

Approved: April 7, 2000

Date



MINUTES OF THE KANSAS 2000 SELECT COMMITTEE.

The meeting was called to order by Chairperson Kenny Wilk at 1:30 p.m. on February 21, 2000 in Room 526-S of the Capitol.

All members were present except: Representative Susan Wagle - excused

Committee staff present: Alan Conroy, Legislative Research Department  
Julian Efird, Legislative Research Department  
Jim Wilson, Revisor of Statutes  
Jill Wolters, Revisor of Statutes  
Janet Mosser, Committee Secretary

Conferees appearing before the committee:

Representative Geraldine Flaharty  
Representative Shari Weber  
Kathy Porter, Office of Judicial Administration  
Tom Bohs, Deputy Secretary for Community and Field Services,  
Department of Corrections  
Meredith Williams, Executive Secretary, Kansas Public Employees  
Retirement System  
Pat Beckham, Milliman and Robertson

Others attending: See attached list.

Chairperson Wilk opened the hearing on **HB 2839 - Retirement provisions for certain KPERS members with nonlegislature service who are also members of the legislature.**

The fiscal note was distributed.

Chairperson Wilk recognized Representative Geraldine Flaharty, sponsor and proponent, to address the committee (Attachment 1).

Questions and discussion followed testimony. Jack Hawn, Deputy Executive Secretary, Kansas Public Employees Retirement System, was recognized and assisted in answering questions.

Chairperson Wilk closed the hearing on **HB 2839.**

Chairperson Wilk opened the hearing on **HB 2723 - Consolidation of field services in judicial branch.**

The fiscal note was distributed.

Representative Shari Weber, proponent, was recognized to address the committee and provided background information (Attachment 2), examples of duplication (Attachment 3), recommendations from the Community Corrections Advisory Committee (Attachment 4) and a position paper from the Court Services Advisory Board (Attachment 5).

Kathy Porter, Office of Judicial Administration, opponent, was recognized to address the committee (Attachment 6).

Tom Bohs, Deputy Secretary for Community and Field Services, Department of Corrections, neutral, was recognized to address the committee (Attachment 7).

Questions and discussion followed testimony.

Chairperson Wilk closed the hearing on **HB 2723.**

Meredith Williams, Executive Secretary, Kansas Public Employees Retirement System, was recognized to address the committee. Mr. Williams appeared in response to a request early in the legislative session

## CONTINUATION SHEET

from the Chair to respond to a series of actuarial questions (Attachment 8) and directed the committee's attention to a series of spreadsheets (Attachment 9) and a graph (Attachment 10). Mr. Williams then introduced Pat Beckham, actuary, Milliman and Robertson who reviewed the documents.

Questions and discussion followed the review.

Chairperson Wilk adjourned the meeting at 3:15 p.m.

The next meeting is scheduled for February 22, 2000.

# KANSAS 2000 SELECT COMMITTEE GUEST LIST

DATE: 2-21-00

NAME	TITLE	REPRESENTING
Don Reynolds		S. E.A. K
Karen Schwallier	off. spic	SRS
Tom Iler	Deputy Secretary	KDOC
Paul Jones	Executive Director	BSC
Keith Houston		SEAK
Robert Woodward	CIO	KPERS
Kel OC Breda	CFO	KPERS
Harley E Becker		KRTA
J. TED WALTERS		KRTA/AARP
Stacey Farmer		KASB
Donald J. Cowby	<del>Director</del>	DOR
Wendy K. Williams		KPERS
Michael Young	Director of Corrections	Johnson Co. Corrections
Steve Perry		Smart & Associates
Shari Weber	Rep.	Corr + Juvenile Justice Oversight
Krista Casperich	Staff	DOA/DPS
B. Mariani	Asst. Dir.	DPS/DOA
R. GATES	lobbyist	Fidelity Investments
B. Amy		VALTC



GERALDINE FLAHARTY  
REPRESENTATIVE, 98TH DISTRICT  
1816 FERNWOOD  
WICHITA, KS 67216  
(316) 524-8039  
  
STATE CAPITOL—279-W  
TOPEKA, KS 66612-1504  
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TOPEKA  
HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
EDUCATION  
HEALTH AND HUMAN SERVICES  
JUDICIARY  
JOINT COMMITTEE PENSIONS,  
INVESTMENTS AND BENEFITS

### Testimony on HB 2839

### KANSAS 2000 SELECT COMMITTEE

February 21, 2000

The Kansas legislature is established as a citizen legislature drawing from many walks of life to work for an annual 90 day session.

Nearly all of us have an identity besides politician. We are farmers, bankers, business people, accountants, lawyers, firefighters, etc. I am a teacher. This May will complete my 36<sup>th</sup> year as a Kansas teacher. I will be 64 years old and have been eligible for full retirement for the past several years. Because I am also a representative, under current law I am barred from receiving retirement benefits earned from my teaching career if I continue as a representative. The only direct relationship between the two jobs is KPERS.

Though this is for the present only a problem for me, a similar situation could arise for any current or future school or state employee who also serves in the legislature.

The bill as presented would allow me to receive only the KPERS fully earned as a teacher before entering the legislature. Upon leaving the legislature, the benefits would be re-calculated.

Please look at section D. It might be more easily understood if the word retirement was removed from line 34. The section means death and disability coverage would not continue after KPERS payments began.

Jack Hawn from KPERS is here to help with questions you may have. I ask that you consider HB 2839, and hope that you will pass it out favorably. I will stand for questions.

Kansas 2000 Select Committee  
Meeting Date 2-21-00  
Attachment 1



## Unified Field Services

A Report to the Public Safety Committee  
February 21, 1999

### Background Information

Correctional Field Services for convicted adults and adjudicated juveniles in Kansas include: probation, parole, post-release supervision, and community corrections. In 1991, the Kansas Legislature directed the Criminal Justice Coordinating Council to form a task force to study consolidation of field services. The Task Force consisted of 18 members, appointed as representatives of the Sentencing Commission, Community Corrections programs, Parole, and the Courts. The Task Force formed in 1991 completed a thorough analysis of consolidation and issued their report in January 1992. The Task Force conducted hearings and a state survey, and analyzed statistics, statutes, and descriptions of the current system, in order to make their recommendation for consolidation of field services.

The CJCC presented the Task Force's report and recommendations to the Kansas Legislature, which triggered a series of legislative activity related to consolidation. The 1992 Legislature (Senate Bill 479) appointed another task force to consider implementation of consolidation. The 1992 Legislature also passed the following, which was codified as part of K.S.A. 21-4727:

“On or before January 1, 1994, probation, parole and community corrections services shall be consolidated after review of the recommendation of a task force to be appointed by the Kansas Sentencing Commission.”

The Special Committee on the Judiciary was assigned an interim study topic to review the recommendations of the second task force between the 1992 and the 1993 sessions. In December 1992, the second task force also recommended consolidation, but proposed consolidation under the Kansas Department of Corrections. The interim committee recommended that the Senate Judiciary Committee introduce a bill that reflected the second task force recommendations for the field services consolidation under KDOC, thus providing a means for full legislative debate of the consolidation issue.

The Senate Judiciary Committee introduced Senate Bill 21 to the 1993 Legislature. Senate Bill 21 was an attempt to implement the consolidation of field services, as directed by K.S.A. 21-4727. The bill included provisions for consolidation of field services under KDOC with a revised implementation date of July 1, 1994. The 1993 Legislature worked SB 21, but a conference committee could not resolve House and Senate versions and SB 21 never returned for final floor action from the committee. Despite the statutory requirements of K.S.A. 21-4727, the 1993 Legislature failed to pass legislation to implement consolidation.

The Attorney General was asked to rule on the status of K.S.A. 21-4727 as related to the provision for consolidation. In Kansas Attorney General Opinion No. 93-72, the Attorney General stated the following:

“The obvious intent of the consolidation provision in (K.S.A. 21-4727) was that the legislature would review the recommendations of the second task force and pass legislation required to implement the consolidation... This prerequisite never occurred and, therefore, the provision requiring the consolidation has no legal effect because legislation is necessary to implement any consolidation.

Combined Table Containing Community Corrections, Court Services, and Parole office locations.  
 Note: Not all agencies responded to the request for information.

**COURT SERVICE**

**COMMUNITY CORRECTIONS**

**PAROLE OFFICES**

Judicial District	Court Service Location(s)	Rent	Expiration Date	Additional Comments	Community Corrections Location(s)	Rent	Expiration Date	Additional Comments	Parole Office Location(s)	Rent	Expiration Date	Additional Comments
1st	Leavenworth C. Courthouse 624 Olive St Leavenworth KS 66048 5 <sup>th</sup> and Parallel Atchison KS 66002	None	None	Share with CC, Courts	Same  111 N. 8 <sup>th</sup> St. Atchison KS	\$563 mon.  \$400 mon.	None  9/01	Share with CS, Courts				
2nd	Jackson Co. Courthouse Holtan KS 66436  Jefferson Co. Courthouse Oskaloosa KS 66066  Pottawatomie Co. Courthouse Westmoreland KS 66549	None	None	Share with courts								
3rd	Shawnee Co. Courthouse 200 SE 7 <sup>th</sup> Topeka KS 66603	None	None	County offices	712 SW Kansas Ave Topeka KS 66603	\$9,228 month	6/30/99		3400 SW Van Buren Topeka KS 66611	\$5,958 mon.	9/00	
4th	Franklin Co. County 301 S. Main Ottawa KS 66067  Anderson Co. Courthouse PO Box 305 Garnett KS 66032  Coffey Co. Courthouse PO Box 330 Burlington KS 66839  Osage Co. Courthouse PO Box 549 Lyndon KS 66451	None	None	Share with courts	1418 S. Main, Su. 3 Ottawa KS 66067	\$1,240 mon.	None					
5th	618 Commercial Emporia, KS 66801	None	None	Share with CC and Parole	618 Commercial Emporia, KS 66801	None	None	Share with CS and Parole	618 Commercial Emporia, KS 66801	\$83 mon	12/98	Share with CS and CC

COURT SERVICE

COMMUNITY CORRECTIONS

PAROLE OFFICES

6th	Bourbon Co. Courthouse PO Box 868 Fort Scott KS 66701  Linn Co. Judicial Bldg 318 Chestnut Mound City KS 66756  Miami Co. Courthouse 120 S Pearl Paola KS 66071	None	None	Share with court system	1120 S. National Fort Scott KS 66701  Linn Co. Judicial Bldg Mound City KS  211 N. Silver Paola KS 6607	\$550 month  \$150 month utilities  \$750 month	7/31/01  None  6/30/99	County court  Share with Parole	211 N. Silver Paola KS 66071	\$100 mon.	6/99	
1					Douglas Co. Courthouse 1100 Mass. Lawrence KS 66044	None		Court offices	901 Kentucky Su. 106 Lawrence KS 66044	\$825 mon.	7/98	
8th	Geary Co. 801 N. Washington Junction City KS 66441  Dickinson Co. Courthouse PO Box 127 Abilene KS 67410  Marion Co. Courthouse PO Box 298 Marion KS 66861  Morris Co. Courthouse 501 W. Main St. Council Grove KS 66846	\$3,200 bond payment  None  None  None	20 year bond  None  None  None	Share with Co. offices All offices share space with regional parole officers and CC	Junction City (Same)  1503 N. Washington Junction City KS	\$3,400 month  \$761 month	None provided  None provided	Parole office  Juvenile I&A	801 N. Washington Junction City KS 66441	\$400 mon.	5/00	Share with CC and CS
9th	Harvey County Courthouse 8 <sup>th</sup> and Main Newton, KS 67114  McPherson County Courthouse Kansas and Maple McPherson, KS 67146	None	None		500 Main Pl, Su.204 Newton KS 67114  115 E. Marlin #108 McPherson KS 67146	\$1,250 month  \$872 month	1/99  5/00					
10th	1255 E. 119 <sup>th</sup> St. Olathe KS 66061	\$24,779 mon.	5/05		135 S. Kansas Ave Olathe KS 66061  9307 W. 74 <sup>th</sup> St Merriam KS 66204  6301 Rockhill Rd, Su 421 Kansas City MO 64131	\$6,942 mon.  \$1,282 mon.  \$1,413 mon.	8/99  1/99  12/01		121 A. E. Park Olathe KS 66061	\$1,942 mon.	3/01	



COURT SERVICE

COMMUNITY CORRECTIONS

PAROLE OFFICES

11th	Judicial Center Annex 408 N Walnut Pittsburg KS 66762  Cherokee Co. Courthouse 110 W. Maple Columbus KS 66725  Labeite Co. Judicial Center 201 S Central Parsons KS 67357	\$1,000 month in Pittsburg	5/00	Pittsburg and Columbus share with CC	613 N. Broadway Pittsburg KS 66762  Same  107 S. 27 <sup>th</sup> St. Parsons KS 67357	\$1,1125 mon.  \$100 mon.  \$500 mon.	11/99  None	Share with CS  Share with CS	708 N. Locust Pittsburg KS 66762	\$730 mon.	6/01	
12th	Cloud Co. Courthouse 811 Washington Concordia KS 66901  Mitchell Co. Courthouse 114 S Campbell Beloit KS 66901  Republic Co. Courthouse 815 M. St Belleville KS 66935  Jewell Co. Courthouse 307 N. Commercial Mankato KS 66956  Lincoln Co. Courthouse 218 E. Lincoln Lincoln KS 67455  Washington Co. Courthouse 214 C Washington KS 66968	None	None	Collocated with CC is Concordia  Share with courts	Cloud Co. Courthouse 811 Washington Concordia KS 66901	\$2,100 mon.	None	Share with CS				
13th	Butler Co. Courthouse 121 S Gordy El Dorado KS 67042  Greenwood Co Courthouse 311 N Main Eureka KS 67045  Elk Co. Courthouse PO Box 308 Howard KS 67349	None	None	County offices	226 W. Central #310 El Dorado KS 67042	\$1,900 mon.	6/99					

COURT SERVICE

COMMUNITY CORRECTIONS

PAROLE OFFICES

14th	<p>Montgomery Co. Courthouse PO Box 768 Independence KS 67301</p> <p>City Hall Bldg PO Box 409 Coffeyville KS 67337</p> <p>Chatauqua Co. Courthouse PO Box 306 Sedan KS 67361</p>	None	None	Share with court system	<p>Independence Corp. Offices 200Arco Pl. Box 846 Independence KS 67301</p> <p>Same</p>	\$360	May 99	None	<p>200 Arco Place Suite 108 Independence KS 67301</p>	\$526 mon.	7/99	
15th	<p>Sherman Co. Courthouse 813 Broadway Goodland KS 67735</p> <p>Thomas Co. Courthouse 300 N Court POBox 805 Colby KS 67701</p>	None	None		<p>Law Enforcement Center 813 1/2 Broadway Goodland KS 67735</p> <p>Thomas Co. Courthouse Colby KS 67701</p>	None		County offices				
16th	<p>Ford Co. Government Center 100 Gunsmoke Dodge City KS 67801</p> <p>Gray Co. Courthouse 300 S Main Cimarron KS 67835</p> <p>Meade Co. Courthouse Meade KS 67864</p> <p>Kiowa Co. Courthouse Greensburg KS 67054</p> <p>Comanche Co Courthouse Coldwater KS 67029</p> <p>Clark Co. Courthouse Ashland KS 67831</p>	None	None	Share with court system	<p>208 W. Spruce Dodge City KS 67801</p>	None			<p>POBox 1088 Dodge City KS 67801</p>	\$535 mon.	3/01	
17th	<p>Norton Co. Courthouse POBox 70 Norton KS 67654</p>	None	None	Share with court system	<p>Same</p> <p>Osborne Co. Courthouse POBox 160 Osborne KS 67473</p>	None		Courts				

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COMMUNITY CORRECTIONS

PAROLE OFFICES

18th	Sedgwick Co. Courthouse 525 N Main Wichita KS 67203  510 N Main Wichita KS 67203  1015 S Minnesota	None	None	Share with court system	905 N. Main Wichita KS 67203  207 N. Emporia Wichita KS 67202  961 S. Glendale Wichita KS 67218  1015 S. Minnesota Wichita KS 67211	None  \$6,333  \$3,209  None	  None  3/03	    County courts	210 N. St. Francis Wichita KS 67202  963 S. Glendale Wichita KS 67218	\$4,823 mon.  \$1,903 mon.	8/98  8/98		
19th	Cowley Co Courthouse 311 E. 9 <sup>th</sup> PO Box 472 Winfield KS 67156  320 E. 9 <sup>th</sup> Suite C Winfield KS 67516  City Hall 1 <sup>st</sup> & Central PO Box 1152 Arkansas City KS 67005	None  None  \$175 mon.	None  None  Did not provide info	County offices  CC  City offices	    City Hall 1 <sup>st</sup> and Central Arkansas City KS 67005	    \$1,650 mon.	    12/98	    Share with CS					
20th	1806 12 <sup>th</sup> Street Great Bend, KS  Unspecified office located in: Rice, Stafford, Ellsworth, Russell counties	None	None	All offices are located in courthouses and none pay rent	1806 12 <sup>th</sup> Street Great Bend, KS	None	None	Collocated with CS, Parole	1806 12 <sup>th</sup> Street Great Bend, KS	None	None	Collocated with CS and CC	
21st	100 Courthouse Plaza POBox 158 Manhattan, KS  Clay County Courthouse POBox 203 Clay Center, KS	None	None		115 N. 7 <sup>th</sup> Hiawatha KS  Manhattan (No Info)  Clay Center Sheriff's Dept.  Marysville Co. Bldg  Seneca (No Info)	\$375 month  None  None  None  None	Monthly	None  County offices  County offices  County offices  County offices					



COURT SERVICE

COMMUNITY CORRECTIONS

PAROLE OFFICES

22nd	Brown Co. PO Box 417 Hiawatha KS 66434  Doniphan Co. PO Box 295 Troy KS 66087  Marshall Co. PO Box 88 Marysville KS 66508  Nemaha Co. PO Box 213 Seneca KS 66538	None	None	County Offices								
23rd	1205 Fort Hays, KS 67601	None	5/00	Share with juvenile I&A who pay \$1,100 mon.	1011 Fort Hays KS 67601	\$1,950 mo.	8/98	None				
24th	Ness Co. 105 S. Penn Ness City KS 67560	\$441 mon.	July 2002	Share with CC	Same	\$225 mon.	July 2002	Share with CS				
	Barton Co. 808 Topeka Larned KS 67550	\$388 mon.	Annual, July	Share with CC	Same	\$388 mon.	Annual, July	Share with CS				
25th	504 St. John Garden City KS 67848	None	None	Do not share	601 N. Main, SuA Garden City KS 67848	\$2,212 mon.	11/99	Parole	Same	\$650 mon.	9/00	Share with CC
26th	Seward Co. Courthouse 415 N. Washington Liberal KS 67901	None	None	County Offices	504 N. Kansas	\$900 mon.	Monthly	Juvenile I&A; Parole	504 N. Kansas Liberal KS 67901			
	Grant Co. Courthouse 108 S. Glenn Ulysses KS 67880											
	Stevens Co. Courthouse 200 E 8 <sup>th</sup> St. Hugoton KS 67951											
27th	Reno Co. 400 W 2 <sup>nd</sup> Suite A Hutchinson KS 67501	\$1,657	8/01	CS, CC, Parole	Same	\$2,554 mon.	June 99	CS, CC, Parole	Same, Suite D	\$1,073 mon.	7/00	Share with CC, CS
28th	Saline Co. Building 300 W Ash Salina KS 67401	None	None	Share with courts	227 N. Santa Fe, 202 Salina KS 67401	\$3,100 mon.	1/01					
	Ottawa Co. Courthouse 307 N. Concord Minneapolis KS 67467				307 N. Concord Minneapolis KS 67467	none	none					

COURT SERVICE

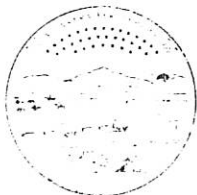
COMMUNITY CORRECTIONS

PAROLE OFFICES

29th	812 N. 7 <sup>th</sup> Kansas City KS 66101  9400 State Kansas City KS 66101  710 Nth 7 <sup>th</sup> Kansas City KS 66101	None	None	Share main office with CC, courts	Same	\$6,000	None	Share with CS	1123 N. 5 <sup>th</sup> St. Kansas City KS 66101	\$4,880	6/02	
30th	Sumner Co. Courthouse 500 N Washington PO Box 399 Wellington KS 67152  Kingman Co. Courthouse 130 N. Spruce PO Box 495 Kingman KS 67068  Barber Co. Courthouse 118 E. Washington Medicine Lodge KS 67104  Pratt Co. Courthouse 300 S. Nineteenth PO Box 884 Pratt KS 67124  Harper Co. Courthouse 201 N. Jennings PO Box 487 Anthony KS 67003	None	None	County offices	Sumner Co. 120 East 9 <sup>th</sup> Wellington KS 67152  Kingman Co. Courthouse Kingman KS 67068  111 East 4 <sup>th</sup> #101 Pratt KS 67124  123 N. Jennings Anthony KS 67003	\$300  \$225 mon.  \$785 mon.  \$100 mon.	Monthly  Monthly  6/99  6/99	Juvenile I&A; Parole; CASA  Court offices  County offices	Sumner Co. 120 East 9 <sup>th</sup> Wellington KS 67152			Share with CS
31st					9 E. Main Fredonia KS 66736	\$650 mon.	6/99	Juvenile I&A				
id												

CC=Community Corrections  
CS=Court Services

Unless otherwise noted, when multiple addresses listed, first address is the main office.  
 \* Identified addresses do not assume that no other city or state agency (in addition to Court Services, Community Corrections, or Parole) may also share the office space.  
 \*\* No record of number of employees or partial-week use of an office located at any identified location.  
 \*\*\* Each of the state's correctional facilities contains a parole office.



DEPARTMENT OF CORRECTIONS  
OFFICE OF THE SECRETARY  
*Landon State Office Building*  
900 S.W. Jackson — Suite 400-N  
Topeka, Kansas 66612-1284  
(913) 296-3317

Bill Graves  
Governor

Charles E. Simmons  
Secretary

February 18, 1999

Charles E. Simmons, Secretary  
Kansas Department of Corrections  
900 SW Jackson  
Topeka, KS 66612-1284

Dear Secretary Simmons:

Attached find the Community Corrections Advisory Committee's recommendations on a Mission Statement, Target Population, Performance Indicators, and Program Evaluation for Community Corrections. We appreciate the opportunity to present our viewpoint on these issues.

Handwritten signature of Rick Burgess in cursive.

Rick Burgess, Director  
Central Kansas Community Corrections  
At-Large Representative

Handwritten signature of Tad Kitch in cursive.

Tad Kitch, Director  
Twenty-Fifth Judicial District  
Community Corrections  
Western Representative

Handwritten signature of Gene Bonham in cursive.

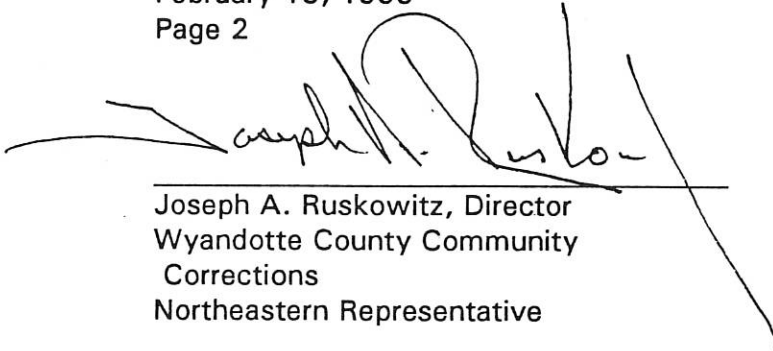
Gene Bonham, Director  
Bourbon, Linn, Miami Community  
Corrections  
Southeastern Representative

Handwritten signature of Gary Marsh in cursive.

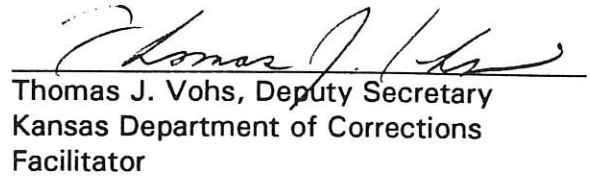
Gary Marsh, Director  
Fifth Judicial District Community  
Corrections  
At Large Representative



February 18, 1999  
Page 2



Joseph A. Ruskowitz, Director  
Wyandotte County Community  
Corrections  
Northeastern Representative



Thomas J. Vohs, Deputy Secretary  
Kansas Department of Corrections  
Facilitator

TJV:jg

Enclosure

cc: File

COMMUNITY CORRECTIONS ADVISORY  
COMMITTEE RECOMMENDATIONS

TO

SECRETARY OF CORRECTIONS

Community Corrections Advisory Committee  
February 18, 1999

## **Introduction**

The Community Corrections Advisory Committee's July 9, 1998 report to the Secretary indicated that the Committee was willing to initiate a process to review and clarify Community Corrections' mission, specify a target population for Community Corrections, and identify standardized performance indicators.

The Department of Corrections' FY 1999 Strategic Action Plan included an objective to begin the process of evaluating Community Corrections agencies and programs. The strategies outlined in the Plan to achieve this objective were consistent with the Committee's proposed initiative.

During an August 26, 1998 meeting of the Joint Committee on Corrections and Juvenile Justice Oversight, Committee members expressed a desire for the Community Corrections Advisory Committee to develop standards to measure the success of community-based programs.

The Community Corrections Advisory Committee's recommendations on mission, target population, performance indicators, and program evaluation were generated at a series of meetings in Topeka on November 5, 1998, November 23, 1998, January 12, 1999, and February 18, 1999.

## **Mission**

The original preamble to the Community Corrections Act indicated that Community Corrections' mission was, "For the purposes of more effectively protecting society and promoting efficiency and economy in the delivery of correctional services". A 1982 amendment eliminated the preamble and since then, the Community Corrections Act has been without a statement of purpose.

In the past, the Department has endorsed the following mission statement, "The primary mission of the Community Corrections Program is to prevent the institutionalization of certain adult and juvenile offenders in state correctional institutions and youth centers". The subsequent implementation of Sentencing Guidelines for adult offenders and the transfer of responsibility for juvenile offenders to the Juvenile Justice Authority ultimately rendered that mission statement obsolete.

After considering the wide array of activities that Community Corrections agencies are currently involved in and reviewing previous attempts to identify Community Corrections' purpose, the Committee recommends adoption of the following statement:

The mission of Community Corrections is to protect the community, provide community-based sanctions that enforce offender accountability, and make services available that assist offenders to change.

### **Target Population**

The factors which influence judicial decisions concerning assignment of adult felons to either Court Services or Community Corrections vary statewide. The Committee asserts that this non-system can be overcome by designating Community Corrections as the entity responsible for supervising all adult felony offenders granted probation by Kansas District Courts.

The target population for Community Corrections under this model would be:

All adult felony offenders on probation, supervised according to a validated risk/needs instrument.

The National Council on Crime and Delinquency, through a contract with the Department of Corrections, is currently in the process of developing the necessary assessment tool.

The Committee emphasizes that any plan to consolidate Community Corrections and Court Services should retain the State's current role concerning the provision of funding, designate the Department of Corrections as the agency to provide administrative oversight, and preserve all existing FTE's devoted to adult felony offender supervision. The Committee notes that if consolidation of Community Corrections and Court Services occurs, courts will need sufficient staff to conduct presentence and child custody investigations, mediate domestic relations issues, and facilitate the resolution of disputes and supervise misdemeanants.

The Committee recognizes that consolidation of Community Corrections and Court Services is likely to be controversial and difficult to achieve. In the event that consolidation does not occur and the current structure of field services is retained, the Committee recommends the following target population for Community Corrections:

- ◆ High risk/needs adult felony offenders on probation
- ◆ Court Services' adult felony probation condition violators as determined by a validated risk/needs instrument

Identification of high risk and high needs adult felony probationers would be accomplished through statewide utilization of a validated risk/needs instrument conducted prior to sentencing or upon a motion for sentence modification. The results would dictate adult

felony offender assignment to either Community Corrections or Court Services. Implementation of this method of specifying target populations is likely to require statutory change.

### **Performance Indicators**

The Community Corrections mission statement proposed by the Committee emphasizes community protection, offender accountability, and provision of services that assist offenders to change. Optimally, performance indicators should be directly related to activities which advance that mission.

The goal of protecting the community is pursued by closely supervising offenders at appropriate levels of intensity so that violations are detected and sanctions are imposed.

Performance indicators for this goal could include:

- ◆ Number and type of supervision contacts
- ◆ Substance abuse testing results
- ◆ Number of absconders
- ◆ Number of new felony convictions
- ◆ Number and type of condition violations

Ensuring offender accountability involves the enforcement of court ordered sanctions. The following performance indicators are suggested:

- ◆ Number of offenders employed
- ◆ Restitution
- ◆ Court costs and fines
- ◆ Community service work hours

The goal of making services available that assist offenders to change is pursued by referring offenders to treatment, counseling, and other activities. Performance indicators for this goal could include:

- ◆ Number of referrals to specific treatment modalities
- ◆ Number of successful treatment program completions
- ◆ Substance abuse testing results
- ◆ Number of new felony convictions by treatment program completers
- ◆ Number and type of condition violations



The Committee equates performance indicators with outputs and performance measures with outcomes. Identification of appropriate, measurable outcomes for Community Corrections is dependent on acceptance of the proposed mission statement and specification of Community Corrections' target population.

### **Program Evaluation**

Department of Corrections staff currently conduct audits of Community Corrections agencies to ensure compliance with operating standards. Although the Committee recognizes the utility of that process, it submits that program evaluation which addresses the effectiveness of Community Corrections agency services is different.

A rigorous evaluation of Community Corrections agencies can occur only if the following conditions are met:

- ◆ Consensus is achieved concerning Community Corrections' mission
- ◆ Community Corrections' target population is specified
- ◆ Consensus is achieved concerning Community Corrections performance indicators and outcomes
- ◆ A Management Information System is established that routinely collects information on performance indicators

Progress has been made on each of these items except specification of a target population. Assignment of offenders to Community Corrections must be controlled and standardized statewide for a rigorous evaluation of the effectiveness of Community Corrections to be feasible.

COURT SERVICES ADVISORY BOARD CONSOLIDATION  
OF FIELD SERVICES POSITION PAPER

TO

DR. HOWARD SCHWARTZ

Court Services Advisory Board  
February, 1999

Kansas 2000 Select Committee

Meeting Date 2-21-00

Attachment 5

## Introduction

The purpose of this position paper is to set forth the opposition of the Court Services Advisory Board to a variety of recent proposals that would have the effect of removing duties of the state's Court Services Officers from the jurisdiction of local judges. As the reader will see, our position is based on the unique line of administrative authority and level of support from the judges that has developed in Kansas for the benefit of her citizens and to further progress in preventing recidivism.

## CSO Advisory Board

In 1980, the Office of Judicial Administration, through appointment by the Judicial Administrator, formed the Court Services Officers (CSO) Advisory Board. The board is made up of six Chief Court Services Officers from the state's six judicial departments. The members represent the judicial districts within their respective judicial department. The board was formed to address policy, procedural and problem issues related to Court Services, and to make appropriate recommendations for action to the Judicial Administrator. Current board members are: James L. Robison, Judicial Department I; Cathy Leonhart, Judicial Department II; Steve Crossland, Judicial Department III; Phil Young, Judicial Department IV; Bob Keen, Judicial Department V; Sabrina Chism, Judicial Department VI; and Doug Irvin, Court Services Specialist.

The following represents the position of the CSO Advisory Board regarding the consolidation of field services.

## Overview

To understand the current status of correctional supervision, it may be beneficial to briefly review its history. By 1984, eight Community Corrections Programs were in operation, mainly in urban areas, under the Community Corrections Act of 1978. Also in 1984, the Division of Legislative Post Audit examined the issue of duplication of services between Community Corrections and Court Services. The auditors found no significant duplication of services.

In 1990, the issue of duplication of services resurfaced. The Legislature's Special Interim Committee on Judiciary recommended the formation of a Task Force under the auspices of the Kansas Sentencing Commission to study the possibility of duplicative actions regarding the release procedures involved in Court Services, Community Corrections, and Parole, as well as cost efficiency. There were reports of some offenders being supervised by more than one agency or by more than one office of an agency. However, the reports did not indicate the level of supervision received. With the progress toward co-location of Court Services and Community Corrections and more efficient technology, duplication of offender supervision is no longer an issue.

The cost effectiveness of supervision has been a topic of discussion in studies on consolidation of field services. The 1995 Koch Crime Commission, Kansas Field

Services Consolidation Report gave an estimated cost of services provided by Court Services, Community Corrections and State Parole. However, the report noted: "this does not equate into a true per diem, since Court Services is involved in other functions that cannot be accurately measured for cost." The ratio of funds available for each average adult offender served on a daily basis was established at:

Court Services Fund/Offender ratio:	\$1.65 per offender each day
Parole Services Fund/Offender ratio:	\$3.40 per offender each day
Community Corrections ratio:	\$9.35 per offender each day

Court Services, the largest field services agency in the state, provides services to the largest number of offenders, and provides the largest array of services. Currently there are 432 authorized Court Services positions. These positions are supported by state dollars for personnel costs only. All other associated costs are provided by counties. State Parole under the Department of Corrections has 118 authorized positions, totally supported by state funding. Community Corrections programs statewide have 208 intensive supervision officer (ISO) positions, also totally supported by state funding.

We believe that Court Services represents a valuable partnership between state and local governments which results in cost effective probation services. The counties have an investment and an opportunity to maintain their interest in the development of services needed in the local communities.

### **Mission Statement of Court Services**

The mission statement for Kansas Court Services Officers provides: "Under the authority of the Kansas Judicial Branch and the laws of the State of Kansas, the purpose of Court Services is to carry out the orders of the court in a timely, professional, and ethical manner consistent with community interests. This is enacted by completing the responsibilities of court reports, supervision, which holds offenders accountable for their behavior, promotes public safety and improves the ability of offenders to live more productively and responsibly in the community."

Based on the mission statement, our vision of Court Services is to continue to provide quality services to the courts and aid in public safety. A unique facet of the judicial branch is the administrative structure which allows each judicial district to tailor its personnel, programs, and services to specific community needs. Court Services Officers have responsibility for criminal, juvenile offender, child in need of care and domestic court cases. If the administrative responsibility for these cases becomes fragmented it will drastically diminish the current system of information sharing and effective case management. This has an even greater impact in non-urban districts where supervision is currently provided for a variety of different types of cases by one CSO. This results in efficient use of personnel and budget management.

## History of Court Services

The advent of today's Court Services Officers occurred in 1978 when four Court Services Officers job classifications were created: CSO I, CSO II, CSO III, and Court Services Administrative Officer (CSAO). In 1979, the judicial branch assumed the probation function in the state. Prior to that time, juvenile and adult misdemeanor probation were county functions and services varied from county to county. In the four urban courts (Sedgwick, Shawnee, Johnson, and Wyandotte Counties) and in one additional two-county judicial district, adult felony probation supervision was carried out by probation officers hired by the county. In the remainder of the state, adult felony probation was carried out by officers of the Department of Corrections (DOC), an executive branch agency.

Effective July 1, 1979, the judicial branch accepted 35 probation officers from the DOC and 1,400 felony cases. Since that time all traditional probation, with the exception of interstate compact cases, has been a function of the judicial branch. Interstate compact cases remain the responsibility of the DOC which also is the agency responsible for felony parole supervision.

## Recommendations

It is important for the District Courts to continue to maintain the responsibility of dealing with convicted persons who are still under local jurisdiction. We believe it is essential Court Services remain under the Judicial Branch and continue to provide services for each judicial district. Due to the unique services provided to the courts, the advisory board recommends Court Services not be included in any consolidation plan. It is also recommended that Court Services continue supervision of adult felons. This would allow the Courts the option of intensive supervision as a graduated sanction.

In addition, the CSO Advisory Board asks the consolidation mandate, as it pertains to the Court or judicial branch, be removed from any current legislation. This would not prevent or limit any consolidation plan for State Parole and Community Corrections programs. We believe the framework is currently in place by the Department of Corrections for the administration of State Parole and the establishment of policy, procedures and funding for Community Corrections programs. Attached is an addendum outlining current duties of Court Services Officers.



## Addendum

### Services Currently Provided to the Courts by Court Services

The primary roles of CSOs are investigations and supervision. The Kansas statutes provide a general definition of the responsibility of CSOs. However, administrative judges in individual judicial districts are able to emphasize the roles of CSOs that best serve that judicial district. The following is a description of the roles or duties of court services by statute and local administrative order of the courts.

#### Adult

- **Felony and Misdemeanor Presentence Investigation Reports:** K.S.A. 21-4604(a) provides: "Whenever a defendant is convicted of a misdemeanor, the court before which the conviction is had may request a PSI by a court services officer. Whenever a defendant is convicted of a felony, the court shall require that a PSI be conducted by a court services officer or in accordance with K.S.A. 21-4603, and amendments thereto, unless the court finds that adequate and current information is available in a previous presentence investigation report or from other sources."

The CSO's role as a felony investigator is clearly defined by Sentencing Guidelines in K.S.A. 21-4604 and 21-4714, as is the content of the report for crimes committed on or after July 1, 1993. CSOs are responsible for the preparation of each presentence investigation report, unless a judge specifically rules adequate and current information already is available and sufficient. Community Corrections Programs are not cited in these statutes.

- **Supervision of Felony Probation:** K.S.A. 21-4610, Conditions of probation or suspended sentence, the statute provides: "(a) Except as required by subsection (d), nothing in this section shall be construed to limit the authority of the court to impose or modify any general or specific conditions of probation, suspension of sentence or assignment to a community correctional services program, except that the court shall condition any order granting probation, suspension of sentence or assignment to a community correctional services program on the defendant's obedience of the laws of the United States, the state of Kansas and any other jurisdiction to the laws of which the defendant may be subject."

Under K.S.A. 21-4610, an offender may be supervised by court services or a community corrections program. Further, K.S.A. 21-4610(c) & (d) defines a probationer's obligation to the court. The court, when ordering probation, assumes responsibility for supervision and verification that the order of probation has been satisfied. The court, through CSOs, may establish any such special programs which, added to the conditions of probation, satisfy the special needs of the probationer's risk/needs assessment and public safety.

- **Supervision of Misdemeanor Probation:** CSOs shall, when ordered by the Court, monitor conditions of probation. It should be noted plea bargaining results in many reductions of felony offenses to misdemeanors, thus serious offenders may be convicted of misdemeanor offenses. Misdemeanant offenders should be afforded

supervision in accordance with the seriousness of the crime, risk/needs assessment and public safety.

The court may order supervision to be carried out by a community corrections program in misdemeanor cases. This is usually the case when community corrections is already supervising an offender in a felony case.

- **Supervision of Traffic Offenders:** Chapter 8 of Kansas Statutes Annotated defines serious traffic offenses in which the court may grant probation. A CSO shall supervise traffic offenders upon order of the Court.

- **Supervision of Fish and Game Violators:** Per K.S.A. 21-3728 and K.S.A. 32-1005 the majority of offenses in these categories are best handled with fines and other actions. However, K.S.A. 32-1005(d) defines commercialization of wildlife having an aggregate value of \$500 as a level 10, nonperson felony and having aggregate value of less than \$500 as a class A nonperson misdemeanor. Due to the seriousness of their nature, at the discretion of a court, CSOs may be responsible for the supervision of selected offenders.

- **Bond Supervision:** K.S.A. 22-2814 through 22-2817 outlines a variety of services in this area. Based on the premise a person is innocent until proven guilty, the court and support staff should make every attempt, when time and caseload permit, to get low risk, non-adjudicated offenders out of jail. K.S.A. 22-2814 specifically mandates this service be carried out by a court services officer or court staff. K.S.A. 22-2816 spells out the responsibility of the CSO in completing this duty. These programs can be instrumental in relieving jail overcrowding.

- **Progress or Status Reports:** This category includes progress reports ordered by a judge at standard intervals or upon request. This includes progress reports prepared for offenders transferred between judicial districts and out of state. These reports are not mandated by any given statute and are considered a courtesy only. When requested or ordered, the reports should be short and concise. A simple form may be adequate to supply the necessary information without using CSO and secretarial time inappropriately (CSO Manual, Section 2.2, VIII).

- **Supervision of Adults Granted Diversion from Prosecution:** Diversion of adult offenders may be handled in one of two fashions, pursuant to the policies and guidelines established by prosecutors (K.S.A. 22-2907 through 22-2911) or by court rule (K.S.A. 22-2912).

K.S.A. 22-2907 suggests the supervision of offenders placed on diversion is a prosecutor's function. Diversion supervision, as a CSO function, is not a current statewide practice. In some districts the county attorney may not have sufficient staff to supervise diversion offenders. In those districts, the court may order supervision be carried out by court services.

- **Supervised Conditional Release from State Hospital:** K.S.A. 22-3428(4) provides for the temporary supervision of persons conditionally released from the State Hospital by a CSO.

- **Arresting Offenders:** K.S.A. 22-2202(13), defines Law Enforcement Officer, which includes CSOs. However, the authority to make arrests appears to be limited to probationers. K.S.A. 22-3716 provides: "Any court services officer or community correctional services officer may arrest the defendant without a warrant or may deputize any other officer with power of arrest to do so by giving the officer a written statement setting forth that the defendant has, in the judgment of the court services officer or community correctional services officer, violated the conditions of the defendant's release or a nonprison sanction."

## Juveniles

- **Juvenile Presentence Investigations and Reports:** K.S.A. 38-1661 states: "Prior to a sentencing hearing, the court shall request an investigation and report by a CSO unless the court finds that adequate and current information is available from a previous investigation, report or other sources." The intent of the statute is to provide a court with relevant data from which to make an appropriate sentence.

- **Juvenile Offender Probation Supervision:** K.S.A. 38-1663(a)(1) provides: once an offender has been granted probation, CSOs have the responsibility to monitor and enforce conditions of probation. The Court, through court services, may establish any such special programs which are added to the conditions of probation to satisfy the special needs of the probationer, the risk/needs assessment and public safety. The court may assign a juvenile offender to a community corrections program for intensive supervision.

- **Child in Need of Care; Supervision, Reintegration and Progress:** K.S.A. 38-1565(b) defines circumstances under which formal supervision, reintegration planning, status and progress reports of children in need of care who are not placed with the Secretary of Social and Rehabilitation Services become the responsibility of the CSO.

- **Offender Release Programs:** K.S.A. 38-1632(e) states, "If the court imposes specific conditions relating to bond, the court may require a CSO to monitor the conditions."

- **Arresting Juvenile Offenders or Detaining Children in Need of Care:** K.S.A. 38-1527(a), K.S.A. 38-1624(b) provides: "A court services officer may take a juvenile into custody when there is warrant commanding the juvenile be taken into custody, when the court services officer has probable cause to believe that a warrant or order commanding that the juvenile be taken into custody has been issued in this state or in another jurisdiction for an act committed therein or when there is probable cause to believe that the juvenile has violated an order for electronic monitoring as a term of probation."

- **Supervision of Juvenile Offenders Who Have Been Diverted:** K.S.A. 38-1635 states: "Each court may adopt a policy and establish guidelines for a diversion program by which a respondent who has not been previously adjudged to be a juvenile offender may avoid such an adjudication. "

- **Informal Supervision of Children in Need of Care:** K.S.A. 38-1544 states: "At any time after filing a petition, but prior to an adjudication, the court may enter an order for continuance and informal supervision without an adjudication if no interested party objects. The court may request CSOs to provide informal supervision for children in need of care and to monitor specific conditions. A Court Services Officer may be required to provide the court with information to modify, revoke, or terminate such conditions.

- **Child in Need of Care Predispositional Investigations, Reintegration Plans and Reports:** Under K.S.A. 38-1562(b) the court may request CSOs to provide a predispositional investigation report concerning a child in need of care.

- **Investigation and Report of Custodial and/or Visitation Arrangements for Children Involved in a Divorce Action:** K.S.A. 60-1615 provides that a court may request this investigation and report from a CSO, the Department of Social and Rehabilitation Services, or any other consenting person or agency employed by the court for the purpose.

- **Domestic Mediation:** K.S.A. 23-601 permits a court or hearing officer to order mediation of any contested issue of child custody or visitation. While CSOs may qualify as mediators (under K.S.A. 23-602), this service shall not be provided without specific training in the process and techniques of mediation. (A CSO performing as a mediator is bound by K.S.A. 38-1522 in reporting suspected child abuse, and K.S.A. 23-606 to report the commission of a crime during the mediation process or an expressed intent to commit a crime in the future.)



State of Kansas

## Office of Judicial Administration

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### House Kansas 2000 Select Committee

Monday, February 21, 2000

#### Judicial Branch Testimony on HB 2723

HB 2723 would consolidate all field services (Judicial Branch court services officers, Department of Corrections parole officers, and community corrections officers) under the Judicial Branch. The Kansas Supreme Court cannot support consolidation of field services under the Judicial Branch for several reasons. Among those reasons is a concern that consolidation of all field services under the Judicial Branch could violate the doctrine of separation of powers. Attorney General Opinion No. 91-161 (attached) concludes that "those powers conferred upon the secretary of corrections by the community corrections act are executive or administrative in nature and may not be transferred to or exercised by the judiciary." Absent an actual case or controversy coming before the Supreme Court and a resulting opinion, the Attorney General's opinion provides some authority on the issue. Consolidation would not have any beneficial result, but if it is to occur, parole and community corrections should be considered for consolidation within the DOC. In any event, we are opposed to any consolidation that involves the Judicial Branch or its functions.

A second concern about this bill is that the Supreme Court currently lacks sufficient administrative staff to support consolidation under the Judicial Branch. Moreover, while current court services offices are able to provide services to the district courts, in many cases the current staffing levels prohibit them from providing anything but the most basic level of services. In the urban areas, court services officers (CSOs) averaged an active caseload of approximately 153 adult probationers in FY 1999. Court services officers already have more offenders to supervise than is desirable or recommended. In fact, the interim Special Committee on Judiciary recommended the addition of 50 new court services officers in Kansas for adequate probation supervision under the current system.

Given caseloads of this magnitude, it should go without saying that the Judicial Branch is not top heavy with administrative staffing. Each of the 31 judicial districts has one chief CSO, and that person carries a caseload in all but the urban areas. The Office of Judicial Administration has only one person who performs administrative duties and coordinates policies for CSOs statewide.

Consolidation under the Judicial Branch would require the courts to assume responsibility for additional caseloads and services that are not currently provided by the courts. Without an in-depth analysis of how the proposed system would operate and a

Kansas 2000 Select Committee

Meeting Date 2-21-00

Attachment 6



substantial increase in funding and staffing levels, it is likely that the effectiveness of the resulting programs would be adversely impacted. We cannot support change that is not an improvement.

Consolidation of field services under the Judicial Branch would be a huge alteration from the court's current operation. Much of the funding for parole is spent in contracting for and providing a large variety of services for offenders. Bringing in parole, which had a budget of \$12,189,679 in FY 1999, and community corrections, which had an FY 1999 budget of \$15,264,031, would have increased the Judicial Branch's FY 1999 budget by 34.8%. In addition, the bill does not make clear who is to pay the operating expenses of the three entities. By statute, the counties fund the operating costs of court services officers. Depending upon how this bill is implemented, the bill could impact the budgets of all 105 counties across the state. These new responsibilities could not be added to the Judicial Branch without a corresponding increase in administrative personnel. The Judicial Branch has no particular expertise in these matters, and certainly has no staffing for them.

Across the state, boards of county commissioners and community corrections boards have worked together to establish programs designed to meet the needs of their communities. These elected and appointed officials are sensitive to those local needs. To return governance of community corrections to the state level would appear contrary to the recent legislative trend toward decentralization and local determination of these issues.

An additional concern about consolidation under the Judicial Branch is that, under the current system, there is a great deal of inconsistency in pay. In many cases, community corrections staff are paid more than court services officers. Moreover, there is an internal inconsistency in that pay for community corrections staff differs from county to county. Significant pay issues would arise if there is any thought to consolidating these workers into the state system.

It is not clear just what problems exist that would be solved by consolidation. When community corrections was first created, there were cases in which offenders were supervised by both court services and community corrections or parole. I am assured by judges and court services officers that this does not occur today. Judges sentence offenders to probation either under court services or under community corrections. Requiring an offender to report to both programs would not be the best use of limited resources, to say nothing of the problems it would create for probationers. Across the state, it is certainly the Judicial Branch's perception that court services and community corrections programs work together in this and many other ways on a daily basis.

One suggestion that could alleviate any communication problems that might exist is to have representatives of court services, community corrections, and parole meet on a regular basis to discuss issues of mutual interest and concerns. Currently, the Judicial Branch has a Court Services Advisory Board that is representative of court services officers from across the state, and community corrections has a Community Corrections Advisory Board. It would seem logical that these groups could discuss statewide policy issues and work together in much the same way that HB 2723 appears to contemplate.

Before the interim Special Committee on Judiciary last summer, the Kansas Sentencing Commission offered testimony recommending consolidation of field services under one agency. Subsequent to that testimony, the Sentencing Commission deleted consolidation from its list of recommendations to the 2000 Legislature, and recommended

instead that the target population for community corrections be more clearly defined.

After considering a significant amount of testimony, including a review of the extensive history of the consolidation issue since the early 1990s, the 1999 Interim Special Committee on Judiciary recommended that the introduction of a bill "to repeal the portion of K.S.A. 21-4727 which contains a directive that probation, parole, and community corrections services shall be consolidated on or before January 1, 1994." 2000 HB 2595 would accomplish this recommendation.

In summary, it is entirely appropriate to review the organization of state government to attempt to promote public safety, to attempt to provide better services to the citizens of this state, and to attempt to achieve efficiencies. It is our position that consolidation under the Judicial Branch would accomplish none of these objectives and would rest on questionable constitutional grounds. Instead, we request your support for HB 2595, which deletes from current law the requirement that consolidation occur on or before January 1, 1994.

KP:mr



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

December 19, 1991

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ATTORNEY GENERAL OPINION NO. 91- 161

Ben Coates  
Executive Director  
Kansas Sentencing Commission  
Jayhawk Tower  
700 Jackson Street, Suite 501  
Topeka, Kansas 66603-3731

Re: Constitution of the State of Kansas--Executive--  
Executive Power of Governor; Community Correctional  
Services; Parole; Probation

Constitution of the State of Kansas--Judicial--  
Judicial Power; Community Correctional Services;  
Parole; Probation

Synopsis: The distribution of powers by a state constitution among the governmental departments is a question for the state itself. Under the Kansas constitution, the functions of parole and probation may be conferred upon either the executive or judicial branch of government. Those powers conferred upon the secretary of corrections by the community corrections act are executive or administrative in nature and may not be transferred to or exercised by the judiciary. Cited herein: K.S.A. 21-4601; K.S.A. 1990 Supp. 21-4603, as amended by L. 1991, ch. 89, § 4; K.S.A. 21-4611; 22-3707; 75-5290; 75-5291; 75-5292; 75-5294; 75-5296; 75-52,103; 75-52,105; 75-52,110; K.S.A. 1990 Supp. 75-52,111; 75-52,114; Kan. Const., Art. 1, §§ 1, 7; Kan. Const., Art. 3, § 1.

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Dear Mr. Coates:

As executive director of the Kansas sentencing commission, you request our opinion regarding: (1) whether the constitutions of the United States and the state of Kansas would permit placing the function of probation in the executive branch of government for the state of Kansas; and (2) whether the constitutions would permit the placement in one branch of state government -- either executive or judicial -- the functions of probation, community corrections and parole.

Neither the United States constitution nor the Kansas constitution expressly provides for separation of powers. State ex rel. Stephan v. Kansas House of Representatives, 236 Kan. 45, 59 (1984). The governments, both state and federal, are divided into three departments, each of which is given the powers and functions appropriate to it. Id. Because of the establishment of the three branches of government, the courts have assumed the applicability of the doctrine of separation of powers among the three branches of government -- legislative, executive and judicial. Leek v. Theis, 217 Kan. 784, 804 (1975); 16 Am.Jur.2d Constitutional Law § 294 (1979). The very structure of the three-branch system of government gives rise to the doctrine. State ex rel. Stephan, 236 Kan. at 59. The separation of powers doctrine is designed to avoid a dangerous concentration of power and to allow respective powers to be assigned to the department best fitted to exercise them. Leek, 217 Kan. at 805.

How power is to be distributed by a state constitution among its governmental departments is commonly, if not always, a question for the state itself. Van Sickle v. Shanahan, 212 Kan. 426, 450 (1973).

"[T]he authority [of the guarantee clause of the United States Constitution] extends no further than a guaranty [sic] of a republican form of government, which supposes a preexisting government of the form which is to be guaranteed. As long, therefore, as the existing republican forms are continued by the states, they are guaranteed by the federal constitution. Whenever the states may choose to submit other republican forms, they have a right to do so, and to claim the federal guarantee for the latter. The

only restriction imposed upon them is, that they shall not exchange republican for anti-republican constitutions; . . . ' (Federalist No. 43.)" Van Sickle, 212 Kan. at 450. (Emphasis in original.)

It is only where the whole power of one department is exercised by the same hands which possess the whole power of another department that the fundamental principles of a free constitution are subverted. Van Sickle, 212 Kan. at 451. Whether the legislative, executive and judicial powers of a state are to be kept altogether distinct and separate, or whether persons or collections of persons belonging to one department may, in respect to some matters, exert powers which, strictly speaking, pertain to another branch of government, is for the determination of the state. Parcell v. State of Kansas, 468 F.Supp. 1274 (D. Kan. 1979).

The several departments of government are not kept wholly separate and unmixed by any of the state constitutions. 16 Am.Jur.2d Constitutional Law § 301. While the Kansas constitution establishes three branches of government, it was never intended that an entire and complete separation be maintained. See In re Sims, 54 Kan. 1 (1894). There may also be situations where a particular power cannot be affirmed to be either executive, legislative, or judicial, and if such power is not by the constitution unequivocally entrusted to either the executive or judicial departments, the mode of its exercise and the agency must necessarily be determined by the legislature. 16 Am.Jur.2d Constitutional Law § 301. All governmental sovereign power is vested in the legislature, except such as is granted to the other departments of the government, or expressly withheld from the legislature by constitutional restrictions. Leek, 217 Kan. at 797.

The constitution is the common source of the power and authority of every court, and all questions concerning jurisdiction of a court must be determined by that instrument, with the exception of certain inherent powers which of right belong to all courts. 16 Am.Jur.2d Constitutional Law § 707. Section 1 of article 3 of the Kansas constitution states:

"The judicial power of this state shall be vested exclusively in one court of justice, which shall be divided into one supreme court, district courts, and such other courts as are provided by law; and



all courts of record shall have a seal.  
The supreme court shall have general  
administrative authority over all courts  
in this state."

Judicial power is not capable of a precise definition sufficient for all conceivable cases. 16 Am.Jur.2d Constitutional Law § 307. It has been held to be the power to hear and determine a cause and the rights of the parties to a controversy, and to render a binding judgment or decree based on present or past facts under existing law. State v. Mitchell, 234 Kan. 185, 194 (1983). The constitution, by implication, confers upon the judiciary every particular power necessary for the exercise or performance of the judicial power. Id. Such inherent powers can neither be taken away nor abridged by the legislature. 20 Am.Jur.2d Courts § 78 (1965). The power a court possesses only by virtue of a statutory grant, however, is not an inherent power. Id.

The power to grant probation is dependent upon statutory provisions. State v. Dubish, 236 Kan. 848, 851 (1985). See K.S.A. 21-4601 et seq. Probation is an act of grace and the power to grant that act is provided by the legislature to the court. Dubish, 236 Kan. at 851. See K.S.A. 1990 Supp. 21-4603, as amended by L. 1991, ch. 89, § 4. Probation is separate and distinct from sentence. State v. Moon, 15 Kan.App.2d 4, 9 (1990); Dubish, 236 Kan. at 851. The power to grant probation, therefore, is not an exclusive function of the judiciary, and the exercise of the power is not inherently a judicial function. Within constitutional limits the legislature, as representative of the people, can vest the power in its discretion. Leek, 217 Kan. at 802. Due to statutory provision, the power to grant probation is a judicial function. However, because the power to grant probation is by constitution neither an exclusive function of the judiciary nor inherently a judicial function, the legislature may transfer the authority to grant probation from the judiciary to the executive branch of government.

In determining whether the functions of probation, community corrections and parole may be exercised by one branch of government, it must be determined whether any of the functions are the exclusive function of a particular branch of government.

As noted above, probation is not an exclusive function of the judiciary. The legislature possesses the authority to confer

the power to grant probation upon either the executive or judicial branch of government.

Section 7 of article 1 of the Kansas constitution states "[t]he pardoning power shall be vested in the governor, under regulations and restrictions prescribed by law." The pardoning power vested in the governor includes the power to parole imprisoned convicts, or to commute their sentences. Lynn v. Schneck, 139 Kan. 138, 140 (1934). However, the matter of parole following the imposition of sentence is purely a legislative function. 59 Am.Jur.2d Pardon and Parole § 78 (1987). Any power to grant parole is dependent upon statute. Id. The authority to grant parole presently exists in the Kansas parole board. See K.S.A. 22-3707 et seq. The district court having jurisdiction of the offender may parole any misdemeanor sentenced to confinement in the county jail. K.S.A. 21-4611. That authority, though, may be conferred by the legislature on either the executive or the judiciary.

The community corrections act is set forth at K.S.A. 75-5290 et seq. Pursuant to the act, each county in the state must establish a corrections advisory board, enter into an agreement with a group of cooperating counties to establish a regional corrections advisory board, or contract for correctional services with a county or group of cooperating counties. K.S.A. 75-52,110. Each corrections advisory board is obligated to adopt a comprehensive plan for the development, implementation, operation and improvement of correctional services described in K.S.A. 75-5291. Id. (Such services include restitution programs, victims services programs, preventive or diversionary correctional programs, and community corrections centers and facilities. K.S.A. 75-5291.) The comprehensive plans are received by the board of county commissioners and then submitted to the secretary of corrections. K.S.A. 75-5292. The secretary of corrections is authorized to perform a number of duties under the act including: adopt rules and regulations necessary for the implementation and administration of the act (K.S.A. 75-5294); provide consultation and technical assistance to corrections advisory boards (K.S.A. 75-5294); approve comprehensive plans (K.S.A. 75-5296); establish operating standards of the correctional services (K.S.A. 75-5296); examine books, records, facilities and programs for purposes of recommending changes and improvements (K.S.A. 75-5296); suspend all or a portion of grants awarded to a county or group of cooperating counties when it is determined that the recipient is not in substantial compliance with the minimum operating standards

(K.S.A. 75-5296); audit and determine the amount of the expenditures for correctional services of each county (K.S.A. 75-52,103); and determine the amount of grant to be awarded to qualified counties or group of cooperating counties (K.S.A. 75-52,105 and K.S.A. 1990 Supp. 75-52,111). Decisions of the secretary of corrections may be appealed to the state community corrections board. See K.S.A. 75-52,114. The powers conferred upon the secretary of corrections by the community corrections act are those powers generally exercised by an administrative agency. Administrative agencies are part of the executive branch of government. 16 Am.Jur.2d Constitutional Law § 310; 20 Am.Jur.2d Courts § 2.

In determining whether those powers conferred upon the secretary of corrections under the community corrections act may be exercised by the judiciary, it must be remembered that even the primary function of any of the three departments may be exercised by any other governmental department or agency so long as (1) the exercise thereof is incidental or subsidiary to a function or power otherwise properly exercised by such department or agency, and (2) the department to which the function so exercised is primary retains some sort of ultimate control over its exercise. 16 Am.Jur.2d Constitutional Law § 299. The court should consider: (a) the essential nature of the power being exercised; (b) the degree of control by one department over another; (c) the objective sought to be attained by the legislature; and (d) the practical result of the blending of powers as shown by actual experience over a period of time. State ex rel. Stephan, 236 Kan. at 60.

As stated above, the powers conferred upon the secretary of corrections by the community corrections act are those powers generally exercised by an administrative agency. It has consistently been held in this state that the power to adopt rules and regulations is essentially executive or administrative in nature. State ex rel. Stephan, 236 Kan. at 60.

Exercise by the judiciary of those powers conferred upon the secretary of corrections would result in extensive control by the judiciary over community correctional services. Control by the executive would be limited to those functions performed by the state community corrections board. The board is authorized to hear appeals on decisions regarding: grants for expenses of a corrections advisory board which does not have an approved comprehensive plan; the determination of grant amounts for community correctional services programs; and the organization of new community correctional service programs

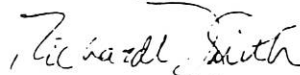
and their plans for services. K.S.A. 75-52,114. The board also has authority to review minimum operating standards and performance evaluation standards established for community correctional services programs. Id. Three of the five members comprising the state community corrections board are appointed by the governor; the remaining members are appointed by the chief justice of the Kansas supreme court. Id. If the judiciary was authorized to exercise those powers presently conferred upon the secretary of corrections, a reversal of the roles generally understood to be executive and judicial would result. While the degree of control over community correction services programs by the judiciary would not be absolute and total, the degree of control would be such that the executive would effectively be precluded from exercising powers inherently conferred upon the executive by section 3 of article 1 of the Kansas constitution. Because community correctional services are not reasonably incidental to performance of judicial functions, the judiciary would not be entitled to perform the functions presently conferred on the secretary of corrections. See 16 Am.Jur.2d Constitutional Law § 313. The legislature may have a legitimate objective for conferring those powers presently exercised by the secretary of corrections upon the judiciary. However, such objective will not override the usurpation of executive power by the judiciary. The power conferred upon the secretary of corrections by the community corrections act may not be transferred to and exercised by the judiciary.

In review, the distribution of powers by a state constitution among the governmental departments is a question for the state itself. Under the Kansas constitution, the functions of parole and probation may be conferred upon either the executive or judicial branch of government. Those powers conferred upon the secretary of corrections by the community corrections act are executive or administrative in nature and, therefore, may not be transferred to or exercised by the judiciary. As all three functions - probation, community corrections and parole -- may legitimately be performed by the executive branch of government, concentration of those functions in the executive does not result in an unconstitutional usurpation of power.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Richard D. Smith  
Assistant Attorney General





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Bill Graves  
Governor

Charles E. Simmons  
Secretary

**MEMORANDUM**

To: Kansas 2000 Select Committee

From: Charles E. Simmons, Secretary 

Subject: HB 2723

Date: February 21, 2000

Attached is testimony which the Department of Corrections provided to the Special Committee on Judiciary last August during its review of the interim topic regarding consolidation of probation, community corrections and parole—all of whom provide community supervision of adult felony offenders. The Department of Corrections has responsibilities in two of these three areas—the department's parole services staff supervise offenders upon their release from prison and the department administers and oversees grants made to local programs under the Community Corrections Act.

Field services consolidation has been studied and considered several times in recent years, and the attached testimony provides background information related to the consolidation issue. In the testimony, we also stress the importance of deciding what the state's policy goals are regarding consolidation before addressing the question of organizational placement. In our view, the organizational options can be better evaluated if the policy framework is clear about what we are trying to achieve.

We continue to believe that consolidation has conceptual merit and will provide the committee with whatever information or assistance it might require in considering this issue.

Attachment




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Bill Graves  
Governor

Charles E. Simmons  
Secretary

**MEMORANDUM**

DATE: August 9, 1999  
TO: Special Committee on Judiciary  
FROM: Charles E. Simmons  
Secretary   
SUBJECT: Consolidation of Field Services

**Background**

Adult felons under community supervision are monitored by three separate agencies in Kansas. Court Services supervises adult felons on probation as assigned by the Courts. In calendar year 1997, the average daily population of felons supervised by Court Services was 6,105. Community Corrections also supervises adult felons assigned by the Courts and may, through contractual agreements, monitor adult felons released from Kansas prisons. In fiscal year 1999 through April, Community Corrections agencies supervised an average daily population of 4,905. Parole Services supervises adult felons released from Kansas prisons and parolees and probationers from other states who transfer to Kansas through the Interstate Compact. In FY 1999, the average daily population of felons supervised by Parole Services was 5,766.

A chronology of activities related to field services consolidation is outlined below:

1991

Kansas Legislature directs Criminal Justice Coordinating Council to establish Task Force to study consolidation of field services.



January 1992

Task Force recommends consolidation of field services under new executive branch agency, the Department of Field Services.

1992

Kansas Legislature appoints second Task Force to consider implementation of consolidation and passes the following directive which is incorporated into K.S.A. 21-4727: "On or before January 1, 1994, probation, parole, and community corrections services shall be consolidated after review of a task force to be appointed by the Kansas Sentencing Commission".

December 1992

Second Task Force recommends consolidation of field services under the Kansas Department of Corrections.

1993

Senate Judiciary Committee introduces Senate Bill 21 to implement consolidation of field services under the Kansas Department of Corrections by July 1, 1994. Legislation fails to pass.

June 1993

Attorney General asked to rule on status of consolidation provision of K.S.A. 21-4727 and responds, "...it is our opinion that in the absence of legislation implementing the consolidation of probation, parole, and community corrections services, the "consolidation" provision of (K.S.A. 21-4727) is a nullity".

January 1995

Koch Crime Commission's Task Force on Corrections, Prisons, Jails, and Parole (chaired by Secretary Simmons) requests Commission to retain consultants to update 1992 Task Force on Field Services Consolidation Report.

December 1995

Consultant's Kansas Field Services Consolidation Report recommends that, "The administration of correctional field services in Kansas should be reorganized within the next two years. A central state office should be established, under the direction of a committee of the Criminal Justice Coordinating Council which provides state oversight of state-funded, county managed field services agencies. Other viable options identified in the report were: Maintain current organizational structure but formally

declare an objective to establish better field services coordination; or consolidate field services under the Kansas Department of Corrections.

December 1995

Criminal Justice Coordinating Council declines to act on consultants' report indicating that they do not envision themselves as a management entity.

December 1995

Chief Justice Kay McFarland and Secretary of Corrections Charles Simmons appoint Field Services Coordination Committee to identify and implement measures to increase efficiency and effectiveness of field services in lieu of consolidation.

January 1997

Field Services Coordination Committee generates report focusing on identification of lead agency in cases of multiple supervision; cooperative training; uniform offender risk/needs instrument; interagency transfer criteria; uniform database; and offender assignment staffing conferences. A uniform database has been established for Community Corrections and Parole Services and substantial progress has been made toward validating risk/needs instruments for those two entities.

January 1998

Ten Year Corrections Master Plan recommends field services unification through establishment of local and regional Community Supervision Departments to plan, develop, operate, and evaluate community supervision services for one or more counties.

December 1998

Koch Crime Institute issues White Paper Report entitled Kansas Field Services Consolidation Report noting that consolidation has been repeatedly recommended and that a decision to either consolidate or streamline the current organizational structure needs to be made.

February 1999

HB 2398 submitted, proposing to create the Unified Field Services Commission with responsibility for developing a plan for the consolidation of the activities, funding, and administration of court service probation, parole, post-release supervision, and community corrections services with the Department of Corrections as the central agency with responsibility and oversight of all such field services. No action taken on proposed legislation.

This chronological outline of legislative initiatives and various studies of field services consolidation indicates that there does appear to be consensus that consolidation should take place. However, the details of how to do it, where to do it, and who is going to be in charge have thwarted implementation.

### **Goals of Consolidation**

Consideration of the feasibility of consolidating Kansas' three field services agencies seems to have originated with concerns about eliminating duplication of services and dual supervision of offenders. Proponents of consolidation have also cited the following additional goals:

- ◆ Increased efficiency (a more uniform system for the administration and operation of field services)
- ◆ More even distribution of resources
- ◆ Expansion in the types and availability of offender services
- ◆ Adoption of single risk/needs assessment for offender classification purposes
- ◆ Establishment of single set of supervision standards
- ◆ Consistent utilization of intermediate sanctions for condition violators
- ◆ Selection of standard performance measures
- ◆ Development of uniform offender database
- ◆ Standardization of field service training content and elimination of duplication in training delivery

It is critical that the goals of consolidation be agreed on before proceeding to discuss the issues of how, where, and who will be in charge of a consolidated field services system.

### **Consolidation Options**

After determining the goals consolidation is expected to achieve, the following issues will also need to be addressed:

- ◆ Target Population

The presumption has been that a consolidated field services agency would serve only adult offenders, not juveniles. This proposed target population should be explicitly confirmed. A decision will also need to be made concerning whether the target

population should be restricted to felons or if it should also include misdemeanants. We also believe that determining the appropriate target population for each service will be critical to accomplishing the goals of consolidation.

◆ Offender Services

The initial Task Force recommended that the services of a consolidated agency should be restricted to offenders on post-conviction status. Pre-conviction services, such as pre-trial diversion and pre-trial release supervision, have not been contemplated by those charged with studying consolidation and this direction should be confirmed. In addition, specific services needed throughout the state, and the best way of delivering those services, will need to be determined.

◆ Administrative Structure

The various studies consistently advocate that a consolidated field services agency be designated as part of the Executive rather than Judicial Branch of government. This placement will need to be endorsed. Arguably, the primary issue concerning the administrative structure of a consolidated field services agency is whether offender supervision should be the responsibility of the state or the county or groups of counties.

The two potential consolidation models are presented below:

◆ State Responsibility Model

Consolidation occurs within a single state agency which could be: a) New State Agency, b) Department of Corrections, c) Office of Judicial Administration. Offender supervision is performed by state employees and services (e.g. substance abuse treatment) are provided through: (1) statewide contractual agreements with private providers; (2) local service providers; (3) staff; or (4) a combination of providers.

◆ Local Responsibility Model

Consolidation occurs at local level which might consist of a) Single County, b) Group of Counties, c) Counties divided into regions. Funding and oversight would be provided by a) New State Agency, b) Department of Corrections, c) Office of Judicial Administration. Offender supervision is performed by county employees, and services are provided through contractual agreements with local service providers or staff, or a combination thereof.

### **Other Issues**

- ◆ The Community Corrections Advisory Committee has previously recommended that Community Corrections agencies be designated as being responsible for supervising all adult felons granted probation by Kansas courts. In effect, implementation of this recommendation would consolidate Community Corrections and Court Services. This concept does not include parole services, making it a partial consolidation option.
- ◆ Any consolidation option will have to address replacing county funding and in-kind services which are currently devoted to activities related to offender supervision. The 1992 Task Force Report estimated that the value of those services was approximately three million dollars.
- ◆ Court Services conducts presentence investigations, provides divorce mediations, and supervises bond and diversion cases. Provisions will need to be made to continue these services.

### **Conclusion**

Several studies in recent years on the issue of the consolidation of field services have been undertaken and have concluded that consolidation should take place. However, the details of how and where consolidation should occur have not been worked out. The Department of Corrections recognizes the studies have concluded that certain efficiencies and an increased effectiveness would result from consolidation and believes it is an issue which has merit.

In my view, achievement of the primary goals of consolidation—efficiency, equitable distribution of resources and standardization of training, offender classification, databases, and performance measures—requires a greater degree of centralized leadership, direction, and accountability than currently exists.

CES:TJV:jg

**HOUSE BILL NO. 2718**  
**ACTUARIAL & IMPLEMENTATION COMMENTS**

**Question 1.**

*In your presentations to the Joint Committee last Fall, you stated that the actuarial present value of participants' interests in KPERS could be individually valued and transferred to an elective defined contribution plan without harming KPERS, and that the Michigan valuation methodology would be an appropriate valuation methodology to use in such circumstances. Please explain the manner in which such actuarial present value would be determined, including use of the Michigan valuation methodology, the actual mechanics involved in transferring this value to an elective defined contribution plan.*

**Question 2.**

*In your presentations to the Joint Committee last Fall, you also stated that if KPERS participants converted to an elective defined contribution plan, the effects on KPERS would be a "wash". Please explain these effects in greater detail, including the effects on KPERS unfunded liability in absolute terms.*

**Response to Questions 1 and 2.**

The "individual interest" of a member of KPERS may be defined in different ways. Most often this term relates to the vested accrued benefit earned while a member is in covered employment, which is based on the member's salary history and service to the date of determination. This is the benefit that would be payable if the member terminated service. The member's interest in the System would be the present value of their vested accrued benefit, but not less than their employee contributions with interest. This is the benefit that would be payable if the member terminated service. Because this calculation is based on the salary and service record for each individual member, this calculation may be performed on an individual basis. It does, however, require the use of several assumptions in order to convert a monthly annuity benefit to a lump sum value. The interest rate, mortality rates and benefit commencement age must be specified in order to calculate the present value of the vested accrued benefit.

This methodology was used by Michigan when it offered members the option to elect out of the current defined benefit program and into the new defined contribution plan. The System converted the member's existing accrued benefit to a lump sum value (but not less than the employee contributions with interest), which was transferred into the defined contribution plan as a beginning balance.



Based on the Michigan statutes, each member who elected into the DC plan received the greater of the present value of their accrued benefit or their accumulated employee account balance as of the transfer date. The actuarial assumptions used to determine the Michigan transfer amounts were:

- (a) 8 % interest rate
- (b) Unisex (50% male, 50% female) mortality based on the valuation mortality table
- (c) Benefit commencement age based on the member's service at the transfer date (for Michigan it was earlier of age 60 or age 55, if service  $\geq 30$ )

If current members in KPERS are allowed to elect out of the defined benefit program and have the present value of their accrued benefit or vested accrued benefit (but not less than their accumulated employee account balance) transferred to the defined contribution plan, there will be an impact on KPERS. The ultimate impact on KPERS will be the net result of the impact on two components: the unfunded actuarial liability and the normal cost rate.

The cost impact for KPERS is heavily dependent on which members elect out of the defined benefit plan and into the defined contribution plan. Assuming complete information and competent counseling is provided to members, it is reasonable to assume that most members will make the decision that is in their best financial interest. If it is in their best financial interest, those decisions will produce unfavorable experience for KPERS (which translates into higher costs). This situation is referred to as an antiselection. If this occurs, it is likely that younger, short service members and those who expect to leave employment in the short term will elect out of the defined benefit plan and into the defined contribution plan.

### **Impact on the Unfunded Actuarial Liability**

The actuarial liability is determined in the actuarial valuation process for each individual member. The calculation is rather complex. It involves projecting benefits payable at each future age for each occurrence (termination of employment, death, disability, retirement), allocating a piece of the future benefit to each year of service, applying the probability of each event occurring and determining the present value of that stream of payments. For most members, the actuarial liability will be equal to or greater than their employee account balance. However, this is not uniformly true.

If members are allowed to elect out of KPERS and into the defined contribution plan with the present value of their accrued benefit (but not less than their employee contributions with interest) as a beginning account balance, it will have an impact on the unfunded actuarial liability. Both the actuarial liability and the assets will be affected, but not necessarily in the same amount. Because the employee account balance may be greater than the actuarial liability, the decrease in assets for an individual may be greater than the corresponding decrease in the actuarial liability. The final impact will depend on the relationship between the actuarial liability and the transfer amount (greater of employee account or present value of accrued benefit) for the members who elect to transfer out of KPERS.

The assumptions used to determine the present value will have an impact on the transfer amount, but not on the actuarial liability (which is determined based on the actuarial assumptions). It is worth noting that the actuarial liability in the valuation utilizes sex distinct mortality rates, but if lump sum values are determined to be transferred to the defined contribution plan, they would have to be computed using unisex mortality rates. This would also create some difference between the relationship of the actuarial liability released by a member and the asset value transferred, and therefore impact the UAL.

In general, the older, longer service members, who are more likely not to elect into the DC plan, represent the largest percentage of the actuarial liability in the System. Under the Michigan methodology, the decrease in the actuarial liability would not necessarily be equal to or greater than the decrease in the assets represented by the transfer amount for each member. However, in total, the expectation would be that the unfunded actuarial liability of the System would decrease somewhat. However the ultimate impact is dependent on which members elect out of the defined benefit plan.

### **Impact on the Normal Cost Rate**

The most dramatic impact on the funding of KPERS will be on the normal cost rate. Again, the ultimate impact is dependent on which members elect out of the defined benefit plan and into the defined contribution plan. The actuarial method used to develop costs for KPERS, the projected unit credit method, is very sensitive to the demographic characteristics of the active members, in particular the attained age. If many of the younger members elect out of the defined benefit plan, it will result in a much older membership. There would very likely be a drastic increase in the normal cost rate for the remaining members, when expressed as a percent of covered payroll. The actual increase in the normal cost rate will depend on which members elect to remain in KPERS. However, by virtue of being a closed group (no new entrants) the average age will increase and so will the normal cost rate.

If the basic plan design changes from the current defined benefit plan to a defined contribution plan, there will not be a one time adjustment to the costs. The real impact on the costs of KPERS will evolve in future years, and the cost impact is likely to be different in each year until the current defined benefit plan has no active members. This is not easily quantified and should be modeled and studied in-depth to appreciate the magnitude of the cost impact and its sensitivity to the different segments of the population which may elect out of the defined benefit plan.

### **Question 3.**

*If an elective defined contribution plan were enacted, it is believed that the selected providers would bear most of the plan's implementation duties and costs, including participants' conversion education, participant account establishment and the like, and*

*that KPERS' costs would be relatively nominal. Please outline the implementation activities that you would envision that KPERS would have responsibility for.*

### **Response to Question 3.**

The costs and administrative issues related to the creation of a new DC plan and the potential conversion of existing DB members is extremely difficult to quantify. This is due to the many (as yet to be determined) options regarding plan design, administrative complexity, and eventual rules regarding transfer. Whatever the actual level of costs experienced and regardless of their source, a defined contribution plan is flexible in that it allows these costs to be borne by the employer through KPERS, by the employee through annual administration and management fees or both.

To allow transfer of existing defined benefit accounts individual statements would need to be prepared to reflect benefit accruals or employee deposits and potential transfer values. KPERS would likely contract with its existing actuary to make these calculations. Costs associated with this one-time transfer provision are as yet undetermined.

To select an administrator, investment managers and potentially an entity to direct participant education, the System would likely develop and advertise national Requests for Proposals (RFPs). Estimates reflect costs associated with the design, publication, evaluation and due diligence of these proposals. Any mandated selection criteria or mandated design inefficiencies (e.g., allowance for partial bids) could impact costs. In addition, the ability or desire to leverage KPERS' existing investment management relationships will impact the need and costs associated with RFPs.

With regard to administration, the apparent ideal arrangement would be to engage a third-party administrator (TPA) to handle the establishment and management of individual accounts, the dissemination of plan information, the custody and safekeeping of plan assets and the ongoing education regarding plan and investment options, features and benefits. The TPA would also act as master record keeper and would likely have expenses associated with coordinating the plan accounts with the investment management service providers. As such, the numbers and types of these providers, as defined within HB 2718 will also have a material impact on the efficiencies and costs associated with this coordination. Many administrative costs could shift materially depending on the extent to which these efforts are coordinated with existing KPERS infrastructure, such as the 800 phone lines, the employer communications, etc.

It does not seem likely that the Board would select investment managers to provide education services to members. The conflicts inherent in asset based fees preclude their effective involvement. With this assumption, the fees paid for administration versus investment management will be clearly delineated. This isolation creates an opportunity to negotiate the best possible rates for all participants but reduces an ability to "hide" overhead in an all inclusive management fee structure. As described earlier, the actuary and KPERS staff would likely be charged with education regarding transfers. The

ongoing education regarding investment selection and plan design could fall to the TPA, to KPERS, to an outside education provider or to some combination of the three. There currently exists on-line (Internet) based investment education packages that can be customized for specific plans and provided on demand.

Currently, KPERS operates without individual participant information. Employers provide aggregate payroll data, affirm eligibility and remit contributions. Depending on the TPA selected and the integration of the defined benefit plan with the new defined contribution plan, an upgrade to the existing payroll management infrastructure may be necessary. It is anticipated that the imaging/workflow project currently underway may help manage many of these issues, although the project may not be completed prior to the DC plan inception.

Once established, the DC operations must be monitored as to consistency and performance of investment alternatives, consistency and quality of administrative services and quality and efficacy of ongoing educational efforts. Assuming some level of independent review and verification, KPERS will have internal costs associated with these duties. Depending on the level of integration with the existing plan investment and administrative infrastructure, these expenses may be more or less significant to the total administrative costs.

In addition to plan design alternatives, the size of the plan, both in terms of participants and dollars, and the ongoing growth of assets under management will have a material impact on incremental fees. To model these size and growth issues certain assumptions must be made. The numbers of participants and amount of assets transferred from the existing DB plan to the DC plan will be critical, as will the number of future new hires automatically enrolled in the DC plan. Average salaries for all participants and relative contribution rates for employers must also be assumed. The assumptions regarding level of participation and size of asset base used to arrive at the cost estimates provided are attached.

Cost Estimates for  
Significant Defined Contribution Plan Components  
(Year One)

Transfer of existing Accounts	
Calculations	estimate not available
Education/Communication	estimate not available
Requests For Proposals	
Design	\$ 0 to \$50,000
Advertisement	\$1,000 to \$25,000
Evaluation	\$ 0 to \$120,000
Due Diligence	\$10,000 to \$100,000
Annual Administrative Costs	\$300,000 to \$500,000
Education/Communication	\$ 0 to \$1.2MM
Investment Management Fees	\$3MM to \$15MM
Monitoring & Maintenance	
TPA	\$ 0 to \$25,000
Investment Managers	\$15,000 to \$150,000
Education	\$ 0 to \$50,000
Total Costs (w/existing assumptions, Year 1)	
In Millions	\$ 3.3 - \$ 17.2
As a % of Assets (Year One)	30 – 158 basis points

## Participant/Asset Assumptions

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>	<u>Assumptions</u>
New Employees	16,000	16,000	16,000	16,000	16,000	10% leave each year
		14,400	14,400	14,400	14,400	
			12,960	12,960	12,960	
				11,664	11,664	
					10,498	
	16,000	30,400	43,360	55,024	65,522	
Average Salary	\$20,000	\$20,600	\$21,218	\$21,855	\$22,510	\$20,000 Avg. starting salary
		\$21,218	\$21,855	\$22,510	\$23,185	3% COLA
			\$22,510	\$23,185	\$23,881	3% Step
				\$23,881	\$24,597	
					\$25,335	
Total	\$25,600,000	\$26,368,000	\$27,159,040	\$27,973,811	\$28,813,026	8% contribution
New Assets	\$0	\$24,443,136	\$25,176,430	\$25,931,723	\$26,709,675	
	\$0	\$0	\$23,338,551	\$24,038,707	\$24,759,868	
	\$0	\$0	\$0	\$22,283,882	\$22,952,398	
	\$0	\$0	\$0	\$0	\$21,276,873	
	\$25,600,000	\$50,811,136	\$75,674,021	\$100,228,123	\$124,511,840	
Converted Employees	30,000	30,000	30,000	30,000	30,000	20% of the 150,000 members convert They take 10% of the \$10B in assets
	\$1,000,000,000					
Average Salary	\$27,000	\$28,620	\$30,337	\$32,157	\$34,087	\$27,000 Avg. starting salary 3% COLA 3% Step
Assets Contributed From Converts	\$64,800,000	\$68,688,000	\$72,809,280	\$77,177,837	\$81,808,507	8% contribution

Total Accounts	46,000	60,400	73,360	85,024	95,522	
Total Assets	\$1,090,400,000	\$1,297,131,136	\$1,549,384,928	\$1,850,741,682	\$2,205,121,363	8% asset growth
Investment Options	S&P 500 Index Portfolio Active Large Cap Active Small Cap International Equity Index Portfolio International Equity Active Portfolio Active Core Fixed Income Portfolio Money Market Portfolio					
Options	Daily Valuation		YES			
	Education		YES			
	Record keeping		YES			



#### **Question 4.**

*If an elective defined contribution plan were enacted, how would KPERS determine the amount of the employer's contribution to each participant? Would a portion of each defined contribution plan participant's employer share have to be reserved to help fund the ongoing defined benefit plan? Would a portion of the employer's share be used to help fund the disability and death benefits? And finally, do you have a rough idea today whether the employer's share for each defined contribution participant would be nearly equivalent to the share contributed for each defined benefit participant?*

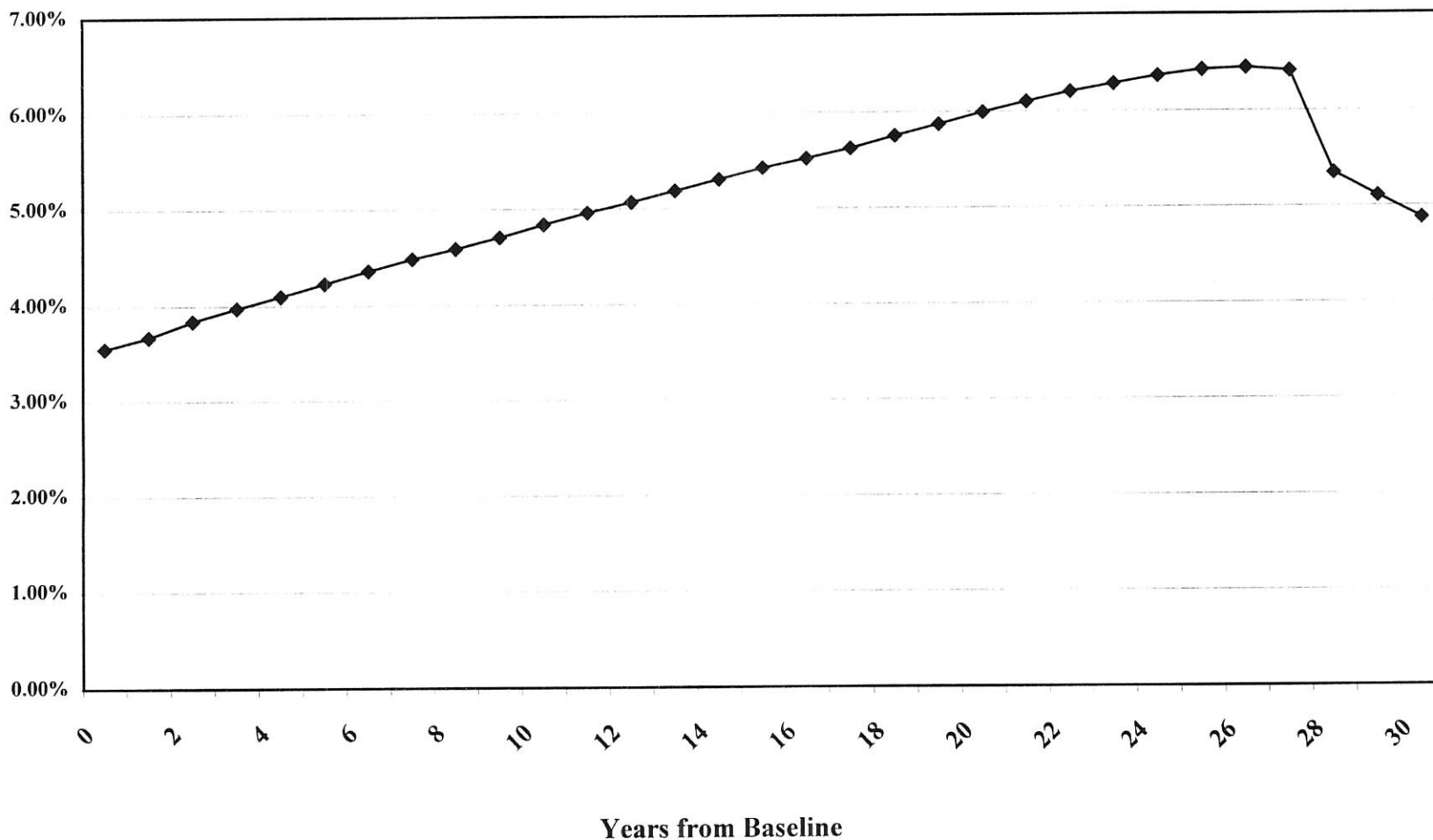
#### **Response to Question 4.**

If a defined contribution plan is enacted and members are allowed to elect out of the current plan, there will still be an unfunded actuarial liability. It will be different than the unfunded actuarial liability prior to the enactment of the defined contribution plan, but it will still exist. As such, a payment on the unfunded actuarial liability will still be required each year in order to amortize it by the year 2034. The dollar amount of the amortization payment each year is fixed, but it could be spread over the payroll of all members (both the defined benefit and defined contribution plans) or only over the payroll of the members of the defined benefit plan. From an administrative standpoint, it probably will be easier to spread the UAL payment over the total covered payroll of members of both the defined benefit and defined contribution systems.

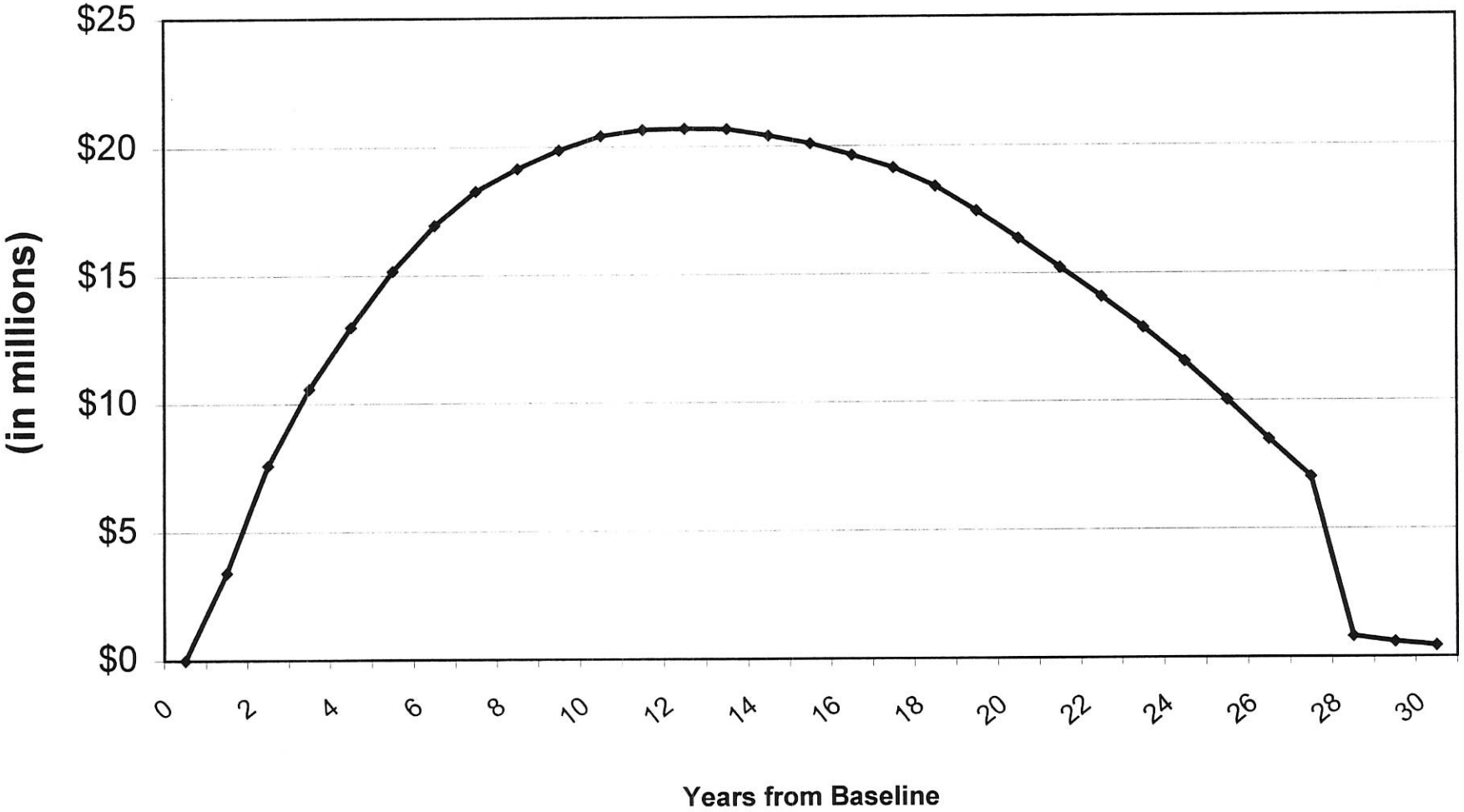
There is no way to know what percentage of payroll the unfunded actuarial liability would represent of total payroll or of the payroll for those members in the defined contribution plan since the unfunded actuarial liability is unknown (see questions 1 and 2).

The employer contributions which are specifically used to fund the death and disability benefits provided by that Program are separate from the contributions used to fund the retirement benefits. They would have to be continued in order to maintain the death and disability benefits offered by that Program. There are other death and disability benefits which are currently provided by the Retirement Program that would be eliminated and replaced with other benefits in the defined contribution plan. In particular, the current defined benefit structure provides for additional years of service credit and salary indexation to normal retirement age for disabled members. Survivor benefits are also provided based on certain age and service requirements.

# Adjusted DB Employer Normal Cost Rate



### Extra Annual Normal Costs (Dollars)



### Comparison of State School Normal Cost Rates

Years from Baseline	BASELINE								
	0	1	2	3	4	5	6	7	
DB count	100,455	89,796	81,790	75,686	70,147	64,551	58,781	54,050	
DC count	-	10,659	18,665	24,769	30,308	35,904	41,674	46,405	
DB count %	100%	89%	81%	75%	70%	64%	59%	54%	
DC count %	0%	11%	19%	25%	30%	36%	41%	46%	
<b>Valuation Covered Payroll</b>	\$ 2,933,442,856	\$ 2,933,442,856	\$ 2,933,442,856	\$ 2,933,442,856	\$ 2,933,442,856	\$ 2,933,442,856	\$ 2,933,442,856	\$ 2,933,442,856	
DB payroll	\$ 2,933,442,856	\$ 2,810,844,678	\$ 2,645,410,605	\$ 2,506,151,703	\$ 2,373,108,935	\$ 2,233,129,161	\$ 2,090,958,814	\$ 1,957,177,913	
DC payroll	\$ -	\$ 122,598,178	\$ 288,032,251	\$ 427,291,153	\$ 560,333,921	\$ 700,313,695	\$ 842,484,042	\$ 976,264,943	
DB payroll %	100%	96%	90%	85%	81%	76%	71%	67%	
DC payroll %	0%	4%	10%	15%	19%	24%	29%	33%	
<b>Adjusted DB Normal Costs:</b>									
Normal Cost ( Total Dollars)	\$ 221,468,249	\$ 215,625,445	\$ 207,329,050	\$ 199,802,187	\$ 192,156,164	\$ 183,773,246	\$ 174,832,651	\$ 166,040,028	
Normal Cost Rate (Total)	7.550%	7.671%	7.837%	7.972%	8.097%	8.229%	8.361%	8.484%	
Adjusted DB Employer Normal Cost Rate	3.550%	3.671%	3.837%	3.972%	4.097%	4.229%	4.361%	4.484%	
<b>Employer Blended Normal Costs:</b>									
Employer Contribution ( DB Normal Costs)	\$ 104,137,221	\$ 103,186,108	\$ 101,504,405	\$ 99,544,346	\$ 97,226,273	\$ 94,439,032	\$ 91,186,714	\$ 87,759,858	
DC Contribution ( 3.55% of Payroll)	\$ -	\$ 4,352,235	\$ 10,225,145	\$ 15,168,836	\$ 19,891,854	\$ 24,861,136	\$ 29,908,184	\$ 34,657,405	
Total Employer Blended Contribution	\$ 104,137,221	\$ 107,538,343	\$ 111,729,550	\$ 114,713,182	\$ 117,118,127	\$ 119,300,168	\$ 121,094,897	\$ 122,417,263	
As a % of payroll	3.550%	3.666%	3.809%	3.911%	3.993%	4.067%	4.128%	4.173%	
Extra Annual Normal Cost from Baseline (Millions)	\$ -	\$ 3.40	\$ 7.59	\$ 10.58	\$ 12.98	\$ 15.16	\$ 16.96	\$ 18.28	
<b>Adjusted DC Employer Rate</b> (To Remain Cost Neutral)		0.78%	0.91%	1.07%	1.23%	1.38%	1.54%	1.68%	

### Comparison of State School Normal Cost Rates

Years from Baseline	8	9	10	11	12	13	14	15
DB count	50,345	46,020	41,706	38,072	34,946	31,967	29,042	26,505
DC count	50,110	54,435	58,749	62,383	65,509	68,488	71,413	73,950
DB count %	50%	46%	42%	38%	35%	32%	29%	26%
DC count %	50%	54%	58%	62%	65%	68%	71%	74%
<b>Valuation Covered Payroll</b>	\$ 2,933,442,856	\$ 2,933,442,856	\$ 2,933,442,856	\$ 2,933,442,856	\$ 2,933,442,856	\$ 2,933,442,856	\$ 2,933,442,856	\$ 2,933,442,856
DB payroll	\$ 1,849,933,974	\$ 1,720,691,373	\$ 1,587,711,277	\$ 1,469,386,830	\$ 1,366,653,737	\$ 1,266,372,144	\$ 1,165,359,052	\$ 1,075,800,307
DC payroll	\$ 1,083,508,882	\$ 1,212,751,483	\$ 1,345,731,579	\$ 1,464,056,026	\$ 1,566,789,119	\$ 1,667,070,712	\$ 1,768,083,804	\$ 1,857,642,549
DB payroll %	63%	59%	54%	50%	47%	43%	40%	37%
DC payroll %	37%	41%	46%	50%	53%	57%	60%	63%
<b>Adjusted DB Normal Costs:</b>								
Normal Cost ( Total Dollars)	\$ 158,817,492	\$ 149,781,104	\$ 140,283,334	\$ 131,588,976	\$ 123,875,172	\$ 116,272,387	\$ 108,392,421	\$ 101,314,194
Normal Cost Rate (Total)	8.585%	8.705%	8.836%	8.955%	9.064%	9.182%	9.301%	9.418%
Adjusted DB Employer Normal Cost Rate	4.585%	4.705%	4.836%	4.955%	5.064%	5.182%	5.301%	5.418%
<b>Employer Blended Normal Costs:</b>								
Employer Contribution ( DB Normal Costs)	\$ 84,819,473	\$ 80,958,529	\$ 76,781,717	\$ 72,808,117	\$ 69,207,345	\$ 65,623,404	\$ 61,775,683	\$ 58,286,861
DC Contribution ( 3.55% of Payroll)	\$ 38,464,565	\$ 43,052,678	\$ 47,773,471	\$ 51,973,989	\$ 55,621,014	\$ 59,181,010	\$ 62,766,975	\$ 65,946,310
Total Employer Blended Contribution	\$ 123,284,038	\$ 124,011,207	\$ 124,555,188	\$ 124,782,106	\$ 124,828,359	\$ 124,804,415	\$ 124,542,658	\$ 124,233,171
As a % of payroll	4.203%	4.227%	4.246%	4.254%	4.255%	4.255%	4.246%	4.235%
Extra Annual Normal Cost from Baseline (Millions)	\$ 19.15	\$ 19.87	\$ 20.42	\$ 20.64	\$ 20.69	\$ 20.67	\$ 20.41	\$ 20.10
<b>Adjusted DC Employer Rate</b> (To Remain Cost Neutral)	1.78%	1.91%	2.03%	2.14%	2.23%	2.31%	2.40%	2.47%

### Comparison of State School Normal Cost Rates

Years from Baseline	16	17	18	19	20	21	22	23
DB count	24,443	22,390	20,055	17,820	15,666	13,823	12,189	10,743
DC count	76,012	78,065	80,400	82,635	84,789	86,632	88,266	89,712
DB count %	24%	22%	20%	18%	16%	14%	12%	11%
DC count %	76%	78%	80%	82%	84%	86%	88%	89%
<b>Valuation Covered Payroll</b>	\$ 2,933,442,856	\$ 2,933,442,856	\$ 2,933,442,856	\$ 2,933,442,856	\$ 2,933,442,856	\$ 2,933,442,856	\$ 2,933,442,856	\$ 2,933,442,856
DB payroll	\$ 999,941,876	\$ 924,786,139	\$ 836,722,037	\$ 752,648,482	\$ 670,330,931	\$ 596,757,976	\$ 530,959,928	\$ 470,744,027
DC payroll	\$ 1,933,500,980	\$ 2,008,656,717	\$ 2,096,720,819	\$ 2,180,794,374	\$ 2,263,111,925	\$ 2,336,684,880	\$ 2,402,482,928	\$ 2,462,698,829
DB payroll %	34%	32%	29%	26%	23%	20%	18%	16%
DC payroll %	66%	68%	71%	74%	77%	80%	82%	84%
<b>Adjusted DB Normal Costs:</b>								
Normal Cost ( Total Dollars)	\$ 95,129,767	\$ 88,968,434	\$ 81,582,599	\$ 74,268,149	\$ 66,970,387	\$ 60,264,662	\$ 54,163,420	\$ 48,400,597
Normal Cost Rate (Total)	9.514%	9.620%	9.750%	9.868%	9.991%	10.099%	10.201%	10.282%
Adjusted DB Employer Normal Cost Rate	5.514%	5.620%	5.750%	5.868%	5.991%	6.099%	6.201%	6.282%
<b>Employer Blended Normal Costs:</b>								
Employer Contribution ( DB Normal Costs)	\$ 55,136,795	\$ 51,972,981	\$ 48,111,517	\$ 44,165,413	\$ 40,159,526	\$ 36,396,269	\$ 32,924,825	\$ 29,572,140
DC Contribution ( 3.55% of Payroll)	\$ 68,639,285	\$ 71,307,313	\$ 74,433,589	\$ 77,418,200	\$ 80,340,473	\$ 82,952,313	\$ 85,288,144	\$ 87,425,808
Total Employer Blended Contribution	\$ 123,776,080	\$ 123,280,294	\$ 122,545,106	\$ 121,583,613	\$ 120,499,999	\$ 119,348,582	\$ 118,212,969	\$ 116,997,948
As a % of payroll	4.219%	4.203%	4.178%	4.145%	4.108%	4.069%	4.030%	3.988%
Extra Annual Normal Cost from Baseline (Millions)	\$ 19.64	\$ 19.14	\$ 18.41	\$ 17.45	\$ 16.36	\$ 15.21	\$ 14.08	\$ 12.86
<b>Adjusted DC Employer Rate</b> (To Remain Cost Neutral)	2.53%	2.60%	2.67%	2.75%	2.83%	2.90%	2.96%	3.03%



### Comparison of State School Normal Cost Rates

Years from Baseline	24	25	26	27	28	29	30
DB count	9,320	7,895	6,627	5,573	1,383	1,203	1,076
DC count	91,135	92,560	93,828	94,882	99,072	99,252	99,379
DB count %	9%	8%	7%	6%	1%	1%	1%
DC count %	91%	92%	93%	94%	99%	99%	99%
<b>Valuation Covered Payroll</b>	\$ 2,933,442,856	\$ 2,933,442,856	\$ 2,933,442,856	\$ 2,933,442,856	\$ 2,933,442,856	\$ 2,933,442,856	\$ 2,933,442,856
DB payroll	\$ 410,555,883	\$ 349,163,445	\$ 293,161,791	\$ 245,045,250	\$ 44,285,553	\$ 37,176,155	\$ 32,126,422
DC payroll	\$ 2,522,886,973	\$ 2,584,279,411	\$ 2,640,281,065	\$ 2,688,397,606	\$ 2,889,157,303	\$ 2,896,266,701	\$ 2,901,316,434
DB payroll %	14%	12%	10%	8%	2%	1%	1%
DC payroll %	86%	88%	90%	92%	98%	99%	99%
<b>Adjusted DB Normal Costs:</b>							
Normal Cost ( Total Dollars)	\$ 42,529,179	\$ 36,384,807	\$ 30,613,497	\$ 25,511,816	\$ 4,138,179	\$ 3,383,912	\$ 2,850,281
Normal Cost Rate (Total)	10.359%	10.421%	10.443%	10.411%	9.344%	9.102%	8.872%
Adjusted DB Employer Normal Cost Rate	6.359%	6.421%	6.443%	6.411%	5.344%	5.102%	4.872%
<b>Employer Blended Normal Costs:</b>							
Employer Contribution ( DB Normal Costs)	\$ 26,107,249	\$ 22,419,785	\$ 18,888,414	\$ 15,709,851	\$ 2,366,620	\$ 1,896,727	\$ 1,565,199
DC Contribution ( 3.55% of Payroll)	\$ 89,562,488	\$ 91,741,919	\$ 93,729,978	\$ 95,438,115	\$ 102,565,084	\$ 102,817,468	\$ 102,996,733
Total Employer Blended Contribution	\$ 115,669,736	\$ 114,161,704	\$ 112,618,392	\$ 111,147,966	\$ 104,931,704	\$ 104,714,195	\$ 104,561,933
As a % of payroll	3.943%	3.892%	3.839%	3.789%	3.577%	3.570%	3.564%
 Extra Annual Normal Cost from Baseline (Millions)	\$ 11.53	\$ 10.02	\$ 8.48	\$ 7.01	\$ 0.79	\$ 0.58	\$ 0.42
 <b>Adjusted DC Employer Rate</b> (To Remain Cost Neutral)	3.09%	3.16%	3.23%	3.29%	3.52%	3.53%	3.54%

### Adjusted DB Normal Employer Rate Vs Adjusted DC Employer Rate

