defendant’s supervision. A defendant shall be awarded seven days earned discharge credit for each full calendar month of substantial compliance with the conditions of such defendant’s supervision.*”
 - On page 3, adding (f): “*The Kansas sentencing commission shall adopt procedures and forms to standardize the process for calculating earned*

- discharge credit pursuant to this section.”*
- On page 3, adding (g): *“The following factors apply and may be considered in determining whether substantial compliance with supervision exists: (1)(A) History of compliance with terms and conditions of supervision; (B) payment of fines, costs and restitution; and (C) successful completion of any required treatment program. (2) Completion of all terms and conditions of supervision is not required. (3) Offenders subject to the provisions of K.S.A. 2020 Supp. 21-6824, and amendments thereto, shall not be eligible for early discharge.”*
 - KSA 21-6608(d) should be amended by striking the following language:
 - “A defendant who has a risk assessment of low risk, has paid all restitution and has been compliant with the terms of probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction for a period of 12 months shall be eligible for discharge from such period of supervision by the court”;
 - KSA 21-6608(d) should be amended by adding the following language, with the intention of not limiting the power of the court to terminate probation at any point, but to provide supervision officers a path to recommend early termination of probation following these benchmarks:
 - A defendant who has a history of compliance with terms and conditions of supervision;
 - Has successfully completed any required treatment or programming;
 - Has completed 75% of their required supervision period except when prohibited by statute;
 - After a review of all fines, costs, and restitution, may be eligible for discharge from such period of supervision by the court; and
 - Early termination from probation shall be retroactive;
 - The 4:1 Behavior Management System developed by Carey Group Publishing should be implemented statewide to guide and track responses to defendant pro-social and violation behaviors; and
 - Encourage KDOC and OJA to collaborate on a sanctions and incentives structure to be used within the system.

STANDARDIZED TERMS AND CONDITIONS (APPENDIX PAGES 63-73)

- Adopt the following standardized terms and conditions of supervision:
 - Obey all laws and ordinances and report any law enforcement contact within 24 hours or the next business day to your supervision officer;
 - Do not engage in physical violence or threats of violence of any kind. If convicted of a felony or prohibited by law, do not use, purchase, or possess dangerous weapons including firearms while on supervision;
 - Report to your supervision officer as directed and be truthful in all matters;
 - Remain within the State of Kansas and other specified area as defined by your supervision officer;
 - Reside at your approved residence unless given permission by your supervision officer to relocate. Notify your supervision officer within 24 hours of any emergency changes in residence and/or contact information;
 - Do not possess, use, or traffic in any illegal drugs or controlled substances. Do not possess or consume any form of alcohol or intoxicating substance and do not enter any establishment where alcohol is sold and/or consumed as the primary business. You may possess and use medications as prescribed to you by a licensed medical practitioner;
 - Submit to any form of alcohol/substance use testing at the direction of a supervision officer and do not alter or tamper with the specimen or test;

- Participate in assessments, treatment, programming, and other directives by the Court or your supervision officer;
- Pay restitution, court costs, supervision fees, and other costs as directed by the Court or your supervision officer; and
- You are subject to searches of your person, effects, vehicle, residence, and property by your supervision officer and any other law enforcement officer based on reasonable suspicion that you violated conditions of supervision or engaged in criminal activity.

In addition to these recommendations, the subcommittee identified the following issues that need further exploration by the Commission:

- Encourage KDOC and the Prisoner Review Board to adopt common language where appropriate from the proposed

standardized (general) conditions of supervision;

- Encourage a reform oversight committee to consider including safety- and liberty-restricting conditions that are not tied to risk or needs assessments;
- Encourage a reform oversight committee to create special conditions of supervision with consistent language and give guidance on how to apply such special conditions in an evidence-based manner;
- Encourage a reform oversight committee to develop a training around general and special conditions in Kansas to district and county attorneys, defense attorneys, and community supervision officers; and
- Collaborate with the Robina Institute of Criminal Law and Criminal Justice and the University of Cincinnati for statewide training on special conditions.

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Kansas Criminal Justice Reform Commission
Diversion Subcommittee

Background

During the 2021 legislative session, 2021 HB 2077 was passed, which narrowed the scope of the Kansas Criminal Justice Reform Commission. At the June 29, 2021, meeting of the Kansas Criminal Justice Reform Commission, the Diversion Subcommittee was established.

HB2077 specifically asked for recommendations that 1) permit pre-filing and post-filing diversions be an option in all district courts, 2) set minimum statewide standards for diversion, and 3) provide a method for sealing or removing diversion from criminal records.

The Diversion Subcommittee held all meetings by zoom. The first meeting was July 13, 2021, and Bill Persinger was elected as the subcommittee's chairperson. The subcommittee then met on August 10, 2021, August 24, 2021, September 14, 2021, October 12, 2021, and October 29, 2021.

Working Group Recommendations

I. Legislation

The Diversion Subcommittee to the Criminal Justice Reform Commission recommends that legislation be drafted to permit pre-file diversions that are filed with the district court, subject to database availability, for all misdemeanor and non-person, severity level 9 and 10 offenses, with the following **exclusions**:

- a. domestic violence
- b. traffic tickets
- c. driving while under the influence
- d. sex offenses, including misdemeanor sex offenses.

The legislation should encourage district and county attorneys to offer pre-file diversions only to those individuals who appear to have a viable chance of success.

Court costs will be assessed for pre-filing diversions, a portion of which will be allocated to the Office of Judicial Administration to cover the costs for tracking pre-filing diversions.

The Kansas Bureau of Investigation will record pre-file diversions in the same manner that post-filing diversions are recorded.

II. Discussion

A. Pre-filing Diversions

According to the Kansas Attorney General's Opinion, 97-34, if a county or district attorney has a policy that permits the dismissal of charges pursuant to specific terms, then the county or district attorney is deemed to have a diversion program and they must comply with the requirements of K.S.A. 22-2907 *et. seq.* K.S.A. 22-2907(1) provides for diversions "after a complaint has been filed charging a defendant with commission of a crime. . ." If an individual receives a diversion, it is associated with a crime charged and filed with the clerk of the district

court. Currently, there is no mechanism for pre-charge filing of diversions and no method of recording those diversions with the district court.

The Diversion Subcommittee recommends the legislature pass a statute permitting pre-charge filing of diversions. There are circumstances where the filing of a charge, even if there is no conviction, can negatively impact an individual. Licensing boards or employers may hold the filing of charges against an individual. A district or county attorney should have the flexibility to not file criminal charges but allow the individual to enter a pre-filing diversion. If successful, the individual would not have to report that they had been charged with a crime.

This new tool for district and county attorneys should not be used for defendants with charges that would be hard to prove. In other words, district and county attorneys should not use this option for cases that would typically result in a dismissal. Cases that would typically be dismissed, should be dismissed. But for some cases that would usually result in formal charges, this is an opportunity to work with a client and give them an opportunity to succeed before getting pulled deeper into the criminal justice system.

Less stringent options than filing charges can also ease the burdens of a district or county attorney and may be appropriate to address low level conduct. For instance, a group of 18–20-year-olds could be issued citations for being in possession of alcohol at a party. The district or county attorney may want to offer them a chance to do community service to resolve the case. If the case is charged, formal diversion, with the attendant waivers of rights and court appearance would be required. See, K.S.A. 22-2907(1). For certain low-level offense, such as nonperson, nonviolent misdemeanors, diversion following formal charges may be unnecessarily burdensome.

Although a criminal charge would not be filed with a pre-file diversion, the subcommittee strongly suggests there should be a system in place to record and review these cases. Filing these cases in District Court would allow for transparency and tracking by the district or county attorney, as well as allow for the payment of restitution. When a criminal case is filed, it is given a formal criminal case number, whether that is CR for criminal cases, DV for domestic violence cases, or TR for traffic tickets. To track pre-file diversions and file them with the district court, a type of case number must be associated with the filing.

Input was sought from the Office of Judicial Administration. According to OJA, it is possible to give a pre-file charge a MISC or other designation for district court filing purposes. The question was whether OJA could absorb the new designation into the current database and the attendant costs. OJA also raised the issue of whether it is appropriate for the judicial branch to be involved with pre-filing. Like the individual who pays court costs for a post-filing diversion, the subcommittee recommends that court costs should also apply to pre-filing diversions. A percentage of the costs should be allocated to OJA to offset its increased costs.

Because post-charge diversion programs already exist for various offenses and pre-file diversion is a more lenient option, the pre-file option should apply only in certain circumstances. First, the district or county attorney should have reason to believe that the person is a good candidate and likely to be successful with the requirements of the pre-file diversions. Second, only certain crimes should qualify. After a review of various misdemeanors and low-level felony charges, the subcommittee agreed that all misdemeanors, except those considered sex offenses, such as misdemeanor sexual battery, should be included. The same holds true for nonperson severity level 9 and 10 offenses. Excluded from pre-file diversions would be all domestic violence offenses and all driving under the

influence offenses. In addition, traffic offenses would not be eligible for a pre-file diversion as the traffic ticket will already trigger a filing.

If the individual successfully completes the pre-file diversion requirements, no charges would be filed. However, the pre-file diversion should still be recorded so that district and county attorneys are aware of the conduct in evaluating future conduct. If the individual does not satisfy the requirements of the pre-file diversion, a criminal case is filed.

B. Standardizing Post-filing diversion

The consensus of the subcommittee is that it would be difficult to establish statewide standards for post-file diversions. Once a charge is filed, it is in the prosecutor's discretion how to proceed with a case. Individual counties have different needs and issues, and it is important that district or county attorneys have the discretion to appropriately resolve a criminal case according to the community's needs. The inconsistent access to services and resources across various areas of the state would also make it difficult to impose statewide standards.

C. Sealing Diversion Records.

The subcommittee was charged with examining whether diversion records should be sealed once the diversion is successfully completed.

The subcommittee learned that when an individual enters a diversion with the district or county attorney, the journal entry and order is sent to the Kansas Bureau of Investigation. The KBI records the diversion, and it is noted on the record that the diversion is in progress. Once the diversion is successfully completed, the record with the KBI is closed. A closed diversion record is not open to the public. If the record is later expunged, the record is sealed except for limited qualifying circumstances.

For criminal history records, the current KBI procedure strikes the appropriate balance between privacy and the need of district or county attorneys to have access to information about prior diversions. If an individual has successfully, but repeatedly, completed diversions, a prosecutor may decide that the individual should not be given repeated diversions. In the interest of transparency statewide, district and county attorneys from different counties need access to that information.

Although a successfully completed diversion does not appear in background checks, the subcommittee notes that the public can still gain access to those records by accessing district court records via public access portions of district court websites unless the individual expunges their record.

Conclusions

This report represents the recommendations of the Diversion Subcommittee based on the specific charges of 2021 HB2077. We are aware that the ability to implement pre-file diversions will depend upon the ability to incorporate a new classification system into OJA's case management system and the ability to absorb the associated costs. The subcommittee believes that it is society's best interest to allow individuals who meet the criteria to avoid the collateral consequences of having a criminal case filed.

Page Break

Respectfully Submitted this 3rd day of November, 2021

Bill Persinger
Diversion Subcommittee Chair
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Marc Bennett
Chair of the Commission
District Attorney, Sedgwick County

Tabitha Owen
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Jessica Domme
Kansas Attorney General Designee
Ex-Officio Member

Kansas Criminal Justice Reform Commission

Dual Supervision Subcommittee

Report

November 1, 2021

To: Criminal Justice Reform Commission

Re: Report on this session's work

Members of the Criminal Justice Reform Commission,

This subcommittee picked up on work that was started last session, meeting 6 times over the past several months. (August 9, 2021; September 13, 2021; September 27, 2021; October 13, 2021; October 20, 2021, and October 28, 2021.) During these meetings, we received information and examined issues related to people being supervised by more than one supervision officer as conditions of sentences for more than one criminal conviction. The Council of State Governments (CSG) has been a tremendous resource, gathering relevant information for this subcommittee. CSG's information gathering included, among other things, conducting focus groups of Chief Court Services Officers and Community Corrections Directors from rural and urban supervision agencies. A report created by CSG titled *Consolidation of Concurrent Supervision*, guided this subcommittee and is attached as an exhibit to this report.

Problem Statement: In Kansas, it is estimated that 5 to 10 percent of the supervision population—1,500–3,600 people—are on supervision with more than one supervision officer. There is no consistent process for how concurrent supervision cases are handled. And no formal process exists to ensure coordination between supervision entities. This results in a lack of coordination, duplication of assessments, unnecessary or multiple drug and alcohol testing, conflicting conditions of supervision, multiple supervision entity fees, and duplicative case planning and supervision meetings. Duplication of supervision efforts expends unnecessary state resources. Reporting to multiple supervising officers can also interfere in a person's ability to maintain steady employment. This can have a cascading effect of negatively impacting housing and increasing the risk of recidivism.

Goal: To provide a statutory framework for judges to consolidate supervision of persons under multiple supervision entities so a person reports to one supervision officer as an extension of Kan. Stat. Ann. § 21-6610 (2020), which allows transfer of supervision. This proposal is intended to improve outcomes for persons under supervision and communities, with the expectation that by reducing duplication of services and expenditure of resources, there will also be a budgetary benefit.

Recommendation: This subcommittee recommends that procedures be adopted so that persons under dual or multiple supervision report to only one supervising officer. The supervising entity would oversee applicable terms of all cases for which the person under supervision is being supervised. For this to occur, standards need to be established to determine which supervising entity will supervise the individual, addressing issues surrounding jurisdiction, enforcement of sentence provisions, and collection of fees. In addition, standards should be established to improve communication between entities and to facilitate a ready means of sharing information about people under supervision.

The three supervising entities are: Community Corrections (county level probation with state oversight and funding by Department of Corrections), Parole (under the Department of Corrections), and Court Services (under the Office of Judicial Administration). Supervision philosophy, policies, program offerings, and resources are different among all three entities. In addition, the court has jurisdiction over those persons supervised by two entities (Community Corrections and Court Services) and the other (Parole) is under the authority of the Secretary of Corrections and jurisdiction of the Prisoner Review Board.

Dual or multiple supervision can occur under several circumstances, with several combinations of courts and agencies. A person may be under supervision from a municipal court and a district court, a person may be under supervision from district courts located in different judicial districts, or a person may be under supervision for multiple cases within a single district court, to identify a few. For example, if someone was sentenced in one case to supervision by Court Services and in another case to supervision by Community Corrections, the plan would be to have just one of the entities actively supervise the person under supervision.

To implement a plan in which people under multiple supervision would be supervised by one entity, guidelines must be established to determine which entity should supervise an individual.

1. Considerations to determine which entity will supervise a person under dual or multiple supervision:

a. Concurrent Municipal Court/District Court Sentences

The subcommittee spent minimal time addressing dual supervision involving municipal courts. There are challenges to creating legislation that will uniformly govern municipal courts throughout the state. This may be an area for the legislature (or implementation team following up on supervision reform) to explore in the future with input from all stakeholders, including municipalities.

b. Concurrent District Court/District Court Sentences

A challenge in any dual or multiple supervision situation is to match a person under supervision with the services and the supervising entity that is best tailored to the address the needs and rehabilitation of the person under supervision. As such, the subcommittee suggests that the case

involving the longest underlying incarceratory sentence should control which entity will supervise the sentences. The longest sentence will generally involve the most relevant risk and needs assessment. This in turn will identify the most appropriate services for a person under supervision. With that information, the entity best equipped to provide those services should be the entity that supervises all the concurrent sentences. Jurisdiction for each case will remain with each sentencing court, unless the courts with jurisdiction over each case agree to transfer jurisdiction.

The subcommittee proposes the following guidelines for consolidating supervision of persons under multiple supervision:

- i. Between district courts, the longest underlying incarceratory sentence is controlling. (See additional factors to consider below.)
- ii. If a new sentence would place a person under supervision on concurrent supervision, control of the case should be determined after considering these factors:
 - a. Unless the severity of a new offense impacts the level of supervision, the defendant should remain under supervision of the originating entity throughout the length of the sentence.
 - b. If the severity of a new offense requires a higher level of supervision, control of the case should be given to the appropriate supervision entity and will remain in place through the end of the supervision sentence.
- iii. If concurrent supervision involves multiple cases with equal sentences, the supervision entities involved must agree on a controlling case after considering these factors:
 - a. The residency of the person on supervision
 - b. The ability of the person to travel to and from their residence and place of employment or school to the offices of the supervising authority
 - c. The resources for residential and nonresidential sanctions or rehabilitative treatment available to the various courts with supervising authority
 - d. The level of supervision and resources available to the person on supervision by each supervising entity
- iv. Financial Obligations: The supervising entity enforces any financial obligations including those imposed by a concurrent court, according to these guidelines:
 - a. Set a payment schedule consistent with ability to pay.

- b. Apportion payments for each case.
 - c. Allow one supervision fee, only for the entity providing supervision.
- v. Conditions of Supervision: The supervising officer enforces all conditions of supervision
- vi. Sanctions: Sanctions for violations of the conditions of supervision shall be imposed solely by the controlling case supervision entity. If supervision is revoked, all pertinent information shall be shared with the corresponding entities for appropriate action to be taken.
- vii. Termination of Supervision: The court with jurisdiction of the controlling case determines when supervision will be terminated.
- viii. Kansas Department of Corrections (KDOC) and Concurrent Supervision: KDOC and Office of Judicial Administration (OJA) enter into an agreement whereby a person on parole or post-release supervision who is simultaneously under the supervision of OJA shall be supervised exclusively by either KDOC or OJA
 - a. Revocation: The supervising authority will provide notice and supervision history documentation to the concurrent supervision entity upon initiation of revocation proceedings so the concurrent supervision entity can notify the appropriate court or Prisoner Review Board.
 - b. Termination of Supervision: The supervising entity will provide notice and supervision history documentation to the concurrent supervision entity 30 days prior to the termination of supervision so supervision of the person can transfer to the court or Prisoner Review Board for any remaining term of supervision.
- ix. Prior to supervision responsibilities being transferred, the originating supervision entity is responsible for ensuring that the risk and need assessment, and all data in the case file is current.
- x. Upon transfer of supervision, the receiving entity has responsibility for overseeing supervision conditions and updating risk and need assessments and the case plan as indicated.

2. *Develop Consistent Conditions of Supervision*

Conditions of supervision across the state are inconsistent. The lack of consistency presents challenges when control of the case moves from Court Services supervision to Community Corrections, or vice versa. There are occasions in which the originating court imposes a

condition or special condition that may not be a service provided by the supervising entity.
The subcommittee recommends:

- a. The legislature should adopt the recommendations of the KCJRC Standardized Terms and Conditions of Supervision subcommittee as they have addressed this issue by creating statewide conditions of probation.

3. Improving Communication Between Supervising Agencies:

Information gathered by CSG indicates that there is inconsistent sharing of information between agencies across the state. Lack of consistent communication between agencies makes proper supervision of multiple supervised persons a challenge. In addition, information received by the subcommittee indicates that information about persons under supervision is not consistently shared with law enforcement officers.

To facilitate better exchange of necessary and useful information, the subcommittee recommends that Court Services, Community Corrections, and Parole develop recommended standards for communication.

- a. Process for transfer should include the following information
 - Journal Entry
 - PSI
 - Risk Assessment
 - Specialized Assessments (WRNA, LSCMI, Drug and Alcohol Assessment.)
 - Conditions of Probation
- b. Requirement for multi-disciplinary team (MDT)(supervising officer, treatment provider, etc.) meetings should be scheduled by risk level. Prior to the meeting, a list of persons under supervision to be discussed should be distributed to appropriate supervisors or officials.
 - Monthly for high risk
 - Bimonthly for moderate risk
 - Quarterly or as needed for low risk
- c. Agencies should outline expectation and process for sharing case management progress based on the supervising entity's policies and procedures
 - Conditions of Probation/Release
 - Progress Reports
 - Violation Reports
 - Major violations
 - Minor violations
 - Incentives and Sanctions
 - Share information with Law Enforcement

- d. Supervising entities should have access to client information maintained by other supervising entities.
- e. Identify points of contact for dispute resolution within KDOC and OJA to resolve disagreements between entities.

Consolidation of Concurrent Supervision

Problem Statement: In Kansas, approximately 5 to 15 percent of the supervision population—1,500–3,600 people—are on supervision with more than one supervision officer. There is no consistent process for how concurrent supervision cases are handled. And no formal process exists to ensure coordination between supervision entities, which results in a lack of coordination, duplication of assessments, unnecessary drug and alcohol testing, conflicting conditions of supervision, multiple supervision agency fees, and duplicative case planning and supervision meetings.

Goal: To provide a statutory framework for judges to consolidate concurrent supervision terms so a person on supervision is only reporting to one supervision agent as an extension of [Kan. Stat. Ann. § 21-6610 \(2020\)](#), which allows transfer of supervision.

PROPOSED GUIDELINES FOR CONSOLIDATING CONCURRENT SUPERVISION CASES

Controlling Case:

1. District court case supersedes municipal court case as the controlling sentence regardless of sentence length.
2. Between district courts, the longest possible sentence is controlling. (*See additional factors to consider below.*)
3. If a new sentence would place a defendant on concurrent supervision, control of the case should be determined after considering these factors:
 - a. Unless the severity of the new offense impacts the level of supervision the defendant should be under, the originating agency should maintain control of the case throughout the length of the sentence.
 - b. If the severity of the new offense requires a higher level of supervision, control of the case should be given to the appropriate supervision agency and will remain in place through the end of the supervision sentence.
4. If concurrent supervision cases have equal sentences, the courts involved must agree on a controlling case after considering these factors:
 - a. The residency of the person on supervision
 - b. The ability of the person to travel to and from their residence and place of employment or school to the offices of the supervising authority
 - c. The resources for residential and nonresidential sanctions or rehabilitative treatment available to the various courts with supervising authority
 - d. The supervision intensity and resources available to the person on supervision by each supervising authority

Financial Obligations: The supervising court enforces any financial obligations including those imposed by a concurrent court, according to these guidelines:

1. Set a payment schedule consistent with ability to pay.
2. Apportion payments to concurrent courts.
3. Allow one supervision fee, only for the agency providing supervision.

Conditions of Supervision: The supervising court enforces all conditions of supervision established by a concurrent court.

Sanctions: Sanctions for violations of the conditions of supervision shall be imposed solely by the controlling case. If supervision is revoked by the controlling case, all pertinent information shall be shared with the corresponding courts for appropriate action to be taken.

Termination of Supervision: The supervising court determines when supervision will be terminated.

Kansas Department of Corrections (KDOC) and Concurrent Supervision: KDOC and the court enter into an agreement whereby a person on parole or post-release supervision who is simultaneously under the supervision of the court shall be supervised exclusively by either KDOC or the court.

1. Revocation: The supervising authority will provide notice and supervision history documentation to the concurrent supervision agency upon initiation of revocation proceedings so the concurrent supervision agency can notify the appropriate court or Prisoner Review Board.
2. Termination of Supervision: The supervising authority will provide notice and supervision history documentation to the concurrent supervision agency 30 days prior to the termination of supervision so supervision of the person can transfer to the court or Prisoner Review Board for any remaining term of supervision.

CONSIDERATIONS FOR THE SUBCOMMITTEE

Controlling case:

1. Is there a process to ensure that all information can be made available from the originating court to the new court to determine case load assignment and conditions?
2. Prior to supervision responsibilities being transferred, should the originating court be responsible for ensuring that the risk and need assessment and case file are current?
3. Once the transfer of supervision takes place, should the receiving court take over responsibility of not just supervision conditions but updating risk and need assessments and the case plan?
4. Is there a time period that should be established for the receiving court/jurisdiction to reply to the originating court?
5. Is there a system that needs to be put in place to ensure there is an automatic process for the receiving court to provide all requested records to the originating court upon termination of supervision?

Conditions of supervision:

1. Conditions of supervision across the state are inconsistent. In instances where control of the case moves from Court Services supervision to Community Corrections, or vice versa, what is the guidance on what to do should the originating court have a condition or special condition that is not within the conditions of the supervising agency?
2. If a violation of conditions occurs, does the receiving court have to notify the originating court within a certain period?

KDOC and concurrent supervision:

1. Under [Kan. Stat. Ann. § 21-6606 \(2020\), 1b and 1c](#) state:

- (b) It is within the power of the judiciary to decide whether those on supervision when convicted of a new misdemeanor offense can serve the sentence concurrently or consecutively.
- (c) It is within the power of the judiciary to decide whether those on supervision when convicted of a new felony offense must serve the sentence consecutively to the previous sentence.

To adhere to this legislation, does the subcommittee think that drafted policy should specify and refer to this, stating that supervision would continue with the controlling agency prior to conviction of the concurrent case, unless the new conviction warranted a higher level of supervision? Or is the subcommittee interested in recommending that Kan. Stat. Ann. § 21-6606 (2020), 1b and 1c be changed to state that felony offenses may be served consecutively *or* concurrently?

This project was supported by Grant No. 2019-ZB-BX-K002 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

**Report of the
Kansas Criminal Justice Reform Commission
Proportionality and Sentencing Subcommittee
to the 2022 Kansas Legislature**

CHAIR: Sheriff Bill Carr

OTHER MEMBERS: Senator Rick Wilborn, Tabitha Owen, Jennifer Baysinger, Judge Glenn Braun, Scott Schultz, and Jennifer Roth

Past Member: Chief Todd Ackerman

Assisting agency: Counsel of State Governments (CSG)

CHARGE:

The Commission is directed by K.S.A. 2019 Supp. 21-6902 to:

- Analyze the sentencing guideline grids for drug and nondrug crimes and recommend legislation to ensure appropriate sentences;
- Review sentences imposed for criminal conduct to determine proportionality compared to sentences for other criminal offenses;
- Analyze diversion programs and recommend options to expand diversion programs and implement statewide standards;
- Review community supervision levels and programming available for those serving sentences for felony convictions;
- Study and make recommendations for specialty courts statewide;
- Survey and make recommendations regarding available evidence-based programming for offenders in correctional facilities and in the community;
- Study Department of Corrections policies for placement of offenders and make Recommendations for specialty facilities, to include geriatric, health care, and substance abuse facilities;
- Evaluate existing information management data systems and recommend improvements that will allow criminal justice agencies to more efficiently evaluate and monitor the efficacy of the criminal justice system; and
- Study other matters that, as the Commission determines, are appropriate and necessary to complete a thorough review of the criminal justice system.

During the 2021 legislative session, HB2077 made some changes to the Kansas Criminal Justice Reform Commission. Section 2 of the bill amended K.S.A. 21-6902, adding a charge that pertains to the Proportionality and Sentencing Subcommittee: that the Commission monitor the implementation of previously endorsed commission recommendations and study other matters the commission determines are appropriate and necessary.

The Proportionality and Sentencing Subcommittee is interested in ensuring that existing policies and practices increase public safety. Subcommittee members have stated that people who commit crimes should be punished and held accountable, and that responses to crimes should be designed to provide punitive and corrective measures to change behavior of the offender, protect the public and be cost-effective for taxpayers.

Subcommittee Meetings:

- June 28, 2021;
- July 23, 2021;
- August 30, 2021; and
- September 17, 2021

Listed below are the Proportionality and Sentencing Subcommittee's prior recommendations that were not finalized in the 2021 session, which the Subcommittee reaffirms, as well as a new addition. Additional recommendations approved in December 2020 are attached to this report.

Immediate (short term):

1. Decrease the penalties from drug grid level five to be similar to nondrug level eight for proportionality reasons.

Explanation: This recommendation is in support of 2019 HB2047 and 2021 HB2139 (the latter was heard on February 10, 2021, in House Corrections and Juvenile Justice Committee, where it remains). The Subcommittee reviewed and concurred with the Sentencing Commission that sentences for severity level 5 drug crimes should be comparable to those of severity level 8 nondrug crimes. The proposal would lower drug grid severity level 5 sentences to be consistent or proportional with crimes on the nondrug grid at severity level 8.

2. Increase felony loss threshold from \$1,000 to \$1,500 on eleven (11) property crimes.

Explanation: This recommendation is in support of 2020 HB2485 and 2021 HB2028 (the contents of the latter were added to 2021 HB2229, which was stricken from the House calendar on March 5, 2021, as was HB2028 itself). This is for proportionality reasons only. In 2016, the felony theft threshold was raised from \$1,000 to \$1,500. The same was accomplished for mistreatment of a dependent adult or elder person in 2018. We believe not including the rest of the property crimes was just an oversight when the original threshold was moved and support raising the threshold on these crimes.

3. Make domestic battery qualifying prior convictions include prior convictions with a domestic violence designation.

Explanation: This recommendation is in support of 2020 HB2518 and 2021 HB2029 (the latter passed the House on February 3, 2021, and was referred to Senate Judiciary). Currently, the domestic violence statute only counts domestic battery convictions as prior convictions to determine class severity for sentencing. We suggest a language change that would include prior convictions of a crime with a "domestic violence designation" under K.S.A. 22-4616. As it stands currently, a defendant who has two prior convictions of aggravated battery under K.S.A. 21-5413 with a DV designation would not qualify as "prior convictions" if convicted of domestic battery under K.S.A. 21-5414. This change would ensure that the legislative intent of counting prior crimes against family members and intimate partners to determine the appropriate crime severity level at sentencing is followed.

4. Amend the drug grid and nondrug grid by expanding presumptive probation and border box zones, in order to better reflect actual sentencing and reduce downward departures; continue to ensure adequate prison capacity for people convicted of off-grid and other extremely serious crimes.

Explanation: These recommendations are in support of 2021 HB2146 (stricken from House calendar on March 5, 2021) and 2021 HB2350 (referred to House Corrections and Juvenile Justice Committee). The Subcommittee was committed to making informed decisions based on available data and research. An analysis of the sentencing grids showed that judges and prosecutors are already trying to ensure that people with addictions are sentenced to intensive supervision and treatment, in order to help them change their behavior, recover, and become productive citizens. The proposed changes allow judges and prosecutors to make the same decisions they are already making but allows them to be made easier without requiring the need for downward departures.

5. Implement a more open and expanded compassionate release program.

Explanation: This recommendation is in support of 2020 HB2469 and 2021 HB2030 (the latter passed the House on February 10, 2021, and was referred to Senate Judiciary). The Subcommittee recognizes that the cost of corrections is expensive and continues to increase over time. Nationally, compassionate release programs for terminally ill or functionally incapacitated inmates are underutilized. Kansas is possibly the most stringent in the country in its criteria for release. The current statute requires a physician to certify that the inmate has a terminal medical condition likely to cause death within 30 days of release. In consultation with the KDOC, it was disclosed that only a handful of inmates have been released in the last 10 years under this provision. Moreover, it takes on an average of 30 days just to do the paperwork and get all the approvals finished. Changes to K.S.A. 22-3728 and 22-3729 would assist in allowing more inmates to be eligible for release to save taxpayer dollars and allow for inmates to be with their families in their last days.

Long term:

1. Propose combining both sentencing grids instead of utilizing drug and nondrug grids.

Explanation: Examination of the drug grid sentencing ranges discloses that there is a need to explore proportionality with the nondrug grid. Those crimes currently on the drug grid are all nonperson and the Subcommittee will seek to determine whether they can be incorporated into the nondrug grid.

A survey was performed for this across the state of Kansas. Law Enforcement, Judges, Prosecutors, BIDS Attorneys, Private Defense Counsel were asked to participate. The survey shows 54.79% agreed they need to be combined. This percentage is low if you look at just the prosecutors and law enforcement. We also asked if the top five drug and nondrug offenses should have the incarceration ranges be re-worked. All ten offenses were overwhelmingly answered with a yes. (The survey is attached.)

2. Judicial review of probation time at 50% served.

Explanation: This is in support of 2019 HB2052 (including the Office of Judicial Administration balloon amendments proposed last legislative session) and 2021 HB2084 (referred to House Corrections and Juvenile Justice Committee). This is a review of the probation to see if all terms have been met. This would include all terms and conditions that were set by the court such as fines, restitution, treatment, or other programs. If satisfactory, the offender would be terminated from probation. The bill would serve to incentivize offenders to successfully complete probation early and allow probation officers to allocate scarce resources to higher risk/needs offenders.

3. Early discharge from prison for nonviolent drug offenders after 50% of sentence is served.

Explanation: This is in support of 2020 HB2484 and 2021 HB2147 (the latter was heard on February 16, 2021, in House Corrections and Juvenile Justice Committee, where it remains). A referral has been made from the Sentencing Commission to determine the effectiveness of all drug offenders being placed on community corrections after 50% of their time is served in prison. The proposal in its current form is estimated to save 61 beds in FY 2021 and 370 in FY 2030. If it would be applied retroactively, the savings increase to 291 beds in FY 2021 and 402 in FY 2030.

4. Decrease Penalty to the Kansas Offender Registration Act.

Explanation: This is a new recommendation. The Subcommittee reviewed last year's survey (referenced earlier), which showed that 70% of respondents answered yes when asked if the penalties for the offense of noncompliance with the offender registration act should be re-worked.

The Subcommittee recommends the penalties proposed in 2021 HB2349 (stricken from House calendar on March 5, 2021). HB2349, as introduced, would make a violation of the Act a class B nonperson misdemeanor upon a first conviction and a class A nonperson misdemeanor upon a second conviction. A third or subsequent conviction, or an aggravated violation of the Act, would be a severity level eight, nonperson felony. A violation consisting only of failing to remit payment to the sheriff's office would be a class C nonperson misdemeanor. When the underlying crime for which the offender is required to be registered is a misdemeanor, an aggravated violation of the Act would be a class A nonperson misdemeanor.

HB2349 comes from a Judicial Council report published in December 2020. HB2349 would make many other changes to KORA, but the Subcommittee's recommendations do not extend to those because they were outside the charge, not discussed, or we did not reach consensus around them.

The Subcommittee does recommend that:

- a. KORA should include an exit mechanism for non-violent offenders to get off of the offender registry; and
- b. KBI change its default setting on its online offender registry from having all categories checked (for search purposes) to having the users check the boxes for the categories they are interested in, and that KBI keep track of how many users opt to search each category.

The Subcommittee would like to thank The Council of State Governments and former Chief Todd Ackerman.

I. Violent Crime

Policy Objective 1: Understand violent crime in Kansas at the incident level to improve investigation and build community trust.

Key Findings – September

- Reported violent crime in Kansas has increased in recent years driven by increases in aggravated assaults.
- While the Kansas property crime rate has been higher than the U.S rate for decades, it wasn't until 2015 that the violent crime rate in Kansas rose above the national rate.
- Between 2010 and 2018, Kansas had the seventh-highest violent crime rate increase in the nation.
- In 2018, the aggravated assault rate was 19.2 percent over the 10-year average aggravated assault rate and the number of reported violent crimes increased 30 percent in metropolitan areas.
- Law enforcement officials, victim advocates, and members of the legal community report recent challenges responding to violent crime across the state. Since March 2020, reports of violent crime, and more specifically reports of domestic violence, have increased while custodial response options have reportedly decreased.

Key Findings – October

- Pressures on the state budget have delayed the timeline of the Kansas Bureau of Investigation's (KBI) transition to incident-based reporting statewide.
- Meanwhile, despite best efforts at collaborative cross-jurisdictional investigation, without incident-level data it is hard to track incidents of violent crime, and specifically domestic violence, statewide.
- Police chiefs and sheriffs statewide report increased calls for transparency in police data, practices, and policies that echo national conversations about trust in the law enforcement system.
- Reported violent crime in Kansas has increased in recent years driven by increases in aggravated assaults.
- While the majority of reported violent crime occurs in Kansas's most populous areas, rural and frontier regions have also seen dramatic increases in reported violent crime.

Improve statewide data collection and data transparency

Immediate Actions

- **Prioritize the transition to an incident-based reporting system.** Support KBI's transition to Kansas Incident-Based Reporting System (KIBRS); provide technical assistance to local law enforcement agencies necessary to transition to incident-based reporting.
- **Use incident-based data to understand potential disparity.** Collect, analyze, and make publicly available incident-level crime data that breaks down crime incidents by sex, race, geography, and relationship between perpetrators and victims.

Long-Term Goals

- **Support local law enforcement.** Prioritize the ability of local and state law enforcement agencies to collect and report incident-based data through funding and technical assistance.
- **Support collaboration.** Use incident-based data to guide intervention strategies appropriate to geographic regions and to foster cross-jurisdictional collaboration.

Policy Objective 2: Hold people who commit crime accountable and ensure they receive interventions needed to change their behavior and not reoffend.

Key Findings – September

- Rates of domestic violence are high across the state, with urban centers, like Wichita, seeing the biggest increases.
- From 2010 to 2018, domestic violence homicides increased 16 percent, from 32 to 37. In 2018, 25 percent of all 146 homicides were domestic violence related.
- In recent months, safety regulations and public health concerns limit capacity of state prisons, county jails, and local lock-ups. Community-based services and supervision are over capacity and are working to remotely serve individuals in need of services, support, or supervision.

Key Findings – October

- Law enforcement report that the majority of aggravated assault and battery calls for service and arrests are for domestic violence offenses or are domestic violence related.
- Law enforcement also report that increased substance use, namely alcohol and methamphetamine, is connected to rising calls for service for serious domestic violence incidents.
- In recent months, there have been double to triple the number of calls for service for serious domestic violence incidents.
- Communities are using the coordinated community response model to strengthen the management of domestic violence in Kansas communities.
- BIP is regulated in Kansas through a statewide certification process, but orders for BIP assessment and to BIP programming vary jurisdictionally.

Hold people who commit crime accountable and ensure they receive interventions needed to change their behavior and not reoffend.

Immediate Actions

- **Disallow anger management programming** in cases of intimate partner violence. Replace anger management in these cases with batterer's intervention programming.
- **Require BIP assessment and programming at the time of first offense.** People who perpetrate domestic violence should be sentenced to BIP. Providers of BIP should use evidence-based practices and collaborate closely with victim service providers and with parole and probation supervision agencies. Expand SB 123 to include provision of determination of need for BIP assessment and programming. Expand access to include pretrial access.
- **Fund BIP assessment and programming to alleviate cost burden on participants.** BIP must be mandatory and state subsidized. Allow domestic violence special program fees collected by judicial districts to be used to assist individuals sentenced to BIP with BIP provider fees.

Strengthen coordinated community response teams and increase local case coordination related to violent crimes, including homicide, child abuse, sexual assault, and domestic violence.

Immediate Actions

- **Require use of lethality assessments.** Statutorily mandate statewide adoption of lethality assessments. Use of lethality assessments should focus on assessing the risk of a person committing abuse as well as connecting victims to resources. Statutorily mandate statewide adoption of valid, reliable assessment instrument.

II. Victims

Policy Objective 1: Increase the data available about victims in Kansas to ensure state funding priorities support victims' needs.

Key Findings – September

- Kansas has three strategies to directly support victims of crime: services through grants, crime victim compensation, and restitution.
- The Kansas Crime Victim Compensation Board paid out \$3,341,390.31 to victims of crime in FY2019 and is an essential support for victims of violent crime.
- While applications to the Kansas Crime Victim Compensation Board have increased, the majority of victims of violent crime do not apply for compensation.
- Anecdotal evidence reveals that victim service agencies, law enforcement, and criminal justice agencies providing assistance to victims have faced increased pressures since March, including increases in the number of domestic violence incidents reported to law enforcement, increases in the number of domestic violence victims in community-based shelters, and backlogs for criminal justice-based protections like Protection From Abuse Orders (PFAs).

Key Findings – October

- The Kansas Governor's Grants Program (KGGP) can use data and information from a Kansas victimization survey to ground surveys, interviews, focus groups, and other data-collection methods from the strategic needs assessment.
- The KGGP is currently conducting a comprehensive assessment to examine the service needs of crime victims.
- KGGP will use the assessment to develop a statewide implementation plan and determine Kansas funding priorities.
- Victims' experiences are shaped by their gender, race, class, and age and by the intersection of these identities. Talking to victims directly is the best way to learn about gaps in services and unmet needs.

Immediate Action

- *Administrative:* Conduct a statewide victimization survey to understand the full scope of victimization across the state, capture polyvictimization that is occurring (people who experience multiple victimizations simultaneously), and identify survivor populations that systems may not currently be serving. This survey can inform priorities for statewide victim services funding. The victimization survey should be undertaken by the KGGP and should be conducted every five years.

Policy Objective 2: Strengthen victim-witness coordinator programs throughout the state.

Key Findings – October:

- One hundred and two counties in Kansas have at least one designated staff person with victim-witness responsibilities; However, the depth of these responsibilities and victim-witness coordination varies from county to county by: funding source; individual job descriptions and competing job responsibilities; and hiring requirements.
- The Kansas Attorney General's Office provides technical assistance to victim-witness coordinators across the state, and resources for and responsibilities of victim-witness coordinators vary greatly by jurisdiction.

Immediate Action

- *Administrative:* Maximize technology to provide remote assistance to victim-witness coordinators in under-resourced areas.
- *Administrative:* Utilize the Kansas Academy of Victim Assistance provided by the KGGP to administer training on best practices to victim-witness coordinators across the state.

Long-Term Goal

- *Administrative:* Reinstate the Victim-Witness Coordinator Committee within the Kansas County & District Attorneys Association to increase best practices and peer support among victim-witness coordinators.

III. Sentencing

Key Findings

Prioritizing Prison Space

- Prison population projections have changed based on the reduced population in 2020, with KDOC at 82 percent of capacity.
- Sustaining recent prison population reductions could save the state \$22 million in incarceration costs annually.
- Off-grid sentences to prison average 24 years in length, or over 2,000 bed years in a single year of sentencing for the most serious crimes.
- Nondrug grid analysis shows low rates of revocation for a new offense for people placed on community corrections in 2017.
- Research has shown that there is no public safety benefit to using incarceration for lower-risk people who can be supervised in the community.
- Nondrug grid analysis shows that sentences in 6C through 6I are usually non-prison sentences even though these are presumptive prison cells.

Drugs

- From FY2010 to FY2019:
 - The number of felony drug **cases filed** in district court **increased 125 percent**; and
 - The **proportion** of felony drug cases filed in district court, out of all felony filings, **increased from 13 percent to 27 percent**.
- From FY2010 to FY2019,
 - **Community Corrections (CC) starts** for felony drug offenses **increased 52 percent**;
 - The number of **women** starting CC for felony drug offenses **increased 91 percent**;
 - Felony **sentences** for drug offenses overall **increased 63 percent**;
 - **Sentences to prison** for drug offenses **increased 79 percent**; and
 - Drug offense **prison sentence lengths increased from 38 to 43 months**.

(*Starts are counted per person and probation start date; i.e., if a person started more than one probation term on the same date, they are only counted once. Offense level and type are based on the most serious offense per person and probation start date.

**Sentences to prison are based on admissions to prison to match Kansas Sentencing Commission analysis methodology. Figures here are based on admissions to prison by court action only (i.e., parole condition violations and interjurisdictional transfers are excluded).

***Prison sentence length was only available for new court commitments.)

- Of all admissions to prison for drug offenses in FY2019, 27 percent were for people with no prior felonies.

- The number of people in prison for drug offenses has increased 3–4 times more than the number of people in prison for other types of offenses.
- The number of women in prison for drug offenses doubled between FY2010 and FY2019.
- Possession of drugs is by far the greatest volume driver in “high-growth” grid cells.
- It cost an estimated \$41 million to incarcerate people for drug offenses in FY2019.

Geographic Variation

- There are counties that sent over half of all their felony cases to prison. In 2019, over 400 people went to prison from these counties.
- Douglas County has the highest rate of prison sentences and almost the highest rate of supervision revocation of the top 10 higher-volume counties.

Revocation

- The majority of admissions to prison each year are for supervision condition violations.
- It cost an estimated \$43 million to incarcerate people who violated supervision conditions in FY2019.

Recommendations

Policy Objective 1: Enact policies to prioritize prison space for the most serious crimes.

- Amend the drug grid and the nondrug grid to better reflect actual sentencing and reduce downward departures by expanding presumptive probation and border box zones; continue to ensure adequate capacity for people convicted of off-grid and other extremely serious crimes.
- Improve the SB 123 sentencing option by expanding eligibility to nondrug crimes and counting treatment time toward the sentence.
- Provide for “decay” of old criminal history so it is not counted in guideline scoring.
- Provide for jail or SB 123 treatment for marijuana sentences that currently are eligible for prison.

Policy Objective 2: Expand diversion options available to prosecutors and judges.

- Build on the SB 123 infrastructure to encourage more prosecutor diversions to certified treatment and provide treatment to more people before they commit more crimes.
- Adopt “deferred adjudication,” providing a judicial diversion option as a last opportunity to resolve a case without a criminal conviction.

Supervision Workgroup Policy Objectives: Strengthen supervision for a sentencing system that depends upon supervision to reduce recidivism.

- Ensure timely and consistent assessment of the risks and needs of women and men under supervision.
- Enable consistently strong, evidenced-based supervision practices.
- Anticipate a substantial quantity of technical supervision relapses among the relatively large population under supervision.
- Provide suitable incentives for compliance and consistent, measured sanctions for technical relapses by people under supervision.

Citation: Key findings and policy recommendations were provided by The Council of State Governments Justice Center and are based on presentations to the subcommittee on September 9, 2020, and October 7, 2020.

Percent of sentences to prison per box in the drug grid illustrates dispositional departure patterns.

FY2019 Felony Drug Sentences by Grid Cell – Percent Sentenced to Prison										
Criminal History Category										
	A	B	C	D	E	F	G	H	I	
Severity Level	D01	75%	71%	50%	n/a	75%	100%	50%	100%	60%
	D02	69%	75%	66%	50%	39%	36%	34%	27%	26%
	D03	78%	59%	45%	29%	65%	38%	42%	32%	16%
	D04	74%	67%	47%	32%	40%	33%	23%	12%	4%
	D05	43%	37%	15%	3%	14%	10%	3%	1%	1%

0 - 10%
11 - 25%
26 - 50%
51 - 75%
76 - 100%

Presumptive
Prison

Border
Box

Presumptive
Probation

Criminal History Categories	
A	3+ Person Felonies
B	2 Person Felonies
C	1 Person & 1 Nonperson Felonies
D	1 Person Felony
E	3+ Nonperson Felonies
F	2 Nonperson Felonies
G	1 Nonperson Felony
H	2+ Misdemeanors
I	1 Misd. or No Record

The grid cell for 5 drug grid sentences could not be determined due to missing criminal history information.

CSG Justice Center analysis of Kansas Sentencing Commission felony sentencing data, September 2020.

Amend the drug grid to better reflect actual sentencing and reduce downward departures by expanding presumptive probation and border box zones.

Current and Proposed Drug Grid Designations

Current Probation

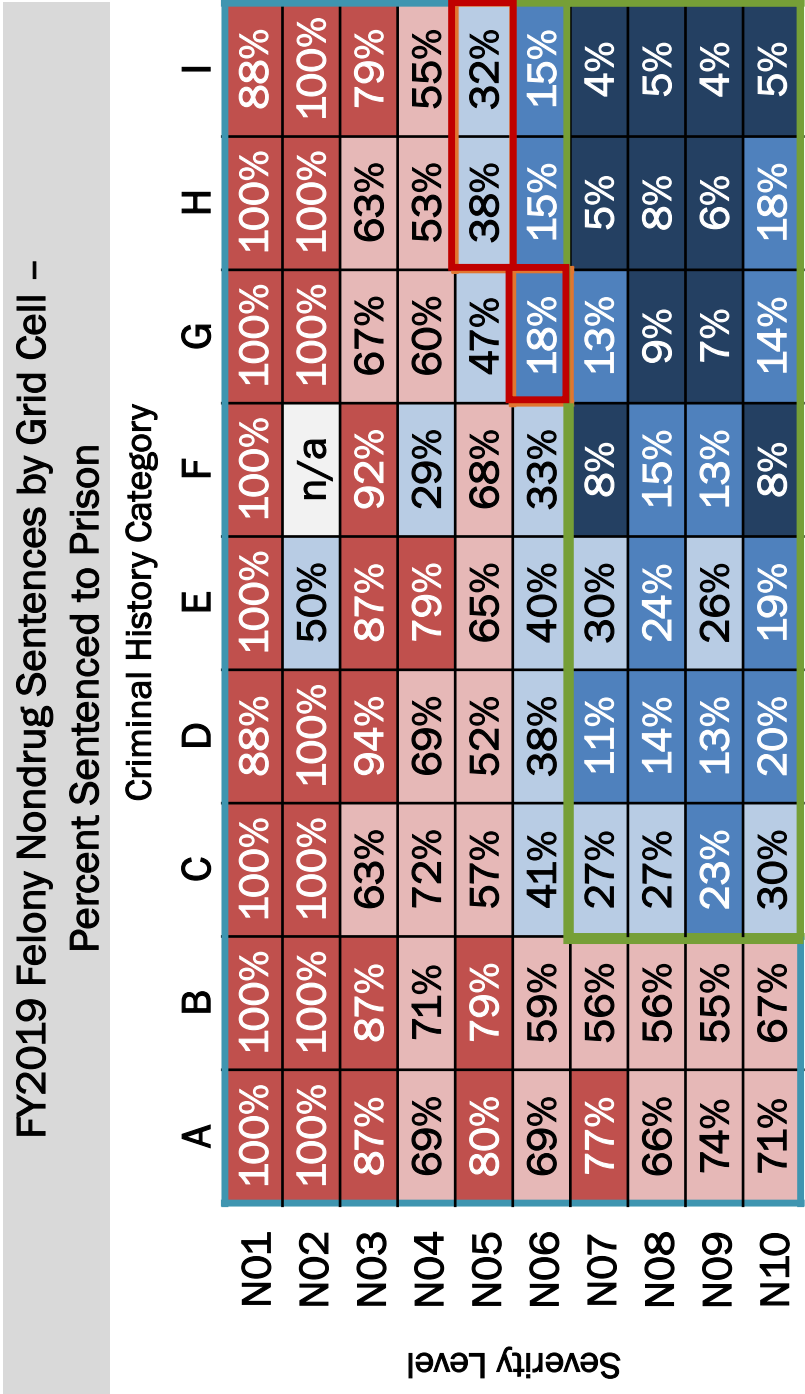
Current Border to Probation

New Probation

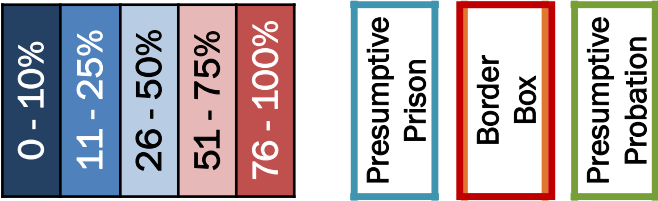
New Border

SL	A	B	C	D	E	F	G	H	I
1									
2									
3									
4									
5									

Percent of sentences to prison per box in the nondrug grid illustrates dispositional departure patterns.

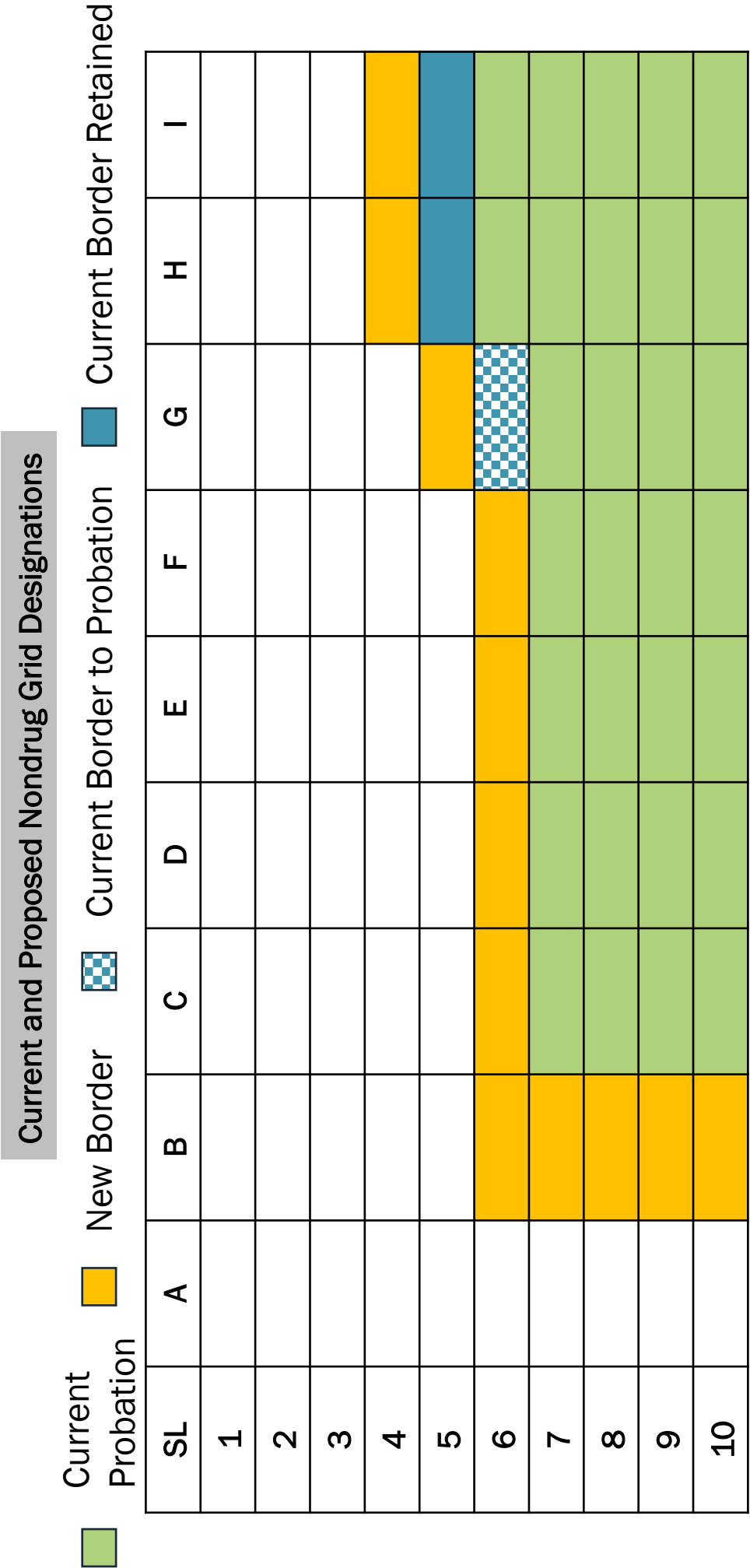


The grid cell for 7 nondrug grid sentences could not be determined due to missing criminal history information.



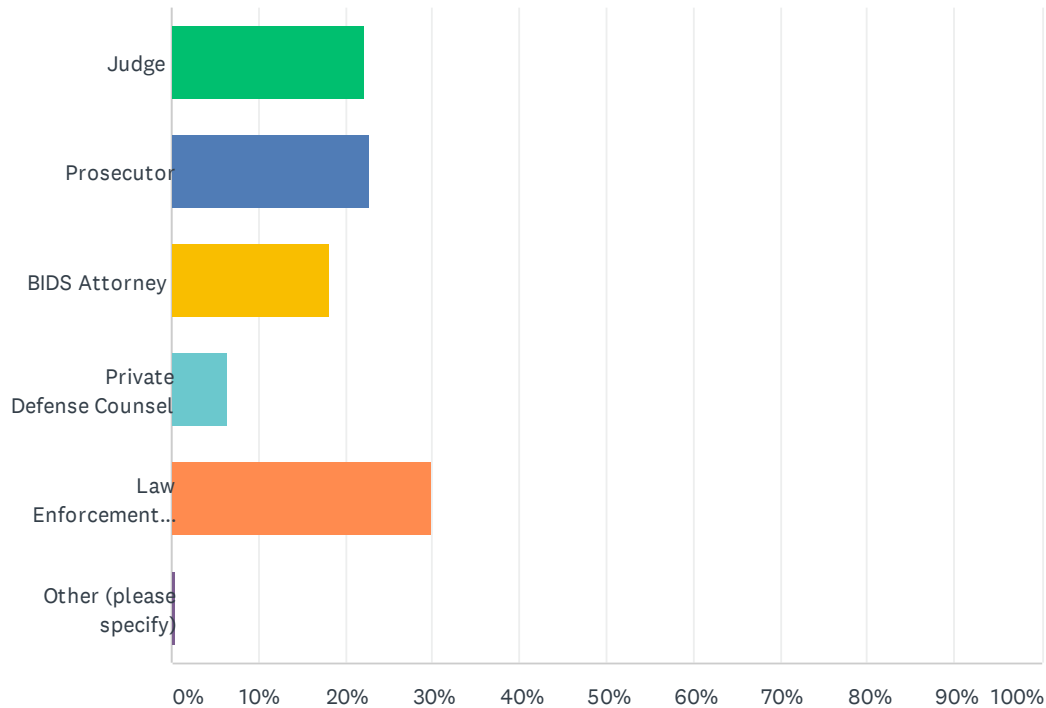
Criminal History Categories	
A	3+ Person Felonies
B	2 Person Felonies
C	1 Person & 1 Nonperson Felonies
D	1 Person Felony
E	3+ Nonperson Felonies
F	2 Nonperson Felonies
G	1 Nonperson Felony
H	2+ Misdemeanors
I	1 Misd. or No Record

Amend the nondrug grid to better reflect actual sentencing and reduce downward departures by expanding presumptive probation and border box zones.



Q1 What best describes your role?

Answered: 297 Skipped: 0

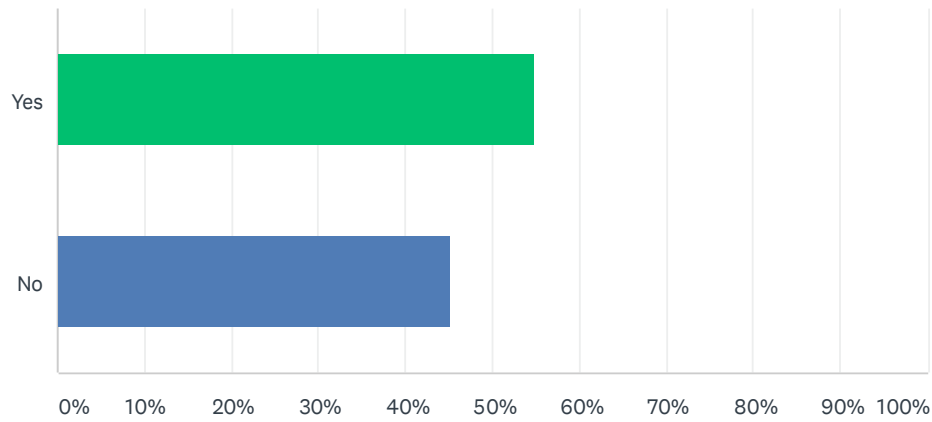


ANSWER CHOICES	RESPONSES	
Judge	22.22%	66
Prosecutor	22.90%	68
BIDS Attorney	18.18%	54
Private Defense Counsel	6.40%	19
Law Enforcement Officer	29.97%	89
Other (please specify)	0.34%	1
TOTAL		297

#	OTHER (PLEASE SPECIFY)	DATE
1	Sheriff	9/1/2020 1:38 PM

Q2 Would you support combining the current nondrug and drug sentencing grids?

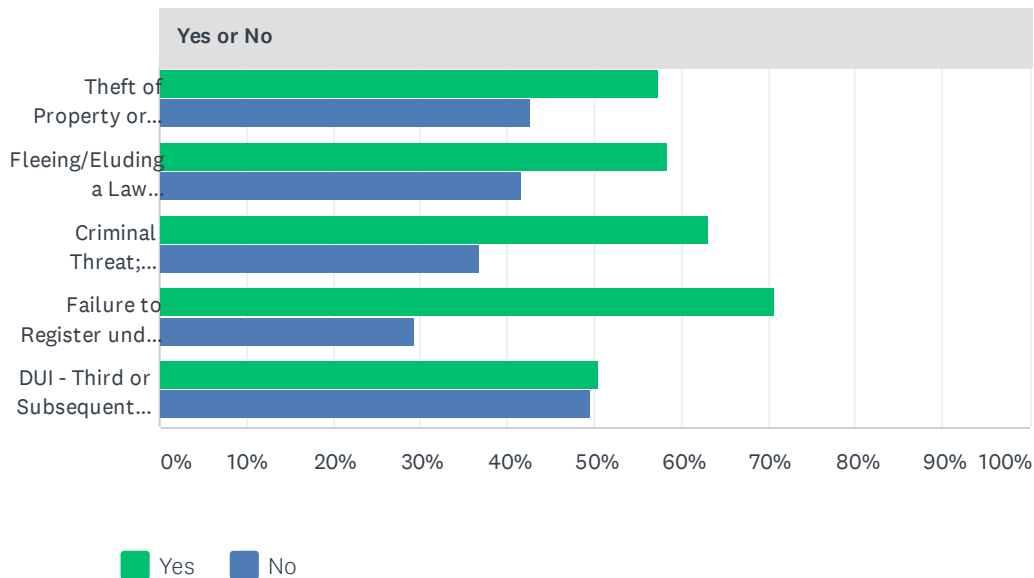
Answered: 292 Skipped: 5



ANSWER CHOICES	RESPONSES	
Yes	54.79%	160
No	45.21%	132
TOTAL		292

Q3 Should the top five nondrug felonies in the state as set forth below have the incarceration ranges re-worked for proportionality?

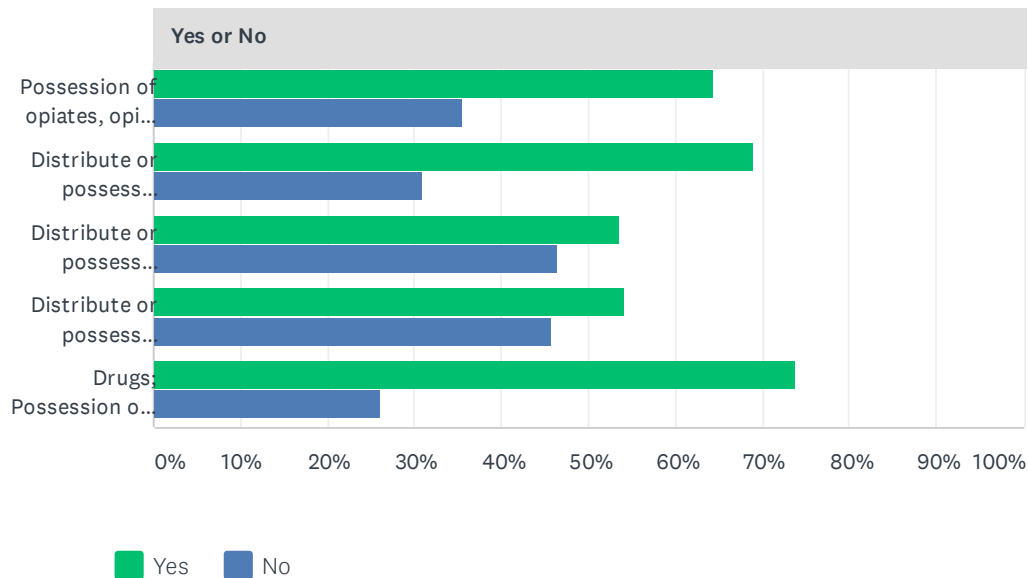
Answered: 293 Skipped: 4



Yes or No			
	YES	NO	TOTAL
Theft of Property or Services; Obtain or exert unauthorized control at least \$1,500 but less than \$25,000	57.39% 167	42.61% 124	291
Fleeing/Eluding a Law Enforcement Officer - 3rd or Subsequent	58.42% 170	41.58% 121	291
Criminal Threat; Threaten to commit violence w/intent to place another in fear, to cause evacuation, lock down	63.10% 183	36.90% 107	290
Failure to Register under the Kansas Offender Registration Act	70.79% 206	29.21% 85	291
DUI - Third or Subsequent Conviction	50.34% 146	49.66% 144	290

Q4 Should the top five drug felonies in the state as set forth below have the incarceration ranges re-worked for proportionality?

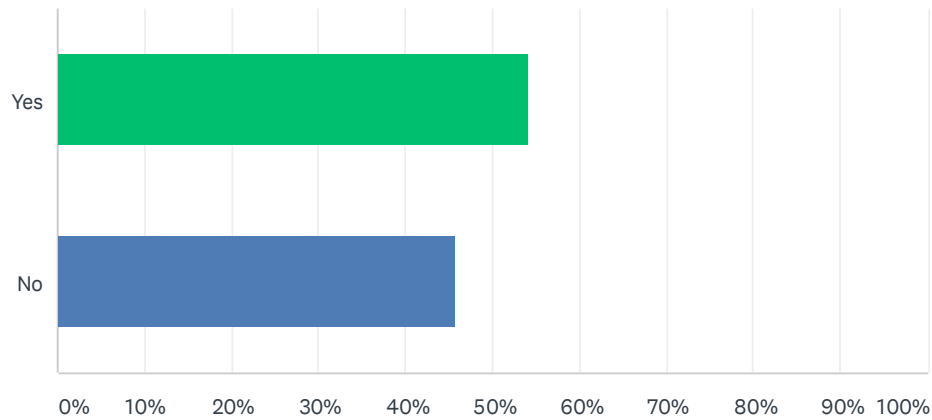
Answered: 295 Skipped: 2



Yes or No			
	YES	NO	TOTAL
Possession of opiates, opium, narcotic, stimulant (d)(1), (d)(3) or (f)(1) of 65-4107 or controlled substance analog	64.51% 189	35.49% 104	293
Distribute or possess w/intent to distribute; Marijuana; Quantity<25 grams	69.05% 203	30.95% 91	294
Distribute or possess w/intent to distribute; Heroin or Methamphetamine; Quantity=>1 gram<3.5 grams	53.58% 157	46.42% 136	293
Distribute or possess w/intent to distribute; Heroin or Methamphetamine; Quantity<1 gram	54.08% 159	45.92% 135	294
Drugs; Possession of hallucinogenic or analog; 3rd or Subsequent Offense-Marijuana	73.81% 217	26.19% 77	294

Q5 Would you support severity level 5 drug possession crimes (not sales or distribution crimes) to be classified as nongrid, much like DUI?

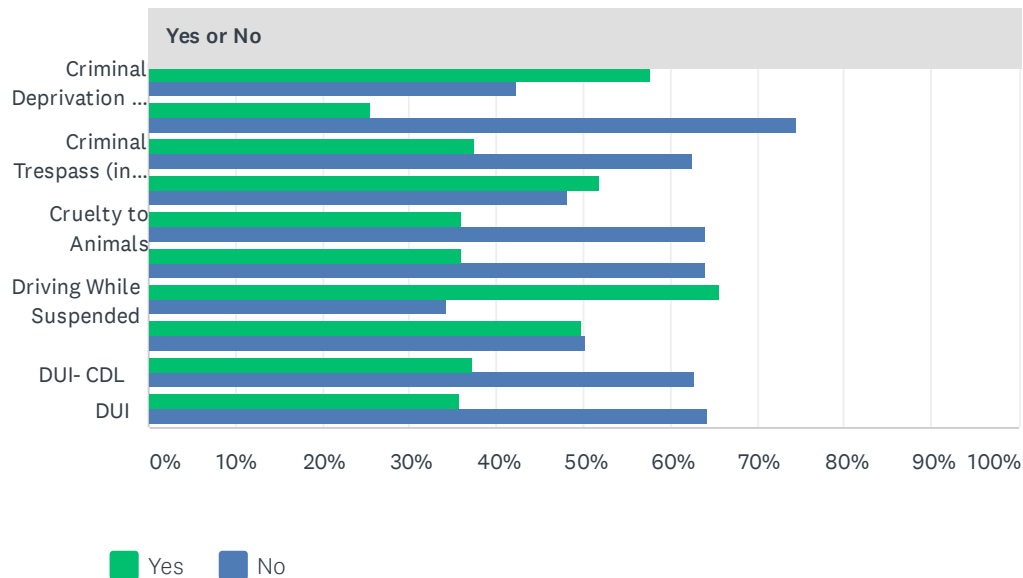
Answered: 293 Skipped: 4



ANSWER CHOICES		RESPONSES	
Yes		54.27%	159
No		45.73%	134
TOTAL			293

Q6 Would you support removing mandatory minimums for certain misdemeanors?

Answered: 296 Skipped: 1



Yes or No			
	YES	NO	TOTAL
Criminal Deprivation of Property (Motor Vehicle) - 2nd	57.68% 169	42.32% 124	293
Domestic Battery - 2nd and 3rd	25.51% 75	74.49% 219	294
Criminal Trespass (in defiance of restraining order)	37.54% 110	62.46% 183	293
Forgery - 2nd and Subsequent	51.89% 151	48.11% 140	291
Cruelty to Animals	36.08% 105	63.92% 186	291
Harming or Killing Certain Dogs	35.96% 105	64.04% 187	292
Driving While Suspended	65.76% 194	34.24% 101	295
Habitual Violator	49.83% 145	50.17% 146	291
DUI- CDL	37.29% 110	62.71% 185	295
DUI	35.79% 102	64.21% 183	285

Q7 Please include comments on previous survey questions or any other proportionality concerns you would like the subcommittee to consider.

Answered: 111 Skipped: 186

#	RESPONSES	DATE
1	Drugs should be decriminalized. Since this won't happen, all but the most serious should be misdemeanors or infractions. There should be no registry for drugs. We do not take person crimes as seriously as we should. Domestic battery is less serious than theft of a lawnmower. How can that be right? Which is worth more a person or a mower? Person crimes should have longer sentences. Disobeying a lawful order should have mandatory minimums with no tolerance. No client I have ever had has been rehabilitated from a drug addiction by being sent to prison.	9/16/2020 7:28 PM
2	I don't see the point of making possession crimes a non-grid. Should have more treatment options and maybe make the range on all charges bigger so the judges have more discretion. DUI's third or more should possibly have harsher sentences, especially with a high BAC (Say double or more of the limit). Eluding should be a much higher crime or sentence given the overall danger to the community, especially for people with subsequent convictions or if they cause a wreck. The drug grid needs to be reworked but not combined. When a possession charge can get the same (or more) amount of time as an agg assault at some criminal history levels, there's something wrong.	9/16/2020 5:31 PM
3	Mandatory minimums cannot be removed from DUI violations withing exposing the state to federal penalties. The State's current minimums comport with federal minimums and are not in excess of those requirements. Simple possession of drugs should be a level 9 or 10 felony. Get rid of the special rule that makes a third offense presumptive prison. Minimum mandatory jail sentences can be an important tool for crimes such as DV Battery so I oppose removing them from some crimes. Other violations, such as DWS, I have no problem removing the minimum mandatory. You inquire as to essentially 3rd possession of marijuana; marijuana penalties need to be scaled downwards as more and more communities choose not to enforce marijuana laws at all. These creates a significant statewide proportionality issue.	9/15/2020 2:20 PM
4	Vehicular Homicide should be a felony, there should be an aggravated section for when it is done with a CDL holder. Rape should not have to prove lack of consent. Furthermore force or fear should be aggravating factors, not the standard.	9/15/2020 1:05 PM
5	Some penalties should be increased, some should be decreased. This survey does not include how they should be modified.	9/15/2020 11:22 AM
6	We need to make sure we prioritize prison space for violent offenders.	9/15/2020 10:49 AM
7	I said yes to number 5 but they should in all reality be made misdemeanors.	9/15/2020 10:44 AM
8	It is too easy for theft and especially criminal damage to property to become a felony with the monetary limits at their current state. Most vehicles incur felony-level damage at the slightest amount of force. This should be reviewed frequently. The punishment for DUI homicide is disproportionately low. It is often hard to explain to a family why their deceased loved one's life is worth such a short sentence.	9/15/2020 10:43 AM
9	You can tinker with the numbers, but to get real change that helps offenders and public safety you need resources to work with them and time to allow change to happen. Inadequate resources=little likelihood of lasting change.	9/15/2020 10:38 AM
10	I support removal of mandatory minimum jail sentences for non-violent property crimes that do not pose a public safety risk - forgery, temp dep, ect. DUI and DV Battery are another matter, though. As for registration offenses, and possession drug crimes, making them non-grid would be fine (more thoughts on possession drug crime below). I'd be careful about making flee and elude a nonperson offense -- as the risk that crime poses to the public and LEOs is substantial. Another possibility for SL5 drug possession cases would be to create a new category -- not non-grid (which pushes responsibility back to the county jail) but maybe a range that goes up only incrementally if at all. 6-9-12 months per conviction, from criminal history E or below, with 9-12-18 for CH A or B. Get creative. Keep Crim Threat a person felony. Its a great plea negotiation tool for all parties. The Agg Assault or DV assault charges plead to that because its a PF but defendants like it because its only a SL9, not a SL7. Change that and your other, more serious PF convictions (and consequent incarceration) will go up exponentially.	9/15/2020 10:15 AM
11	End the war on drugs, End the war on the poor	9/14/2020 1:01 AM
12	Distribution of meth/heroin/opiates should not be touched. Even though touted as "non-violent" offenses they most certainly are accompanied with violence and other crimes committed in	9/11/2020 12:50 PM

conjunction with it. Criminal possession of a weapon (firearm) penalties need to increase especially if the prior felony is for a person crime or for a drug crime. Our current penalty for that offense is a joke.

13	I really think there needs to be a fix to Special Rule #26 (3rd or subsequent conviction for felony drug offense). The PSI writers are told to mark that the Special Rule applies when the three drug felonies are all in the same complaint. I don't think that was the legislative intent. Please look at replacing the language "third or subsequent" with "prior convictions." I think that could eliminate that issue, and actually penalize repeat offenders instead of someone who happens to possess three kinds of felony drugs at once. (Or what I usually see is that they have one prior, and then have two pending meth cases. For purposes of plea, I combine the meth cases into one complaint because the person needs treatment. Instead, they're put into the presumptive prison category.) Additionally, if you're looking at forgeries anyway, the same could be done there, which could help reduce the frequency of minimum jail penalties.	9/11/2020 12:47 PM
14	The drug grid is so harsh compared to other crimes. Felon in possession of a firearm is HALF the punishment of simple possession of drugs. Need to be much harsher on person crimes and need to chop level 4 and 5 drug offenses in half.	9/11/2020 9:54 AM
15	With respect to the drug crimes, the jump in quantity the moves a distribution from a level 3 to a level 2 and a level 1 is HUGE. I think the drug grid would be more reasonable if the quantities were more evenly spread out. Sometimes major distributors are getting level 2's (with 50-100g) and sometimes "smaller" street level distributors are getting the same level 2 charge for having 4 - 10g. ALSO, the grid time for level 5 possessions is pretty extreme for someone who's NOT a dealer, but primarily a user. There has been discussion that the D5 possession might change to be closer to regular-grid level 8 - I think that is a great idea. Many Judges hesitate to ever impose the underlying time because it's such a long amount of time; thus, most D5 probationers know they will rarely face any type of revocation no matter how many times they violate probation.	9/11/2020 9:52 AM
16	The drug grid is absolutely draconian and needs to be substantially revamped.	9/11/2020 9:48 AM
17	Felony flee/elude should be higher on the grid, it usually is incredibly dangerous; the maximum penalty for 3rd and subsequent DUI should not be one year, there needs to be some proportionality to intoxication and number of priors convictions that does not exist when the maximum is the same for second and subsequent offenses; drug distribution sentences are fine where they are, felony drug possession could be reworked from "A-D" on the grid to where the maximum sentence was consistent with what is now a 5E or 5D box.	9/11/2020 8:45 AM
18	No additional comments	9/11/2020 8:42 AM
19	We should move away from non-grid felonies in general, but particularly felony DUI.	9/11/2020 8:26 AM
20	Meth is a problem. Do not lessen the punishment. We have seen manufacturing go down, in part, because of the severe punishment. Now distribution is up (filling the demand). Lessening the consequence would be unwise. The vast majority of theft cases are tied to individuals who are involved with meth. Victims of theft feel violated by the criminal and ignored by the justice system with little punishment to the criminal other than probation requiring them to simply follow the law. This typically results in years of probation violations resulting in very little repayment to the victim. Criminal prosecution of marijuana is an inefficient use of resources unless tied to dui or what would be the equivalent of an open container charge. Criminal threat is too broad and can turn a heated argument into a felony prosecution. Driving while suspended is a vicious cycle for most and the system feels broken. People who can't pay fines, lose their right to drive which inhibits their ability to get to work to pay the fines. They drive out of desperation and it snowballs. We should re-work what can cause a suspension and limit the use of that restriction. Fleeing and alluding is an extremely dangerous crime putting officer and civilian lives in danger. It is not punished proportionately.	9/10/2020 10:45 PM
21	None	9/10/2020 8:55 PM
22	Property crimes need more severe/mandatory jail/prison. It makes no sense that you have to do 48 hours for a DUI 1st, but a Residential Burglary has no minimum	9/10/2020 8:02 PM
23	It is a shame that we treat addiction so harshly. To receive the same sentence as an addict, a person must pull a deadly weapon on another (If they are an I).	9/10/2020 6:26 PM
24	Nothing good comes from reducing the penalties for most of the offenses referenced above given that most involve presumptive or agreed probation by plea agreement and there is little	9/10/2020 5:09 PM

to no likelihood that prison sentence will ever be served. If prison is ordered after multiple probation violations the defendant inevitably receives a McGill modification substantially reducing prison time. I am unsure of basis for concern about "proportionality" as it strikes me as just another reason to continue going softer on crime and criminals.

25	Felony DUIs need a greater range in maximum sentence. It is incomprehensible that a 7th offense DUI has the same maximum sentence of 12 months as a 3rd offense DUI (or even 2nd offense DUI). Courts should be permitted to sentence repeat felony DUI offenders to more than 12 months jail.	9/10/2020 4:49 PM
26	None	9/10/2020 4:43 PM
27	I think exit mechanisms for lifetime postrelease and parole would be advisable. Not having lifetime postrelease on lower level (6+) felonies may also be advisable. The sentence for attempts, conspiracies, and solicitations to commit offenses (especially Jessica's law offenses) should not be the same as completed offenses. Removing that would allow for better plea deals. And some Jessica's law offenses should not carry life sentences. Be careful removing low-level felonies from the grid. You may well end up with longer jail sentences if they become misdemeanors. Low-level offenses are typically mandatory probation, whereas the court has absolute discretion to impose jail time for misdemeanors.	9/10/2020 4:23 PM
28	I would like the subcommittee to consider removing the 3rd or subsequent felony drug possession conviction special to requires imprisonment. I would also like the subcommittee to consider implementing a mandatory minimum imprisonment for any kind of felony domestic battery including strangulation.	9/10/2020 4:05 PM
29	n/a	9/10/2020 3:59 PM
30	Please keep marijuana illegal.	9/10/2020 3:57 PM
31	the juvenile sentencing matrix needs attention, including reworking the habitual violator provisions.	9/10/2020 3:52 PM
32	Dui should become a grid charge and come with heavy penalties, flee and elude as well	9/10/2020 3:50 PM
33	Place DUI - 3rd on the grid, as Level 9 offenses. put on a mandatory minimum jail sentence and fine (like we do with forgery-3rd or subsequent) if you feel that is necessary, but get rid of Post-Imprisonment Supervision and just make it post-release. On offender registration violations, remove the special rule under 21-6804(m) that requires all of these convictions to be presumptive imprisonment (but it allows for border box findings on Level 5 offenses, which are second offenses - this is not allowed on Level 6 first time offenses, which seems unjust). Allow the placement on the grid control prison/probation, not the special rule. Also, first offenses could be a level 7, second offenses could be a level 5, and third or subsequent offenses could be a 3.	9/10/2020 3:49 PM
34	There should be more time on severity level 3 crimes; there is a big jump from a 3 to a 2. Also should be a more gradual jump from a "C" to a "B" on level 5-1 (adjustment made to "C" and down).	9/10/2020 3:46 PM
35	I selected yes, but want to be sure my thoughts are understood. There are crimes I actually feel to be quite low on the underlying time with presumptive probation, that I think should be re-worked to increase the time (criminal threat and aggravated domestic battery are two that come to mind.) Likewise, there are many I find to be disproportional and should be lowered (the idea that the A history necessarily supports the time listed for simple possession offenses has always confused me.) If a kid gets a few person felonies as a teen and then at 30 has a drug problem, it's hard for me to say he deserves an A-5 drug box sentence and a person who habitually possesses and is convicted for possessing drugs routinely never gets over the "E" amount. Not to say they should be higher, but that the A person's time doesn't seem that proportional.	9/10/2020 3:45 PM
36	There is no reason to lighten any sentences anywhere, offenders get too many chances at probation as it is. Too many departures granted.	9/10/2020 3:44 PM
37	On question 5, my answer would be, "It depends." I believe that the current penalties for felony drug possession offenses on the grid are disproportionate and need to be substantially reduced. But it's hard to answer that question without knowing what the penalties under the nongrid scheme would be.	9/4/2020 12:10 PM
38	N/A	9/3/2020 8:30 AM

39	Simple drug possession crimes should all be misdemeanors. The state should fund treatment centers similar to JOCO's Residential Center for drug possession violators.	9/2/2020 11:27 AM
40	Failure to register should be a non-person crime, without a \$20 fee, and it should go back to a level 10 felony. There is absolutely no scientific data to back up the idea that registration makes our communities safer or that it reduces recidivism. There should be no registration for violent crimes or drug crimes at all. If anything, the registries for drug/violent crimes should be for law enforcement only. These laws on registration are Draconian. As for sex offenders, there should definitely be a way for people to apply to be removed from the registry, but again, there is no data to support the idea that registration helps anyone.	9/2/2020 9:19 AM
41	The guidelines are a joke. A felony fleeing and eluding a level 9 is stupid, it should be a 5 or higher. People want people that commit crimes to be in prison, not probation all the time. The Court takes blame for this, but it is what the legislature does.	9/2/2020 8:09 AM
42	I personally do not support the lessening or removal of mandatory minimums. It provides the public with a sense of "wiggle room" when it comes to committing crime. If anything I would like to see some of these options be taken more seriously rather than being diverted.	9/2/2020 6:28 AM
43	Sections 3 and 4, I feel some could have the range lowered and some could be raised. But all of them should be considered for change.	9/2/2020 2:28 AM
44	I believe that, if we have to prioritize measures, that modifications to the drug statutes and sentencing grid and eliminating mandatory minimums should receive the most focus. The drug statutes and distribution presumptions are based on outdated information and product costs. What used to be distribution level amounts are now commonplace and not indicative of an intent to distribute, only that they got a bonus on Friday and have some extra cash to spend. Another huge problem is the weight difference between a level II and a level III. It's illogical that someone who has 3.6 grams is going to be charged and potentially convicted at the same level as someone with 99.5 grams.	9/1/2020 11:37 PM
45	25 grams of marijuana is FAR TOO SMALL an amount to be designated a Level 3 drug sales felony. The sales "presumption" is 450 grams, so a small quantity distributor is designated as a distributor in the criminal charge, but is not, by law, presumed to be a distributor. Why is meth and heroin singled out from cocaine and other drugs for harsher treatment as to levels charged based on quantity? They should be treated the same. Re Marijuana: There is no limit to how much a person can possess (just limits on sales amounts) but I find that any arrestee who possesses more than a small quantity (less than an ounce) is charged with distribution, even with no evidence of sale or possession with intent to sell. The reality is that marijuana users have increasing access to "quality" product and oftentimes will buy quantities for personal use when they find something they like. If people are arrested based on quantity, the levels should be increased. The statutes on drugs are aimed at cartel level distributors, and are too harsh for the reality of the small time Kansas weed seller, which is the majority of arrests and reflects reality. Weed should not be illegal to possess, but as long as it is illegal, the laws should be realistic. For example, I have a college age client with NO criminal history, who sold \$80.00 of "dab" and is charged with a Level 4 distribution crime! Another client sold 40 grams and no criminal history, and is charged at a Level 3. The sentences are presumptive prison in both cases, though neither client has ever been in trouble. These are 21 year old kids who make a stupid error and who are punished so disproportionately it is incredible. Both graduated from college this year and face a dismal employment future due to selling a friend a bit of weed. This hurts Kansas, it is unfair, and needs to be corrected.	9/1/2020 7:00 PM
46	The huge disparity in possible juvenile sentencing options for felonies needs attention, and likely closing of the gap.	9/1/2020 4:57 PM
47	The survey was not well constructed! For example, what do you mean about combining the drug and non-drug grids? Does this were to mean that there would be 15 severity levels or just 10. Also, what does proportionality mean in this context? A sentence for a particular crime must be tied to some other sentence in order to consider proportionality. If the questions were intended to determine if survey members think certain sentences are too harsh then that's a different conversation.	9/1/2020 3:45 PM
48	Having watched the time portion of the Grid grow and minimum sentences being added over 30 years of practicing law, it is well pass time to rethink locking people up for long periods of time, and for driving while poor.	9/1/2020 2:11 PM
49	Drug offenses are very disproportionate to other offenses. Burglary of a dwelling should be	9/1/2020 1:57 PM

more severe - registration should be less so. Often times the offense for failing to register is greater than the crime for which registration is required - more drug offenses should be presumptive probation with treatment - should allow SB 123 treatment without the necessity of a conviction.

50	Sentences have over the years been reduced and it seems as though few are really being held accountable for much of anything these days. The more leniency shown, the bigger joke this system of ours is becoming. Offenders already know if you have a simple drug charge nothing will happen, or if you commit a property crime, nothing much happens. There is very little accountability already. Let's not make it worse.	9/1/2020 1:57 PM
51	I'm not sure it matters much how crimes are classified, as counsel will simply craft plea agreements and amend charges (even with no factual basis) to obtain the sentence they agree on.	9/1/2020 1:41 PM
52	I would like a definition of proportionality!!	9/1/2020 1:38 PM
53	I think we need to rethink the length of incarceration on all of our guidelines. There should be some factor for how old the prior convictions are that are increasing the criminal history. All the math is used to increase sentences and that should no longer be the norm. Supervision is cheaper than incarceration and more effective. Parole is underfunded and overworked and too many people are a in the revolving door of violation, back to prison.	9/1/2020 1:36 PM
54	Please change (lower) the sentencing range for Level 5 possession and mandatory prison for third offense. Prison does very little to address the underlying issue of addiction. We also need a better mental health system so folks don't self-medicate with illegal substances and could instead get the mental health treatment they often need.	9/1/2020 1:26 PM
55	The penalties should be more harsh. Anyone having been convicted of two or more felonies should not be eligible for probation. After you have been convicted of possession of CDS three times you should go to prison and not fall into a probation box. Defendants know the grid and they know what they can do and not do to fall into a prison box.	9/1/2020 1:21 PM
56	Mandatory minimums on misdemeanors are a bad idea. Also, we should allow diversions for 1st time DUI's for people with CDL's.	9/1/2020 1:18 PM
57	The Sentencing "Special Rules" like mandatory imprisonment for drug crimes, etc. need to be changed.	9/1/2020 1:15 PM
58	drug felonies should have weight increased in each offense to reduce penalties	9/1/2020 1:09 PM
59	A felony should be prison, not jail. Possession of drugs should be less severe, distribution more severe, but prosecutors will simply plea the distribution to possession.	9/1/2020 1:00 PM
60	Many Qs left blank due to lacking adequate knowledge or a strong position.	9/1/2020 12:54 PM
61	In light of the public safety risk posed by the crime, the maximum sentence in a felony DUI case should be longer than 12 months. The maximum sentence should increase with each additional conviction instead of remaining the same whether it is the fourth or the fourteenth.	9/1/2020 12:42 PM
62	Fleeing and eluding should be presumptive prison.	9/1/2020 12:42 PM
63	Do not reduce mandatory penalties.	9/1/2020 12:32 PM
64	The questions regarding proportionality are not good questions. I am not sure my understanding of what "reworked for proportionality" means is the same of what it means in this questionnaire.	9/1/2020 12:32 PM
65	The issue with drug possession being non-grid crime is the burden it would impose on the local jails for incarceration. If reclassified as a non-grid crime you shift financial responsibility to county jails that cannot handle the burden.	9/1/2020 12:20 PM
66	The missing piece is providing appropriate therapy: drug therapy, anger management, etc. In order to promote rehabilitation, therapy is essential & unavailable to the extent necessary.	9/1/2020 12:20 PM
67	Judges should have more discretion in sentencing.	9/1/2020 12:04 PM
68	We need to address registration violations. They should not carry a more severe sentence than the original underlying crime in some offenses.	9/1/2020 11:54 AM
69	1 jury trial 2019, if judges would work it would be helpful, and prosecutors do nothing but plea	9/1/2020 11:42 AM

	deals	
70	The drug felonies really need to be reworked. The quantities used to separate the severity levels are not realistic, especially meth and marijuana. The prosecutors even think they are ridiculous.	9/1/2020 11:25 AM
71	Safety of others beyond the individual should be considered. Would this put others at risk if the current were to be changed?	9/1/2020 11:08 AM
72	MJ poss. (Even 3rd subsequent) Should be infraction.	9/1/2020 11:05 AM
73	The KORA registration penalties are out of proportion and basically punish people who are poor and have mental health issues. We are locking up homeless people because they fail to register. These laws are inhumane. The laws for sex offenders who go to prison--life time post release with ankle bracelet--are ridiculous. While there may be some sex offenders who may deserve this, others are given no hope of ever getting out of the system. This is particularly true for young men who get caught in the system over a he said/she said case. We should not be locking people up for selling marijuana when it is legal in other states. I have represented people stopped in Greenwood county for possession of drugs with intent to distribute. These are not big quantities which are found, but there they are locking up out of state people in our prison. I doubt Kansans would want to pay to incarcerate people for years in our system when they don't even live here. This county stops everyone who has an out of town plate and then they proceed to impound their vehicles and have them forfeited to our state. The aggravated burglary statute should not include inherently dangerous felony of stalking in it. I see people charged with going back to their own home and then charged with aggravated burglary which carries a penalty which is too severe. Proportionality concerns--I currently have a case where the client beat up his girlfriend, posted bond, they got back together and the cycle repeated. Now, he is looking at spending more time in prison than he would had he killed her. There should be a maximum to how the State may stack charges when the person is out on bond and picks up new offenses.	9/1/2020 10:48 AM
74	You ask "reworked for proportionality" ... that is a bad question and means different things to different people. It should ask "increase or decrease." Any small quantity drug possession should be a misdemeanor. Failure to register is an absolute joke. It's nothing more than a tool of oppression, and cannot be said to do anything for public safety. Kansas is one of only a few states that require violent and drug offender registration.	9/1/2020 10:44 AM
75	Mandatory minimums should be eliminated and DUIs should be treated as all other cases that can be plea bargained.	9/1/2020 10:43 AM
76	I don't think this survey appropriately allows for the right questions to be asked and answered. The sentences are not proportional to the crimes committed, but some are more disproportional than others (KORA, for example). Additionally, mandatory minimums are an absolute travesty that do not actually deter future conduct, similar to three-strikes rules. Finally, it is clear that the "war on drugs" has failed and just leads to mass incarceration. Drug crimes should not be punished as harshly as they are. While I said the two grids should be combined, I could be persuaded that different grids are appropriate if the drug grid takes into consideration actual needs of those who are investigated and convicted of drug crimes and doesn't simply chuck someone in prison based on an arbitrary weight set by a legislature that seems to change the grids on a whim.	9/1/2020 10:40 AM
77	There needs to be a difference between DWS due to inability to pay fines and DWS because of DUI. The current law unfairly lumps the two groups together.	9/1/2020 10:36 AM
78	Mandatory sentencing has really removed the ability of the lawyers and the judges to manage cases well. In jurisdictions where I practice my hands are largely tied when it comes to sentencing due to mandatory sentences combined with judges who are very reluctant to do departures. And, further, mandatory sentences do not necessarily take into account relatively reformed behavior (i.e. 2x DUI in 2005 then a 3rd in 2020 will require 90 days in jail despite 15 years of sobriety. The court is unable to take into account individual circumstances of the defendant which might have caused the issue.).	9/1/2020 10:35 AM
79	Need to work on reducing the amount of special rules and mandatory minimums	9/1/2020 10:30 AM
80	Criminal offenses need to have proportional sentences attached. Probation in its current form is a failure as it does nothing to discourage future criminal acts.	9/1/2020 10:29 AM
81	We need to have more punishment especially for repeat offenders	9/1/2020 10:28 AM

82	I did not answer many of the questions. I am concerned that my support for attempts to achieve proportionality or remove minimums will not lead to less crime, and there is no information regarding increases in mandatory treatment for drug and alcohol crimes that could reduce crime. All of these concerns are not based on how I personally feel, but I believe these well-intentioned efforts neglect past, current and future victims. Are we asking them (at least past and current victims) how they feel about these changes? Forty years ago, mental health hospitals began to empty with the promise that reduce costs in MH hospitals would be redirected to communities where local treatment would be provided. We saw what happened around the country and the mess was laid at the feet of law enforcement, families and new victims. I may be digressing so I will stop what may read like a rant, but I assure you it is genuine concern for the safety of our communities.	9/1/2020 10:15 AM
83	Drug sentencing is way out of line, and needs to come down significantly. Criminal threat needs to be a misdemeanor, or needs to have some sort of equivalent misdemeanor available. Mandatory minimums are a problem that make it a lot harder to negotiate palatable pleas.	9/1/2020 9:44 AM
84	We must take dramatic action if we want to meaningfully address our mass incarceration crisis. I'm concerned that "combining the grids" will increase sentences for nondrug felonies, rather than dramatically reduce sentences for drug crimes. Our drug grid is absolutely draconian. The prevalence of the special rules, which apply more often than not and always increase the controlling sentence, is another reason to dramatically reduce sentences. I urge the committee to seek input from public defenders in a more substantive and meaningful way than this survey.	9/1/2020 9:26 AM
85	If you build up regional resources for mental health instead you will likely not need to rework the crime issue as those who really need help will get it instead of leaving it up to law enforcement to solve. Spend your time wisely working on that issue instead. Mental Health is a MEDICAL issue; not a Law Enforcement issue.	9/1/2020 8:56 AM
86	Drug offense's need to be tied to rehab!	9/1/2020 8:11 AM
87	What are the ranges of proportionality you are considering. These are very open ended questions!	9/1/2020 7:45 AM
88	The system is broken....the lack of sentencing has sent the wrong "impression" to criminals, thus creating the sense nothing will happen....build more prisons.....society is out of hand....	9/1/2020 7:36 AM
89	Need to make the charges more severe	9/1/2020 6:31 AM
90	If you don't make drug users spend time in jail and prison they will not change. Not enough time clean. You can not reduce penalties on victim crimes. If an offender has no consequence he will continue to strike. This will cause the death of many victims. Property crime should be punished harder. The offender never learns and believes that is their only way of life	8/31/2020 9:41 PM
91	The fleeing and eluding laws should be strengthened. Pursuits have become to common place.	8/31/2020 9:09 PM
92	This is poorly written. Answers can easily be misinterpreted.	8/31/2020 8:49 PM
93	NA	8/31/2020 8:33 PM
94	The sentencing guidelines should be firm and proportional to the crime and less ability for deviation agreements by attorneys or judges. The lack of fear for the criminal justice system enables criminals and subverts justice. It should be called the "victim/society justice system. But then defense attorneys would be out of a job.	8/31/2020 7:36 PM
95	Drug crimes are currently disproportionate to non-drug crimes. Sentencing on drug possession would be better as a non-drug as long as drug treatment was still provided. Also, remove the 3rd or subsequent special rule. It prevents treatment in some situations which is greatly needed and unjust (for example two priors from many years ago or two picked up in a very short time so only one chance at treatment because the first two were sentenced together).	8/31/2020 7:11 PM
96	Drug offenses, if off grid, would make drug offenders spend too much time in the county jail.	8/31/2020 7:07 PM
97	Build more prisons. Drugs are the underlying issues with most crimes. Need more mental health facilities as it is ridiculous to have officers sit with patience for up to 16-24 hours before can get them into state hospital. Need more drug treatment facilities. Focus on the issues and quit bashing law enforcement wjmhen they don't have resources to do the job.	8/31/2020 6:43 PM
98	The penalties on the drug grid are ridiculous. I understand the intent to punish people who are	8/31/2020 5:34 PM

selling drugs to prevent others from being addicted or over-dosing. But most cases we see are possession with the intent and not actual selling. Most of the time, they are drug addicts themselves who are struggling to get by and support their own addiction. It's ridiculous that person who has over 3.5 grams of meth or heroin--which is NOT a large amount to get to--could do more time in prison than people charged with high-level, violent offenses. In fact, it's not a could do more time-- it does happen. All the time. In doing this job, I don't think I've ever seen a meth PWID case be charged from the beginning as a level 3 drug felony. Most of the time, they are level 2s because the minimum gram requirement is so low that it easily bumps up to a level 2. As far as making the level 5 drug felony a non-grid-- I'm torn. It has positives and negatives. Clients would lose good-time credit they would otherwise receive and no opportunity for program credit. Serving the sentencing in KDOC vs. the county jail. I'm sure the county isn't going to want to pay for that since those cases are numerous. However, it would cap the penalty at 12 months as opposed to the 42 months that is the current maximum. It's ridiculous that a person with two or more priors for marijuana can go to prison for 42 months (incorporates another survey question) or someone who possesses a small quantity of meth/heroin/cocaine could face that much time. Once again, that's more time than what some people could/would do for higher-level person/violent offenses. They're addicts--they need treatment. It's a waste of resources to incarcerate them for the amount of time the grid currently requires. On the other hand, they won't get the KDOC programming in the jail. The best solution would be just to re-work the drug grid or at least a MINIMUM re-work the level 5 drug grid (or incorporate the grids and put this at lower level) so the client would be subjected to less time overall, but could still receive the benefits of KDOC should the person be remanded to serve time. Another negative of making it nongrid is the graduated sanctions don't apply, though they don't exist much anymore anyway. The courts wouldn't be required to do a two/three-day sanction before remanding a client to serve a sentence. Plus, most of my clients prefer to go to KDOC and serve time as opposed to in the county jail. Penalties under KORA are also ridiculous. Especially since it's supposedly not punishment to require people to register. Clients can and do have larger sentences for failing to register than for the original offense that required registration in the first place. Criminal threat being a felony is absurd. If a person physical touches/injures a person, it's a simple misdemeanor battery. But using words instead is a felony? And a person felony at that where the client's criminal history is more significantly impacted. Not sure why forgery requires the mandatory jail time. However, that's preferred than if it were mandatory imprisonment like ID theft. The "fleeing/eluding a third or subsequent" current rule is bizarre and doesn't really do much. It's just mandatory imprisonment and imposed consecutively. However, that's just obvious anyway. Fleeing and eluding is a person felony. So if it's a third or subsequent, then that person has 2 prior felony convictions for fleeing/eluding. So they should be presumptive prison anyway based on criminal history. If it elevated the severity level of the offense from a 9 to something a little higher, that would make more sense. Or if there were aggravating factors, that would make more sense.

99	I believe that offender registration violations should be severely reduced in penalties. I believe that DUI should have an escalating penalty and be moved to the grid. I believe that criminal threat should also be a misdemeanor.	8/31/2020 4:30 PM
100	Most of my clients are in prison for drug crimes. I do not believe they are a harm to the public and they should not incarcerated, at least not at the length at which they are currently sentenced.	8/31/2020 3:52 PM
101	none	8/31/2020 3:45 PM
102	I'm not sure what you mean by "proportionality". You should not increase L9 sentences to match the current 5Ds. You should reduce the 5D crime to match the L9s. In fact, consider making 1st time possession of ANY drug a misdemeanor. Also, Drug Distribution should not be chargeable as a 3D or 4D on weight alone.	8/31/2020 3:43 PM
103	I am not quite sure what the thinking is on question 3--is it asking whether I think sentences are currently too high and need to be reduced for proportionality purposes, or too low and need to be adjusted upward? If it is that they are currently too high, I would agree. Not addressed by the survey: There needs to be adjustment to shrink the gap between the sentence for A and B offenders and the sentence for C offenders on higher level crimes. Where there are aggravating factors, the state has the ability to up-depart, but baseline sentences shouldn't start out so high. Definitely shouldn't be so high when comparing them to C box offenders. Also, not all person crimes are equal--there is a huge difference between someone who is in the A box because of 3 prior attempted murders or even aggravated batteries committed at different times and someone who is in the A box because of 9 prior violations of a protection order that	8/31/2020 3:27 PM

have been converted or 3 prior criminal threats. These less serious, nonviolent "person" crimes should be treated differently and shouldn't result in a person being presumptive for prison on all cases.

104	Possession and use of illicit drugs should be properly addressed as a public health issue, meaning individuals should be given access to effective medical treatment. Many of the crimes committed stem from or are related to drug use. Incarceration does not address or treat the underlying addiction/mental health issues, instead it often worsens the individual's condition and makes it more difficult for them to recover/lead a productive life.	8/31/2020 3:27 PM
105	The overall length of sentences has spun out of control, particularly on the left hand side of the grid, and we incarcerate people for entirely too long. Frankly, almost every sentence in the A, B, and C ranges are incredible punitive, and probably longer than can be justified for any penological reason but retribution, which is the least important justification in my opinion. It makes absolutely no sense to have grid sentences that are longer than the hard 25, and just shows how ridiculous some of the grid sentences are. In fact, when the grid was introduced in 1993, the highest sentence possible was around 200 months, whereas now it is over 600. This is simply outrageous, as i do not think we are any more criminal in 2020 than we were in 1993, and if i had to guess, would guess that we are less so. Also, regarding Number 5, i do not think that any sort of drug possession without any distribution or sale should ever result in a prison sentence. i struggled with how to answer 5 though. This is because our DUI scheme is an absolute mess and it makes no sense to have that crime follow different rules for any other crime. In my estimation the idea of non-grid felonies is dumb and unnecessary. As such, I do not favor making anything like our DUI sentencing scheme because it is convoluted and nearly unworkable; ask three attorneys exactly how DUI post-imprisonment supervision works, and i would not be surprised to get three different answers. I would instead support simply decriminalizing possession all together. However, if we insist to continue making simple possession a crime, in no circumstance should it ever be a felony. Ever. So i support decriminalizing possession, but if they must remain crimes, they should become misdemeanors, and preferably Class C or B. Simply put, we are over incarcerating, both in length of sentence and number of acts criminalized.	8/31/2020 3:24 PM
106	I would need additional context for #5 to answer definitively. This list is a good start (esp. the drug offenses and KORA violations), and there are so many other proportionality concerns that the subcommittee could consider. The problems that sentencing in Kansas present go way beyond these offenses - in the words of Danielle Sered, we must reckon with how we treat "violent" offenders as well. And there are so many offenses with life sentences. That said, I understand the Commission already has a huge scope -- perhaps the Commission could work with the Sentencing Commission or the Criminal Justice Reform Commission (the former has decades of experience with trying to pass proportionality measures, building support for merging grids, etc. -- as for the latter, honestly, I don't hold out a lot of hope for them to change the sentencing provisions). I don't know if you are bringing non-Commission members onto your subcommittee, but I would highly suggest that you consult further with public defenders and appointed counsel - as far as felonies go, we handle 85% of the cases in this state so we have a lot of information about how it all plays out.	8/31/2020 3:21 PM
107	Mandatory minimums for nonviolent crimes that pose no potential for danger should be removed (keep and raise mandatory minimums for cruelty to animals and keep them for DUI/DWS). Drug possession should have a treatment emphasis - incarceration serves little purpose except to institutionalize addiction.	8/31/2020 3:16 PM
108	Mainly--ORV	8/31/2020 3:12 PM
109	Grid Boxes for Severity Level 1 and 2 at Criminal History A and B are not proportionate to off-grid homicides.	8/31/2020 3:11 PM
110	When the guidelines were first enacted in 1993, the longest sentence allowed was 204 months. Now it is 653 months. No science or expertise led the legislature to make such draconian changes. K DOC is going to one day have to reckon with a large population of geriatric individuals whom the State has chosen to lock in cages and forget. Guidelines, Hard 50, Hard 25, aggravated/persistent offenders, etc., are going to cost a lot of money, deprive a lot of people of their humanity, and do nothing to make communities safer and reform individuals. In no realm do our guidelines make LESS sense than in the context of offender registration penalties. I've represented people looking at 30+ years on offender registration cases even though there was absolutely no cognizable harm done by my client not registering. That has to change.	8/31/2020 3:08 PM

**Report of the
Kansas Criminal Justice Reform Commission
Race in the Criminal Justice Subcommittee
to the 2022 Kansas Legislature**

I. Subcommittee Members

Chair: Marc Bennett

Senator David Haley

Representative Gail Finney

Johnathan Oggletree (Kansas Prisoner Review Board);

Professor Jean Phillips (KU School of Law);

Professor John Francis (Washburn School of Law);

Curtis Barnes, Johnson County Corrections;

Chad Harmon, Substance Abuse Center of Kansas;

Shelly Williams, Riley County Community Corrections;

* Todd Ackerman (former Police Chief, Marysville, Kansas).

Assisting agency: Counsel of State Governments (CSG);

Speakers: Dr. Tiffany Anderson (Superintendent USD 501) and Professor Shannon Portillo (University of Kansas)

II. Introduction

The Commission is directed by K.S.A. 2019 Supp. 21-6902 to:

- Analyze the sentencing guideline grids for drug and nondrug crimes and recommend legislation to ensure appropriate sentences;
- Review sentences imposed for criminal conduct to determine proportionality compared to sentences for other criminal offenses;
- Analyze diversion programs and recommend options to expand diversion programs and implement statewide standards;
- Review community supervision levels and programming available for those serving sentences for felony convictions;
- Study and make recommendations for specialty courts statewide;
- Survey and make recommendations regarding available evidence-based programming for offenders in correctional facilities and in the community;
- Study Department of Corrections policies for placement of offenders and make recommendations for specialty facilities, to include geriatric, health care, and substance abuse facilities;
- Evaluate existing information management data systems and recommend improvements that will allow criminal justice agencies to more efficiently evaluate and monitor the efficacy of the criminal justice system; and

- Study other matters that, as the Commission determines, are appropriate and necessary to complete a thorough review of the criminal justice system.

During the 2021 legislative session, HB2077 extended the term of the Kansas Criminal Justice Reform Commission. Under the "other matters . . . appropriate and necessary" clause of the extension, The Reform Commission asked the Race in Criminal Justice System Sub-Committee to consider issues that could be brought to the Kansas Legislature to address the impact of race in the criminal justice system in Kansas.

In the limited time available, the Race in the Criminal Justice System Subcommittee sought to identify specific issues with tangible suggestions the Kansas Legislature could then address in meaningful ways through legislation and legislative oversight.

Subcommittee Meetings:

- July 15, 2021;
- August 19, 2021;
- September 23, 2021;
- October 21, 2021; and
- November 18, 2021.

Listed below are the Race in the Criminal Justice System Subcommittee's recommendations.

III. Recommendations

1. The Governor's Commission on Racial Equity and Justice

On October 21, 2021, the subcommittee heard from Dr. Tiffany Anderson and Prof. Shannon Portillo, regarding the final report issued by the Governor's Commission on Racial Equity and Justice. The Commission issued a 62 page report on July 15, 2021 after months of research, public hearings and listening sessions.

The Governor's Commission focused on three primary themes: healthcare, education and economics.

While some of the work done by the Governor's commission focused on issues collateral to the work of this subcommittee -- ex: the expansion of Medicare, child care, tax policy, food sales tax -- there were many subjects with a great deal of overlap. For instance, co-responder programs (detailed below at #2) and training issues for law enforcement (detailed below at #3) were of primary concern for both this subcommittee and the Governor's Commission.

The members of the subcommittee recognize the exhaustive work of the Governor's Commission and draw particular attention to the work done and suggestions made by that body with respect to common areas of concern, as set forth below.

2. Co-Responder Programs

In nearly every meeting of the subcommittee, the subject of co-responder programs was discussed. The term "co-responder program" generally describes programs that send non-law enforcement, mental health clinicians with law enforcement personnel to calls where the subject of the call is (or is suspected to be) suffering a mental health crisis.

The subcommittee believes the expanded use of co-responder programs would be in the best interests of the State of Kansas, and would be of particular benefit to individuals without adequate access to mental health care--an issue that too often effects communities of color.

The subcommittee is not submitting a specific suggestion for legislation, because the subcommittee recognizes that following issues must first be addressed and resolved:

- (1) consistent funding sources for the implementation of co-responder programs and the hiring and retention of appropriately-trained mental-health professionals;
- (2) the deficit in Kansas of qualified mental-health professionals in both rural and urban areas of the state.

The subcommittee would further direct the Legislature to the report generated by The Council for State Governments entitled, "Kansas Justice Reinvestment Initiative Co-Responder Programs -- Focus Groups Summary." This report contains detailed suggestions regarding the implementation and expansion of co-responder programs. Unfortunately, the report was still being finalized at the time of our final meeting, so the subcommittee could not vote on the particular recommendation contained therein. While the subcommittee was not able to weigh in specifically on the report or the four "themes" discussed in the report, it is fair to say that the themes are consistent with the issues discussed in subcommittee meetings:

- (1) the magnitude and complexity of the needs at the intersection of the behavioral health and criminal justice systems in Kansas have not been adequately evaluated;
- (2) lack of resources has detrimentally impacted the mental health crisis taking place in Kansas;
- (3) co-responder programs need additional support to be able to hire and retain qualified mental health professionals and adequately train law enforcement agencies;
- (4) unintended consequences and ambiguity in certain statutes complicates the response in the field.

The subcommittee specifically suggests the Legislature create a statewide advisory board to monitor the development and implementation of co-responder programs across Kansas.

3. Training

From the first meeting this year, the issue of training was a recurring topic for the subcommittee. The expanded use of crisis intervention training (CIT) training, implicit-bias training, diversity training, de-escalation training, and guardian as opposed to warrior training, both through continuing education through CPOST for existing officers, and for new officers graduating from KLETC is recommended by the subcommittee. The subcommittee specifically acknowledges

the value of ongoing (CIT) training undertaken by law enforcement agencies across the state. The subcommittee recognizes that funding and adequate human resources must be addressed in order to expand the training set forth above.

Sub-committee members also recommend the Office of Judicial Administration (OJA) and the Kansas Department of Corrections (KDOC) expand similar training for their probation and parole officers. The subcommittee further recommends mental health training for those holding licensure through the Kansas Board of Healing Arts and other applicable boards.

Finally, the members of the subcommittee recommend the membership of CPOST board of directors be expanded to enhance the diversity of the board.

4. "Criminal Street Gang" definition

The subcommittee discussed concerns with the current statutory definition of "Criminal Street Gang membership set forth at K.S.A. 21-6313; minimum bond requirements for criminal street gang members as set forth in K.S.A. 21-6316; and the application of the definition to the "R.I.C.O." statute, K.S.A. 21-6328(b)(1).

While strong concerns were raised regarding the fairly vague definition in the current statute, time limitations prevented the subcommittee from offering proposed amendments to clarify the language. The members of the subcommittee recommend that further attention be paid to the definition set forth in K.S.A. 21-6313.

In the interim, subcommittee members did agree that a statutory change to K.S.A. 21-6316 was appropriate. The following suggestion would go a long way toward addressing the concerns raised:

21-6316. Criminal street gang member; bail; exceptions. When a criminal street gang member is arrested for a person felony, bail shall be ~~at least \$50,000~~ *appropriately set* cash or surety, and such person shall not be released upon the person's own recognizance pursuant to K.S.A. 22-2802, and amendments thereto, unless the court determines on the record that the defendant is not likely to reoffend, an appropriate intensive pre-trial supervision program is available and

the defendant agrees to comply with the mandate of such pre-trial supervision. an amended The arguably vague definition and

The members of the subcommittee recognize the exhaustive work of the Pretrial Justice Task Force chaired by Judge Karen Arnold-Berger, whose report was issued November of 2020.

Again, members of the subcommittee strongly recommend the Kansas Legislature re-evaluate the definitional language found in K.S.A. 21-6313.

5. Collection of Evidence

The members of the subcommittee discussed the need to expand the collection of evidence detailing the race, gender, ethnicity and/or protected class of civilians "stopped" by law enforcement. One tangible suggestion is that Kansas Driver's licenses be expanded to include these identifying demographics, for instances when an officer can legally ask for said license. If that were done, then asking law enforcement agents to include said information in reports detailing the stop would be significantly more efficient.

In addition to the collection of demographic information, the subcommittee members believe the information should then be maintained in a centralized, accessible database. The details of this recommendation need more attention. For instance, would the Kansas Bureau of Investigation maintain the database, if so to what extent would the information be available to the public? Subcommittee members suggested the Legislature look to the example of Missouri statute, 590.650 regarding Racial Profiling.

Again, given the limited time available, the subcommittee did not have time to formulate a final recommendation. The committee was clear that more data needs to be collected at the time of police stops, and that data needs to be maintained in an accessible, statewide database.

IV. Conclusion

The suggestions contained herein are not meant to be exhaustive. Instead, the subcommittee urges the Kansas Legislature to continue to draw attention to issues related to the intersection of race and the criminal justice system in the future through additional research and legislation.

The Subcommittee would like to thank The Council of State Governments, Dr. Andersen and Professor Portillo, and former Chief Todd Ackerman.

KANSAS JUSTICE REINVESTMENT INITIATIVE

CO-RESPONDER PROGRAMS – FOCUS GROUPS SUMMARY

BACKGROUND

The Council of State Governments (CSG) Justice Center began providing technical assistance (TA) to the Kansas Criminal Justice Reform Commission (Commission) in 2020 at the request of the state through their application as Justice Reinvestment Initiative state-level project funded by the Department of Justice's Bureau of Justice Assistance (BJA). At the end of 2020, the Commission submitted a report to the Kansas legislature with numerous policy and administrative recommendations as well as a statement concerning the time constraint the Commission was under to give certain topic areas greater consideration. As a result, the legislature re-appointed the Commission through December 2021.

In 2021, the Commission developed six topics to explore in greater depth and formed subcommittees composed of stakeholders with interest and expertise in these areas. Two of these subcommittees, the Diversion Subcommittee and the Race and the Criminal Justice System Subcommittee, discussed the impact of not adequately responding to someone who is having a mental health crisis. CSG Justice Center staff held focus groups with existing co-responder programs in Kansas to understand experiences in the field and gather additional recommendations for the subcommittees to consider. The co-responder programs are local programs where mental health professionals are paired with law enforcement to respond to 911 calls that include a report of someone experiencing a mental health crisis.

FOCUS GROUP OVERVIEW

CSG Justice Center staff coordinated with the Kansas Stepping Up Technical Assistance Center to assist with facilitating focus groups with the co-responder programs. The Stepping Up TA Center is a collaboration between the National Association of Counties, the American Psychiatric Association, the CSG Justice Center, and the Kansas Department of Aging and Disability Services (KDADS) and provides TA to Kansas regarding behavioral health issues facing the state. Three focus groups were conducted between August and September 2021 via videoconference. Participants who did not have videoconferencing capabilities were able to join via phone. All focus group sessions were scheduled to last 60 minutes, and participants were encouraged to contact the facilitators directly if additional feedback was warranted. Participants were assured that all comments and reporting would remain anonymous.

The following county-based co-responder programs participated in the focus groups:

- Sedgwick County
- Riley County
- Shawnee County
- Reno County
- Wyandotte County
- Douglas County

CSG Justice Center staff spoke with 7 members of law enforcement and community supervision officers and 10 representatives from behavioral health programs in Kansas.

FINDINGS

Findings are grouped into four themes identified during the focus groups: (1) the magnitude and complexity of the needs at the intersection of the behavioral health and criminal justice systems in Kansas have not been adequately evaluated; (2) lack of resources has detrimentally impacted the mental health crisis taking place in Kansas; (3) co-responder programs need additional support to be able to hire and retain qualified mental health professionals and adequately train law enforcement agencies; (4) unintended consequences and ambiguity in certain statutes complicates the response in the field.

1) *The magnitude and complexity of the needs at the intersection of the behavioral health and criminal justice systems in Kansas have not been adequately evaluated.*

- a. Participants expressed frustration that the lack of interagency cooperation and support from the state results in a lack of information sharing and inadequate funding.
- b. There is a sense that co-responder programs are not thought of as part of the continuum of care that is needed across the state and instead have been siloed as a county responsibility. Co-responder programs should be an intercept in the Sequential Intercept Model (SIM) mapping like crisis stabilization units and inpatient and outpatient care facilities.
- c. The ability of the state to understand the magnitude of the problem is directly related to its inability to collect statewide data efficiently from stakeholders such as jails, police departments, community mental health programs, etc.
- d. Co-responder programs have difficulty navigating siloed systems. Often, co-responder programs work with hospital systems, law enforcement, and community programs from jurisdictions across the state. Additionally, co-responder programs frequently work with people who are uninsured and trying to access services such as housing, vocational and educational programs, and a myriad of other social services.
- e. Due to a lack of adequate data, identifying the recidivism rates at the state level for people who have received acute care or experienced a stay at the state hospital is nearly impossible, limiting the ability to understand the scope of the issue.
- f. Participants would like to see greater involvement from adult protective services staff in the work of co-responder programs. Often, this group is not included in the planning and executions of programs even though their clients are frequently people who are either in crisis or are caring for an adult family member who is experiencing a mental health crisis.

2) *Lack of resources has detrimentally impacted the mental health crisis taking place in Kansas.*

- a. Participants across the focus groups agreed that the state needs a better understanding of the resources to show the need for an additional state hospital, a rapid and large-scale expansion of crisis stabilization units, and inpatient treatment beds so that counties can begin to adequately meet the needs of their communities. However, there is concern that a statewide audit would use a substantial amount of funds that could be spent on expanding services.
- b. Co-responders are a small piece of a larger puzzle. When they are deployed for a mental health crisis but there are no resources for stabilization or hospitalization, law enforcement can be forced to take an individual to jail for their safety and the safety of the people around them. This can result in severe consequences for jails that are not equipped to house people in crisis.
- c. It was reported that, “Too many consumers are getting released from hospitals before they have sustained treatment and decompensate once back in the community and wind up back in a local hospital” or in the custody of law enforcement.

- d. Counties are responsible for the creation and maintenance of services for people experiencing a mental health crisis. A significant number of smaller and rural counties are unable to generate the resources needed, which has resulted in rural counties with co-responder programs partnering with surrounding counties to offer needed services.
- e. There was consensus among participants that there are problems getting access to updated information from the state hospital. This results in confusion and, at times, a scramble to find treatment for a person in crisis because there is no available information on when an evaluation at the state hospital could take place or when a bed will be available.

3) *Co-responder programs need additional support to be able to hire and retain qualified mental health professionals and adequately train law enforcement agencies in Kansas.*

- a. Some counties in Kansas cannot afford to offer competitive pay rates, which results in co-responder programs with a limited workforce and hours of operation. This inability to offer competitive pay rates also impacts the diversity of co-responder programs.
- b. Law enforcement agencies across Kansas cannot identify resources that are available to them let alone know how to seek assistance from various community members and programs—rather than rely on one specific facility that is already operating at capacity—because they do not have any training on SIM mapping.
- c. The state would benefit from training at the Law Enforcement Academy regarding stigma and working with people experiencing mental health crises.

4) *Unintended consequences and ambiguity in certain Kansas state statutes complicates the response in the field.*

- a. State law regarding involuntary holds for people who have been evaluated by a mental health professional is ambiguous, and application of the law is inconsistent across the state. There is a lack of guidance on how and when it is appropriate to apply the statute for an involuntary hold or to commit someone.
- b. There are concerns that the moratorium on placing people in the state hospital is having a negative impact on communities. This in combination with programs struggling to receive accurate up-to-date information from the state hospital adds to frustration and an overreliance on systems and programs that are not equipped to provide the level of care needed for people who could appropriately be placed in the state hospital.
- c. Due to the lack of crisis intervention centers, if a person experiencing a mental health crisis must be transported to a hospital for stabilization, current statute requires that—if requested by the hospital—law enforcement must provide 24-hour protection for that person. The impact on small law enforcement agencies is substantial, causing staffing shortages, slower response times, increased overtime, etc.
- d. Mandatory arrest statutes have complicated domestic violence calls that are the direct result of a person in a mental health crisis. In these cases, the person is required to be detained and taken to jail, even if they would be better served by receiving mental health treatment.

RECOMMENDATIONS FOR CONSIDERATION WITH THE COMMISSION

- 1) **Improve data collection** across the state either through (a) a statewide assessment of co-responder programs to understand the data that are available and the most appropriate method for collection or (b) through a state-funded special research project that would ask stakeholders from across law enforcement, community mental health, and health care systems to collaborate on an examination of data pertaining to people who accessed services and had a law enforcement connection. Either option (a) or (b) would culminate in a final report that provides data on the number of people involved across systems, recidivism rates, and additional metrics as identified.
- 2) **Expand Medicaid** to assist communities with deferring costs.
- 3) **Seek clarification from the Attorney General's Office** regarding statutes that are applied inconsistently, including:
 - a. State hospitals' interpretation of statutes regarding treatment for consumers with developmental disabilities and organic diseases
 - b. What information under Kansas law, HIPPA, and 42 CFR can be shared among law enforcement, community supervision, community mental health providers, and health care providers.
- 4) **Integrate people with lived experience** in the behavioral health system into the development of any new legislation concerning behavioral health care and the intersection of the criminal justice system.
- 5) **Increase reimbursement** for current Medicaid holders.
- 6) **Create a statewide advisory board** that can review resource allocation, new legislation, and current barriers facing the system and complete a projection of needs over the next 3, 5, and 10 years.
- 7) **Create a working group** of mental health professionals, co-responder programs, and law enforcement experts to revisit the unintended consequences resulting from the mandatory arrest statute, Kan. Stat. Ann § 22-2307 (2012).

Research Based Incentives Subcommittee
Report to the Kansas Criminal Justice Reform Commission
Marc Bennett, Chairperson
Representative Stephen Owens, Vice-chairperson

I. Introduction

The Research Based Incentives Subcommittee was appointed by the Kansas Criminal Justice Reform Commission (KCJRC) Chairman Marc Bennett to address HB 2077's addition of the charge in K.S.A. 21-6902(b)(5)(a), which directed the Kansas Criminal Justice Reform Commission "discuss and develop detailed recommendations for legislation that establishes research-based standards and practices for all community supervision programs that; (A) Provide for incentives for compliant offenders to earn early discharge from supervision;" The subcommittee has held meetings on July 14, 2021; August 5, 2021; September 2, 2021; September 30, 2021; October 15, 2021; October 22, 2021; and October 29, 2021.

II. Subcommittee Members

Spence Koehn, Chair (Court Services Specialist, OJA)
Jennifer Roth, (Public Defender, BIDS)
Jean Phillips, (Director, Project for Innocence and Post-Conviction Remedies, KU School of Law)
Representative Stephen Owens (Legislative Member)
Shelly Williams, (Community Corrections Representative)
Secretary Jeff Zmuda, (Kansas Department of Corrections, Agency Ex-Officio)
Stephanie Duriez (Ad Hoc Member, Council of State Governments)
Randy Regehr (Ad Hoc Member, KCCA President)
Chris Esquibel (Ad Hoc Member, KACSO President)
Hope Cooper (Ad Hoc Member, KDOC)
Jonathan Ogletree (Ad Hoc Member, Kansas Prisoner Review Board Chair)

III. Subcommittee Recommendations

Research Based Incentives Subcommittee makes the following legislative recommendations to the Kansas Criminal Justice Reform Commission:

1. Incentives and early discharge from probation should include misdemeanor and felony cases.
2. The Committee on Corrections and Juvenile Justice should **not** move forward with certain amendments to K.S.A. 21-6608(d) as proposed in 2021 HB 2084, specifically:
 - a. On pages 2-3, amending K.S.A. 21-6608(d); "In addition to the provisions of subsections (a), a defendant *may be discharged* early from probation, assignment to a community correctional services program, suspension of

sentence or nonprison sanction if such defendant is found to be in substantial compliance with the conditions of such supervision. The court shall set a hearing at sentencing for the date when the defendant will have served 50% of such defendant's term of supervision to determine if a defendant has been in substantial compliance with the defendant's conditions of supervision. The court shall grant such discharge unless the court finds by clear and convincing evidence that denial of such discharge will serve community safety interests."

- b. On Page 3, adding (e); *"A defendant shall earn credit to reduce such defendant's term of probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction when the defendant has substantially complied with the conditions of such defendant's supervision. A defendant shall be awarded seven days earned discharge credit for each full calendar month of substantial compliance with the conditions of such defendant's supervision."*
- c. On page 3, adding (f); *"The Kansas sentencing commission shall adopt procedures and forms to standardize the process for calculating earned discharge credit pursuant to this section."*
- d. On page 3, adding (g); *The following factors apply and may be considered in determining whether substantial compliance with supervision exists: (1)(A) History of compliance with terms and conditions of supervision; (B) payment of fines, costs and restitution; and (C) successful completion of any required treatment program. (2) Completion of all terms and conditions of supervision is not required. (3) Offenders subject to the provisions of K.S.A. 2020 Supp. 21-6824, and amendments thereto, shall not be eligible for early discharge.*

3. K.S.A. 21-6608(d) be modified by;

- a. Strike the following language;
 - i. a defendant who has a risk assessment of low risk, has paid all restitution and has been compliant with the terms of probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction for a period of 12 months shall be eligible for discharge from such period of supervision by the court.
- b. Keep the following language;
 - i. In addition to the provisions of subsection (a),

c. Add the following language;

- i. A defendant has a history of compliance with terms and conditions of supervision;
- ii. Has successfully completed any required treatment or programming;
- iii. Has completed 75% of their required supervision period except when prohibited by statute;
- iv. After a review of all fines, costs, and restitution;
- v. May be eligible for discharge from such period of supervision by the court.
- vi. Early termination from probation shall be retroactive.

The intention is not to limit the power of the court to terminate probation at any point, but to provide supervision officers a path to recommend early termination of probation following these benchmarks.

- 4. The 4:1 Behavior Management System developed by Carey Group Publishing be implemented statewide to guide and track responses to defendant pro-social and violation behaviors.
 - a. The Office of Judicial Administration and the Kansas Department of Corrections will collaborate on a sanctions and incentives structure to be used within the system.

IV. Subcommittee Discussion

Since its creation, the Research Based Incentives Subcommittee worked closely with the Council of State Governments to review current practices and research surrounding early termination of probation. The group reviewed the work completed by the Supervision Subcommittee from 2020 regarding early termination of probation, current statutes surrounding probation termination, and pending legislation which discusses mechanisms for early discharge from probation.

Supervision lengths in Kansas are much shorter than the national average. According to a report from The Pew Charitable Trusts from December 3, 2020, *States Can Shorten Probation and Protect Public Safety*, "The national average probation term length in 2018 was 22.4 months. Analysis of 2018 average lengths show significant variations among states: Average probation lengths ranged from just nine months in Kansas to 59 months, or close to five years, in Hawaii." Furthermore, according to data obtained from the Kansas Sentencing Commission for fiscal year 2020, the average length of felony probation was 12 months. Research does however point to early discharge being a motivator. According to Joan Petersilia, "Employ Behavioral Contracting for 'Earned Discharge' Parole," *Criminology & Public Policy* 6, no. 4 (2007): 807–14, "Interviews with parolees confirm that the prospect of early discharge provides a strong incentive to comply with monitoring conditions or to participate in correctional programming."

Knowing that research shows early termination of probation does affect motivation but keeping in mind more time is often needed to complete treatment and programming, much

discussion surrounded 2021 HB 2084. This group believed the fiscal impact, specifically in urban districts, made a hearing at 50% for all probation cases unmanageable and cost prohibitive. Furthermore, the recommendation for earned discharge credit, much like current juvenile earned discharge credit, was also unmanageable due to the time required to review and document each probationer's credit or denial of credit, specifically for supervision officers with higher caseloads.

Wanting to provide for a path to early discharge, the subcommittee felt that improving language in K.S.A. 21-6608(d) made the most sense for Kansas community supervision. By providing benchmarks in legislation, supervision officers will have the ability to incentivize probationers.

Looking to further improve outcomes, the subcommittee reviewed the Carey Group 4:1 Behavior Management System, which the Kansas Department of Corrections has partnered with and is working to implement state-wide. An article published March 16, 2011 in *Criminal Justice Behavior, Utilizing Behavioral Interventions to Improve Supervision Outcomes in Community-Based Corrections* states, "Administering rewards in proportionally higher numbers than sanctions produced the best results, especially when a ratio of four or more rewards for every sanction was achieved." This same strategy was used for juveniles in Kansas, with OJA and KDOC collaborating to create a sanctions and incentives grid in K.S.A. 38-2398.

V. Conclusions

This report represents the recommendations of the Research Based Incentives Subcommittee. Kansas is ahead of the national average for probation sentences and integrating the recommendation in this report will continue to strengthen supervision in Kansas.

Respectfully Submitted this 1st day of November, 2021.

Standardized Terms & Conditions of Supervision Subcommittee
Report to the Kansas Criminal Justice Reform Commission
Marc Bennett, Chairperson
Representative Stephen Owens, Vice-chairperson

November 1, 2021

Members of the Criminal Justice Reform Commission,

Overview

During the first meeting of the Kansas Criminal Justice Reform Commission in 2021, the Standardized Terms & Conditions of Supervision Subcommittee was established. HB 2077 was passed during the 2021 legislative session which narrowed the scope of the commission and created new tasks for the subcommittees. The Standardized Terms & Conditions of Supervision Subcommittee charged with creating “standardized terms and conditions for community supervision and providing for a method that courts may utilize use special terms as indicated through the introduction of compelling evidence.”

Since its creation, the Standardized Terms & Conditions of Supervision Subcommittee met six times (August 6, 2021; September 3, 2021; September 24, 2021; October 1, 2021; October 15, 2021; and October 29, 2021), and worked closely with the Council of State Governments (CSG) Justice Center. The Subcommittee reviewed meeting minutes, research and relevant findings from the 2020 Supervision Workgroup, standard conditions of supervision examples from across the Kansas, Minnesota, Ohio and Missouri, and Parole conditions of release from the Kansas Prisoner Review Board were also reviewed. The Standardized Terms & Conditions of Supervision Subcommittee examined what Kansas did and did not have in current statute (K.S.A. 21-6607) referencing best practice conditions.

Parallel to the Subcommittee’s work, the CSG Justice Center facilitated focus groups with the Chief Court Services Officers and Community Corrections Directors, and met with Judges, receiving overwhelming support for standardizing general conditions of supervision and having one state-wide form/document. There was consensus among the Chiefs and Directors that it would be easier for courtesy supervision and transfer of cases both for staff and clients if there were standardized general conditions of supervision in Kansas.

The Standardized Terms & Conditions of Supervision Subcommittee discovered there was no standardized format and no consistent general conditions of supervision across the state.

Additionally, CSG Justice Center staff noted, “Conditions of supervision in Kansas do not meet best practice guidelines and cause inconsistencies in how agencies approach supervision. Further, to promote success, conditions of supervision should encompass three broad considerations:

- Is it realistic? Realistic conditions allow someone on probation or parole to meet the condition thus avoiding unnecessary technical violations.
- Is it relevant? Conditions should be tailored to a person’s criminal behavior and identified criminogenic risk and needs.
- Is it research-supported? Conditions should help maintain protective factors and disrupt criminal patterns. Programs and services the person is provided should be evidence-based programs.”

The CSG Justice Center informed the subcommittee if a condition is not going to be enforced, is not related to re-offending or success on supervision, it should not be included. Too many conditions can serve as trip wires and barriers to offender success. Further, best practice research regarding conditions of supervision that promote public safety dictate the conditions should:

- be limited in number
- be used to address behaviors associated with risk
- be used to foster behavior change
- be used to support positive outcomes
- be based on supervision goals
- be research-supported or backed by evidence demonstrating that they promote individual success, and
- should have rehabilitative value.

Recommendations for Action

The Standardized Terms & Conditions of Supervision Subcommittee makes the following legislative recommendations to the Kansas Criminal Justice Reform Commission:

Adopt the Following Standardized Terms & Conditions of Supervision:

1. Obey all laws and ordinances and report any law enforcement contact within 24 hours or the next business day to your supervision officer.
2. Do not engage in physical violence or threats of violence of any kind. If convicted of a felony or prohibited by law, do not use, purchase, or possess dangerous weapons including firearms while on supervision.

3. Report to your supervision officer as directed and be truthful in all matters.
4. Remain within the State of Kansas and other specified area as defined by your supervision officer.
5. Reside at your approved residence unless given permission by your supervision officer to relocate. Notify your supervision officer within 24 hours of any emergency changes in residence and/or contact information.
6. Do not possess, use, or traffic in any illegal drugs or controlled substances. Do not possess or consume any form of alcohol or intoxicating substance and do not enter any establishment where alcohol is sold and/or consumed as the primary business. You may possess and use medications as prescribed to you by a licensed medical practitioner.
7. Submit to any form of alcohol/substance use testing at the direction of a supervision officer and do not alter or tamper with the specimen or test.
8. Participate in assessments, treatment, programming and other directives by the Court or your supervision officer.
9. Pay restitution, court costs, supervision fees, and other costs as directed by the Court or your supervision officer.
10. You are subject to searches of your person, effects, vehicle, residence, and property by your supervision officer and any other law enforcement officer based on reasonable suspicion that you violated conditions of supervision or engaged in criminal activity.

Continued Work

In addition, the Standardized Terms & Conditions of Supervision Subcommittee presents the following identified issues that need further exploration for the submission to the Criminal Justice Reform Commission:

1. Encourage the Kansas Department of Corrections and the Kansas Prisoner Review Board to adopt common language where appropriate from the proposed standardized (general) conditions of supervision.
2. Encourage a reform oversight committee to consider including safety and liberty-restricting conditions that are not tied to risk/need assessments.
3. Encourage a reform oversight committee to create special conditions with consistent language and give guidance on how to apply special conditions in an evidence-based manner.

4. Encourage a reform oversight committee to develop a training around general and specialized conditions in Kansas to District/County Attorney's, defense attorneys and community supervision officers. Collaborate with the Robina Institute and the University of Cincinnati for state-wide training on specialized conditions.

Conclusions

This report represents the recommendations of the Standardized Terms & Conditions of Supervision Subcommittee. We support the continued work of the Kansas Criminal Justice Reform Commission. We support the continued assistance of the CSG Justice Center. We support the continued technical assistance by the CSG Justice Center on relevant areas. Further we believe there is opportunity for the development of specific administrative and/or legislative policies to strengthen community supervision in Kansas.

Respectfully Submitted this 1st Day of November, 2021

Kansas Criminal Justice Reform Commission Members:

Shelly Williams, Director, Subcommittee Chair
Riley County Community Corrections

Spence Koehn, Court Services Specialist
Office of Judicial Administration

Tabitha Owen, County Attorney
Smith County

Representative Stephen Owens
Legislative Member

Jeff Zmuda, Secretary of Corrections
Kansas Department of Corrections

Ad-Hoc Members:

Pat Colloton, Member
Kansas State Sentencing Commission
Honorable Stacey Donovan, District Court Judge
7th Judicial District

Jonathan Ogletree, Chair
Kansas Prisoner Review Board

Stephanie Springer, Chief Court Services Officer
27th Judicial District
Kansas Association of Court Service Officers, President

Randy Regehr, Director
Reno County Community Corrections
Kansas Community Corrections Association, President

Jeannie Wark, Member
Kansas Prisoner Review Board

2020 Kansas Statutes

21-6607. Conditions of probation or suspended sentence; correctional supervision fee; correctional supervision fund; searches; drug testing; written reports. (a) Except as required by subsection (c), nothing in this section shall be construed to limit the authority of the court to impose or modify any ~~general or specific~~ **special** conditions of probation, suspension of sentence or assignment to a community correctional services program. The court services officer or community correctional services officer may recommend, and the court may order, the imposition of any **special** conditions of probation, suspension of sentence or assignment to a community correctional services program. For crimes committed on or after July 1, 1993, in presumptive nonprison cases, the court services officer or community correctional services officer may recommend, and the court may order, the imposition of any **special** conditions of probation or assignment to a community correctional services program. The court may at any time order the modification of such **special** conditions, after notice to the court services officer or community correctional services officer and an opportunity for such officer to be heard thereon. The court shall cause a copy of any such order to be delivered to the court services officer and the probationer or to the community correctional services officer and the community corrections participant, as the case may be. The provisions of K.S.A. 75-5291, and amendments thereto, shall be applicable to any assignment to a community correctional services program pursuant to this section. (b) The court may impose any **special** conditions of probation, suspension of sentence or assignment to a community correctional services program that the court deems proper, including, but not limited to, requiring that the defendant ***to adhere to the following general conditions of supervision:***

Obey all laws and ordinances and report any law enforcement contact within 24 hours or the next business day to your supervision officer.

Do not engage in physical violence or threats of violence of any kind. If convicted of a felony or prohibited by law, do not use, purchase, or possess dangerous weapons including firearms while on supervision.

Report to your supervision officer as directed and be truthful in all matters.

Remain within the State of Kansas and other specified area as defined by your supervision officer.

Reside at your approved residence unless given permission by your supervision officer to relocate. Notify your supervision officer within 24 hours of any emergency changes in residence and/or contact information.

Do not possess, use, or traffic in any illegal drugs or controlled substances. Do not possess or consume any form of alcohol or intoxicating substance and do not enter any establishment where alcohol is sold and/or consumed as the primary business. You may possess and use medications as prescribed to you by a licensed medical practitioner.

Submit to any form of alcohol/substance use testing at the direction of a supervision officer and do not alter or tamper with the specimen or test.

Participate in assessments, treatment, programming and other directives by the Court or your supervision officer.

Pay restitution, court costs, supervision fees, and other costs as directed by the Court or your supervision officer.

You are subject to searches of your person, effects, vehicle, residence, and property by your supervision officer and any other law enforcement officer

based on reasonable suspicion that you violated conditions of supervision or engaged in criminal activity.

- ~~(1) Avoid such injurious or vicious habits, as directed by the court, court services officer or community correctional services officer;~~
- ~~(2) avoid such persons or places of disreputable or harmful character, as directed by the court, court services officer or community correctional services officer;~~
- ~~(3) report to the court services officer or community correctional services officer as directed;~~
- ~~(4) permit the court services officer or community correctional services officer to visit the defendant at home or elsewhere;~~
- ~~(5) work faithfully at suitable employment insofar as possible;~~
- ~~(6) remain within the state unless the court grants permission to leave;~~
- ~~(7) pay a fine or costs, applicable to the offense, in one or several sums and in the manner as directed by the court;~~
- ~~(8) support the defendant's dependents;~~
- ~~(9) reside in a residential facility located in the community and participate in educational, counseling, work and other correctional or rehabilitative programs;~~
- ~~(10) perform community or public service work for local governmental agencies, private corporations organized not for profit, or charitable or social service organizations performing services for the community;~~
- ~~(11) perform services under a system of day fines whereby the defendant is required to satisfy fines, costs or reparation or restitution obligations by performing services for a period of days, determined by the court on the basis of ability to pay, standard of living, support obligations and other factors;~~
- ~~(12) participate in a house arrest program pursuant to K.S.A. 2020 Supp. 21-6609, and amendments thereto;~~
- ~~(13) order the defendant to pay the administrative fee authorized by K.S.A. 22-4529, and amendments thereto, unless waived by the court; or~~
- ~~(14) in felony cases, except for violations of K.S.A. 8-1567, and amendments thereto, be confined in a county jail not to exceed 60 days, which need not be served consecutively.~~

(c) In addition to any other conditions *special* of probation, suspension of sentence or assignment to a community correctional services program, the court shall order the defendant to comply with each of the following conditions:

- ~~(1) The defendant shall obey all laws of the United States, the state of Kansas and any other jurisdiction to the laws of which the defendant may be subject;~~
- (2) make reparation or restitution to the aggrieved party for the damage or loss

caused by the defendant's crime in accordance with K.S.A. 2020 Supp. 21-6604(b), and amendments thereto;

~~(3) (A) pay a correctional supervision fee of \$60 if the person was convicted of a misdemeanor or a fee of \$120 if the person was convicted of a felony. In any case the amount of the correctional supervision fee specified by this paragraph may be reduced or waived by the judge if the person is unable to pay that amount;~~

(B) the correctional supervision fee imposed by this paragraph shall be charged and collected by the district court. The clerk of the district court shall remit all revenues received under this paragraph from correctional supervision fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund, a sum equal to 41.67% of such remittance, and to the correctional supervision fund, a sum equal to 58.33% of such remittance;

(C) this paragraph shall apply to persons placed on felony or misdemeanor probation or released on misdemeanor parole to reside in Kansas and supervised by Kansas court services officers under the interstate compact for offender supervision; and

(D) this paragraph shall not apply to persons placed on probation or released on parole to reside in Kansas under the uniform act for out-of-state parolee supervision;

(4) reimburse the state general fund for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment. The amount of attorney fees to be included in the court order for reimbursement shall be the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less;

~~(5) be subject to searches of the defendant's person, effects, vehicle, residence and property by a court services officer, a community correctional services officer and any other law enforcement officer based on reasonable suspicion of the defendant violating conditions of probation or criminal activity; and~~

~~(6) be subject to random, but reasonable, tests for drug and alcohol consumption as ordered by a court services officer or community correctional services officer.~~

(d) Any law enforcement officer conducting a search pursuant to subsection (c)(5) shall submit a written report to the appropriate court services officer or community correctional services officer no later than the close of the next business day after such search. The written report shall include the facts leading to such search, the scope of such search and any findings resulting from such search.

(e) There is hereby established in the state treasury the correctional supervision fund. All moneys credited to the correctional supervision fund shall be used for: (1) The implementation of and training for use of a statewide, mandatory, standardized risk assessment tool or instrument as specified by the Kansas sentencing commission, pursuant to K.S.A. 75-5291, and amendments thereto; (2) the implementation of and training for use of a statewide, mandatory, standardized risk assessment tool or instrument for juveniles adjudicated to be juvenile offenders; and (3) evidence-based adult and juvenile offender supervision programs by judicial branch personnel. If all expenditures for the program have been paid and moneys remain in the correctional supervision fund for a fiscal year, remaining moneys may be expended from the correctional supervision fund to support adult and juvenile offender supervision by court services officers. All expenditures from the correctional supervision fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chief justice of the Kansas supreme court or by a person or persons designated by the chief justice.

History: L. 2010, ch. 136, § 247; L. 2011, ch. 30, § 64; L. 2012, ch. 70, § 1; L. 2014, ch. 126, § 4; L. 2020, ch. 9, § 2; June 11.

KANSAS STANDARD CONDITIONS OF SUPERVISION

Name:	Judicial District:	Sentencing Date:
County:	Court Case Number:	Sentencing Judge:

Offense:

Offense:

Supervision Agency:	Community Corrections	Court Services
Postrelease Supervision:	12 Months	24 Months
	36 Months	60 Months
	Parole	
Probation Term:	12 Months	18 Months
	24 Months	36 Months
	60 Months	Other: ____ Months
Sentence:	Jail: ____ Months	KDOC: ____ Months

1. Obey all laws and ordinances and report any law enforcement contact within 24 hours or the next business day to your supervision officer.
2. Do not engage in physical violence or threats of violence of any kind. If convicted of a felony or prohibited by law, do not use, purchase or possess dangerous weapons, including firearms, while on supervision
3. Report to your supervision officer as directed and be truthful in all matters.
4. Remain within the State of Kansas and other specified area as defined by your supervision officer.
5. Reside at your approved residence unless given permission by your supervision officer to relocate. Notify your supervision officer within 24 hours of any emergency changes in residence and/or contact information.
6. Do not possess, use, or traffic in any illegal drugs or controlled substances. Do not possess or consume any form of alcohol or intoxicating substance and do not enter any establishment where alcohol is sold and/or consumed as the primary business. You may possess and use medications as prescribed to you by a licensed medical practitioner.
7. Submit to any form of alcohol/substance use testing at the direction of a supervision officer, and do not alter or tamper with the test.
8. Participate in assessments, treatment, programming and other directives by the Court or your supervision officer.
9. Pay restitution, court costs, supervision fees, and other costs as directed by the court or your supervision officer.
10. You are subject to searches of your person, effects, vehicle, residence, and property by your supervision officer and any other law enforcement officer based on reasonable suspicion that you violated conditions of supervision or engaged in criminal activity.

SPECIAL CONDITIONS OF PROBATION

- 1.
- 2.
- 3.
- 4.
- 5.

FINANCIAL OBLIGATIONS	
Court Costs (including surcharge)	\$
Total Restitution	\$
KBI or Other Lab Fees	\$
Attorney Fees	\$
DNA Database Fee	\$
Booking/Fingerprint Fee	\$
Children's Advocacy Center Assessment Fee	\$
BIDS Attorney Fee Waived	\$
BIDS Application Fee	\$
SB 123 Assessment Fee	\$
SB 123 Offender Reimbursement	\$
Correctional Supervision Fee	\$
Other Fees:	\$
Other (Specify):	\$
Other (Specify):	\$
Other (Specify):	\$
Total Costs: \$	
Court costs/fines/fees/restitution to be paid at the rate of \$ _____ per _____ for _____	

Client Signature

Date

Supervision Officer Signature

Date

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Report of the Legislative Task Force on Dyslexia to the 2022 Kansas Legislature

CHAIRPERSON: Jim Porter

NON-LEGISLATIVE MEMBERS: Jennifer Bettles, Sarah Brinkley, Jamie Callaghan, Tally Fleming, Dr. David Hurford, Jennifer Knight, Alisa Matteoni, Christina Middleton, Jeanine Phillips, Jeri Powers, Angie Schreiber, and Sonja Watkins

OTHER MEMBERS: Senator Brenda Dietrich (appointed to replace Senator Ty Masterson)

EX OFFICIO MEMBERS: Mike Burgess, Laura Jurgensen, and Lori McMillan

CHARGE

Pursuant to 2018 Sub. for HB 2602, the Task Force shall advise and make recommendations to the Governor, the Legislature, and the State Board of Education regarding matters concerning the use of evidence-based practices for students with dyslexia. Specifically, the bill provides the Task Force's recommendations and resource materials shall evaluate the progress and effectiveness of the previous recommendations of the Task Force.

December 2021

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Legislative Task Force on Dyslexia

FINAL REPORT

Conclusions and Recommendations

The Legislative Task Force on Dyslexia made no formal recommendations to the 2022 Legislature.

Proposed Legislation: None.

BACKGROUND

The Legislative Task Force on Dyslexia (Task Force) was created by 2018 Sub. for HB 2602, codified at KSA 2020 Supp. 72-8193, to advise and make recommendations to the Governor, Legislature, and State Board of Education on or before January 30, 2019, regarding matters concerning the use of evidence-based practices for students with dyslexia.

The Task Force initially reported to the Governor, Legislature, and State Board of Education in January 2019.

The Task Force was extended through fiscal year 2022 by 2019 House Sub. for SB 16, which also authorized the Task Force to meet no more than once per year in calendar years 2019, 2020, and 2021.

COMMITTEE ACTIVITY

The Task Force met December 15, 2021, to receive written updates on the progress of the implementation of recommendations made at previous meetings.

Receipt of Reports

The Task Force received written updates from the following entities that provided information at previous meetings:

- The Kansas Association of Educational Service Agencies;
- The Kansas Board of Regents;
- The Kansas State Department of Education (KSDE); and
- Private institutions of higher education (via a memorandum published by KSDE).

Chairperson Overview

The Chairperson provided an overview of previous Task Force recommendations, including the creation of a Dyslexia Handbook, which has been created and distributed and is being reviewed. He also stated the Dyslexia Coordinator at the KSDE had resigned, but the position had been re-filled.

He stated the Task Force had made previous funding recommendations, but those recommendations had not been approved by the Legislature; however, KSDE had allocated federal American Rescue Plan Act funds for several initiatives for the next three years, including:

- \$15.0 million for Language Essentials for Teachers of Reading and Spelling (LETRS) Training;

- \$8.5 million for FastBridge; and
- \$650,000 for Renaissance Learning.

He stated funds had also been allocated to fund the Dyslexia Coordinator position for three years.

He provided information on a literacy grant obtained by KSDE for the Literacy Link Program, and stated literacy resources are available for parents and teachers.

He noted a recent Special Committee on Education meeting, and stated that Committee

recommended the Legislature, State Board of Education (State Board), and KSDE focus on having every Kansas third grader reading at the third-grade level by the time they reach the third grade.

He also stated there are plans for the State Board and the Legislature to continue to meet and communicate in the 2022 Session.

CONCLUSIONS AND RECOMMENDATIONS

The Legislative Task Force on Dyslexia made no formal recommendations to the 2022 Legislature.