

# REPORT OF THE COURT BUDGET ADVISORY COUNCIL

DECEMBER 13, 2013



*“[I]t is clear that administering justice to all Kansans has been an original function of government performed by the Judicial Branch since 1861. Such an original function certainly qualifies as a core function, i.e., an essential service. . . . Adequate court funding is critical to providing these essential services—while inadequate funding undermines not only access to justice, but also the people’s belief in the justice system itself.”*

**Chief Justice Lawton Nuss, 2013 State of the Judiciary Report**

# COURT BUDGET ADVISORY COUNCIL

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## *Advisors:*

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*Angie Callahan, District Court Clerk, 3<sup>rd</sup> Judicial District, Topeka*

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## EXECUTIVE SUMMARY

The Kansas Judicial Branch faces a funding crisis in FY 2015. If the budget already adopted by the 2013 Legislature is not supplemented, the Branch will have to cut \$8.25 million from its base budget, which is the amount necessary to maintain current operations. These cuts are in addition to the denial of the market salary adjustments committed to for Judicial Branch employees in 2008. In addition, these cuts ignore the findings of the Weighted Caseload Study that the Judicial Branch is already understaffed by 58 court clerks and at least 11 judges – if the one judge per county rule and other judge placement statutes remain in place. If these inequities are taken into consideration, the Judicial Branch budget deficit is almost doubled.

Chief Justice Lawton Nuss appointed the Court Budget Advisory Council (Council) to develop and prioritize recommendations for implementing the necessary cuts to cover the base budget deficit. The Council met over a period of six weeks, developed and discussed several budget reduction possibilities, and examined in detail a total of 11 budget reduction strategies.

The Council did not examine potential revenue enhancements to fund the deficit. Since FY 2007, the sole authority for setting court costs appears to rest exclusively with the Legislature. Since then, the Judicial Branch has been statutorily prohibited from exercising any independent authority to assess or increase costs, fees, and fines. In fact, attempts by the Judicial Branch in the last two years to obtain legislative support for a technology fee to fund a statewide rollout of the highly efficient and cost saving e-filing program have been rejected. See 2013 H.B. 2117 and 2012 S.B. 425.

In addition, the Council focused solely on recommendations that would impact FY 2015. Although longer-term strategies are mentioned, and in some cases recommended, they are not part of the final prioritization.

The Council considered the important work of Kansas courts and the impact any cuts would have on its residents and its business community. It considered public safety, access to justice, and the economic impacts of each budget reduction strategy. It was cognizant of the fact that businesses decide where to locate, in part, based on the reputation of the state's court system for fairness and reasonableness. Kansas Courts are currently ranked 5<sup>th</sup> in the nation by the U.S. Chamber of Commerce. See *2012 State Liability Systems Survey, U.S. Chamber Inst. For Legal Reform, Sept. 2012*. Delayed disposition of cases creates uncertainty among affected businesses, which makes businesses less prone to invest and expand operations. "The connection between efficient operation of the judiciary and economic well-being of the community is widely recognized." Roy Weinstein and Stevan Porter, *Economic Impact on the County of Los Angeles and the State of California of Funding Cutbacks Affecting the Los Angeles Superior Court*, Micronomics, Inc., Dec. 2009, at 10. "Significant economic harm to each state and the U.S. as a whole will result from funding cutbacks affecting state judiciaries. . . . Across all states, funding

cutbacks will result in estimated losses of \$52.2 billion from increased uncertainty on the part of litigants.” Nels Pearsall, Bo Shippen and Roy Weinstein, *Economic Impact of Reduced Judiciary Funding and Resulting Delays in State Civil Litigation*, Micronomics, Inc., Mar. 2012, at 22. The Council also considered the impact cuts would have on our most vulnerable Kansans, including domestic violence victims and those who cannot afford counsel, and the disproportionate impact of such cuts on our rural communities.

In the end, the Council recommended the following budget reduction strategies in order of priority:

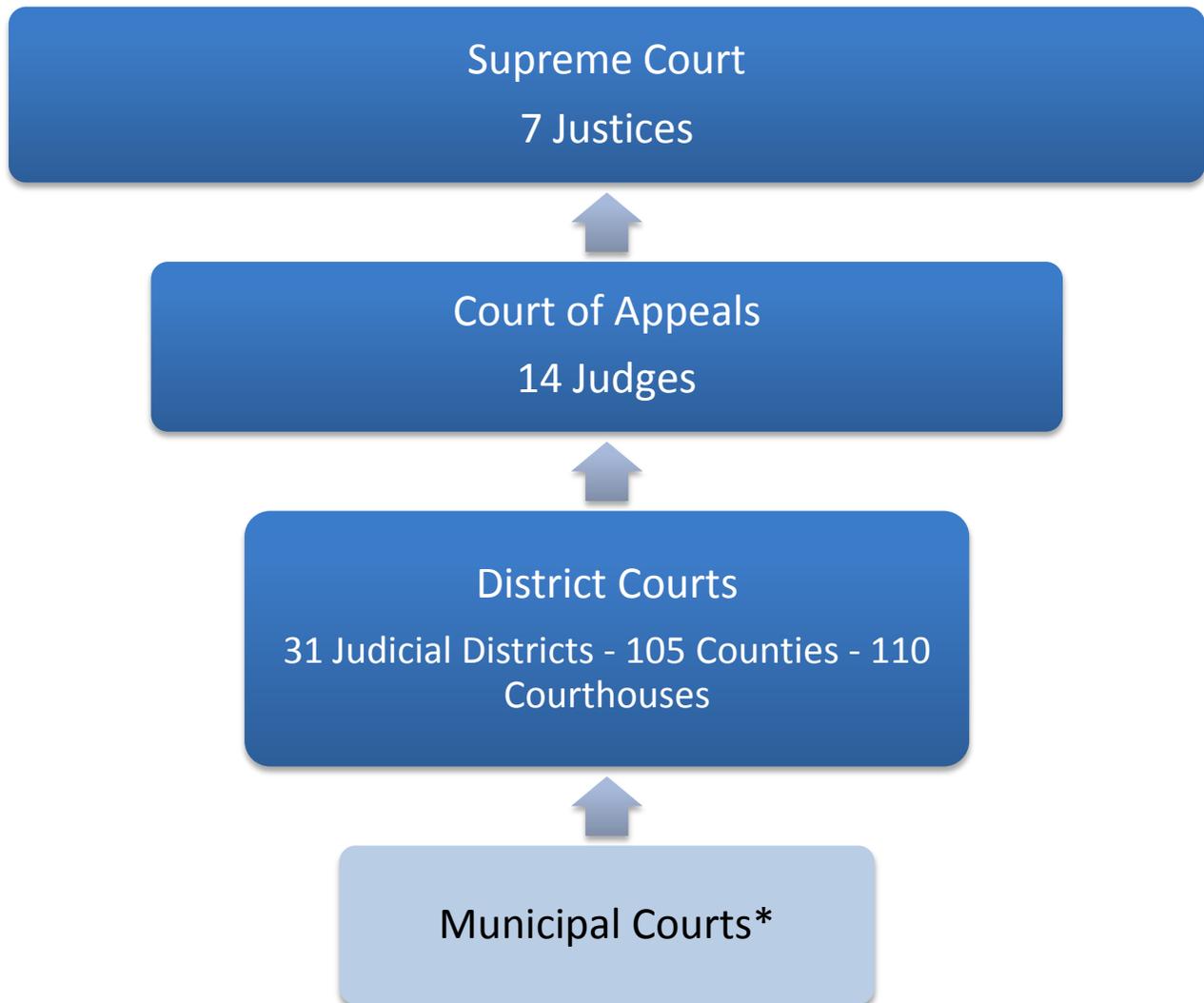
<b>Budget Reduction Strategy</b>	<b>Estimated Savings</b>
Delay Judicial Openings (requires statutory change)	\$438,000
Maintain 80 Nonjudicial Vacancies	\$2,500,000
Reduce Training Budget by 50%	\$206,000
Eliminate 19.5 FTE Court Services Officer Positions that are Performing Solely Discretionary Duties	\$1,080,000
Reduce Access to Justice Grant	\$250,000
Maintain Total of 120 Vacancies (Additional 40)	\$1,250,000
Furlough Nonjudicial Employees (10 days)	\$2,526,000
<b>Total</b>	<b>\$8,250,000*</b>

\*The Council could not quantify any savings for FY 2015 for two budget reduction strategies, reducing the number of court reporters and increasing the use of district magistrate judges in select judicial districts. If any savings can be realized by implementing these strategies in FY 2015, the Council recommends that they be adopted and savings be applied to reduce the number of furlough days required.

## OVERVIEW OF THE JUDICIAL BRANCH

The Supreme Court is made up of seven justices. Kan. Const. art. 3, § 2. It has original jurisdiction in proceedings in quo warranto, mandamus, and habeas corpus; and such appellate jurisdiction as may be provided by law. Kan. Const. art. 3, § 3. The Kansas Supreme Court has general administrative authority over all courts in the state. Kan. Const. art.3, § 1.

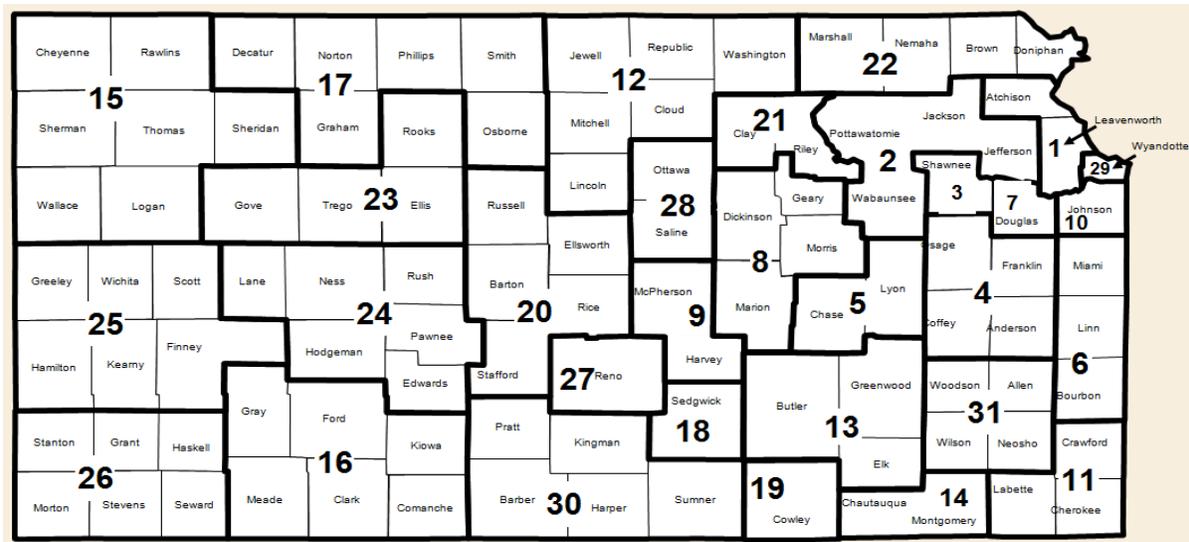
The Kansas Court of Appeals is made up of 14 judges, sitting in panels of three to decide cases. K.S.A. 2012 Supp. 20-3002; K.S.A. 20-3012. The following diagram shows the structure of the Kansas court system.



\*Anyone convicted in municipal court may appeal to the district court of the county in which the municipal court is located. K.S.A. 22-3609. Municipal courts, their judges and staff, are wholly financed by their respective municipalities. K.S.A. 12-4101 *et seq.* The Supreme Court is responsible for training all municipal judges and court staff and for certifying non-lawyer municipal judges. K.S.A. 12-4114; K.S.A. 20-1a11. Court costs assessed on municipal court cases fund the training. K.S.A. 12-4116.

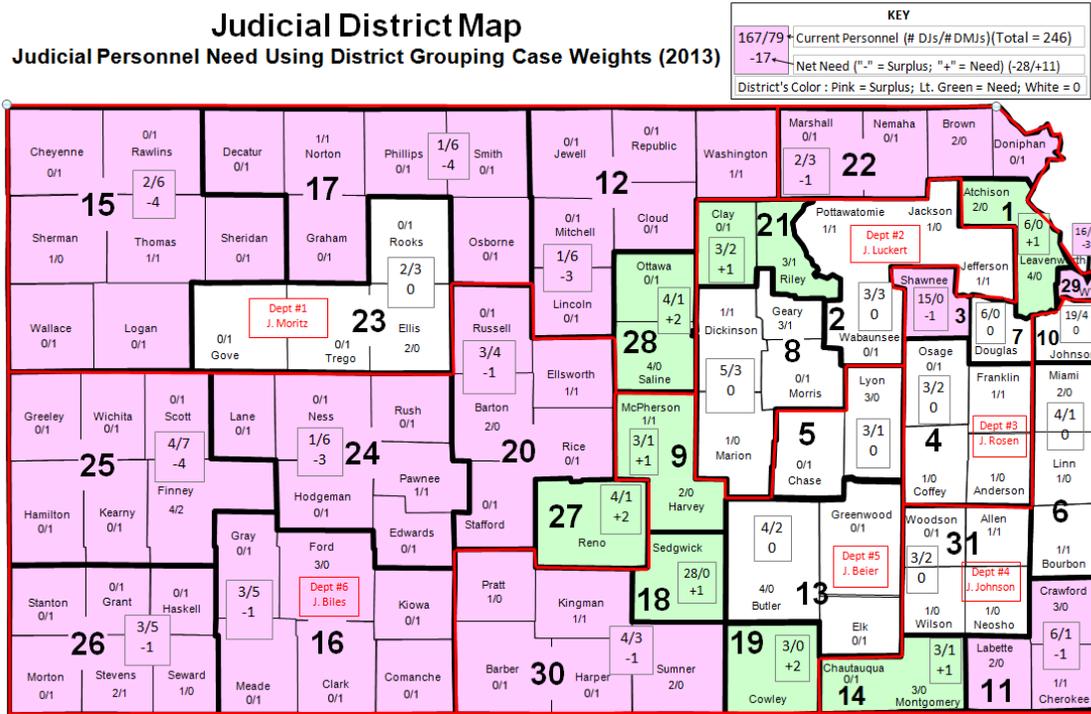
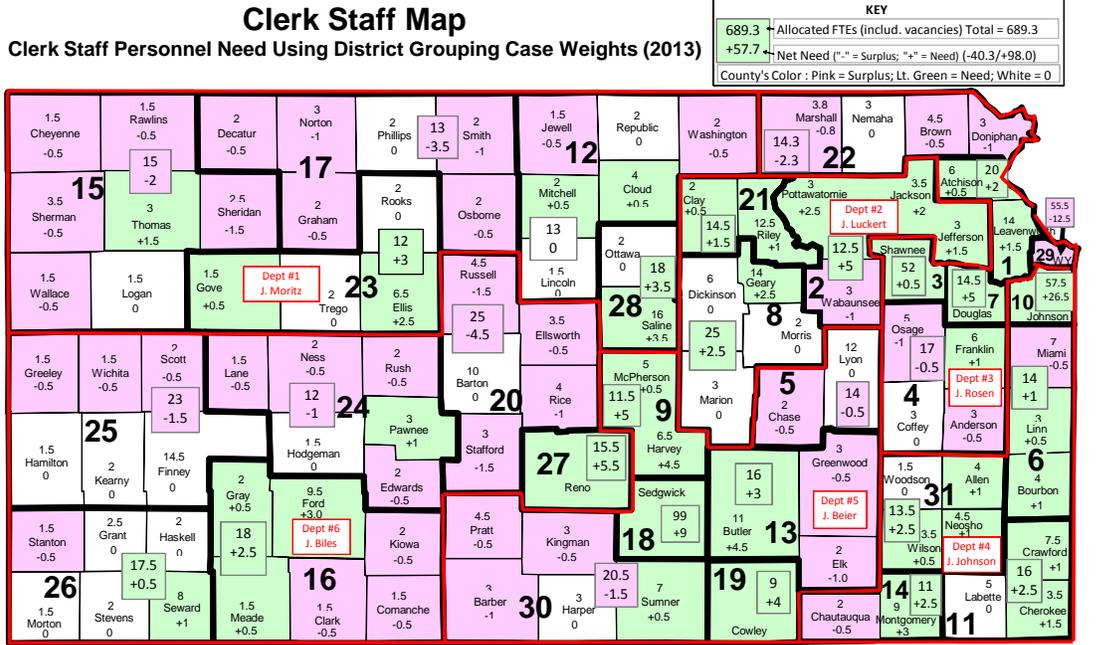
Kansas is divided into 31 judicial districts that vary in size and population. K.S.A. 4-202 *et seq.* Districts are made up of anywhere from one to seven counties. Each county is required to have at least one courthouse; five counties have two courthouses for a total of 110 courthouses. Each *district* has at least one district judge. See Kan. Const. art. 3, § 6. Each *county* has at least one resident district judge or district magistrate judge, regardless of caseload or demand for judicial services in the county. See K.S.A. 20-301b. District judge and district magistrate judge positions are also statutorily required in several of the state’s counties, also regardless of caseload or demand for judicial services in those counties. In addition, each county is required, by statute, to have a clerk of the district court, although the clerk need not be a resident of that county. K.S.A. 20-343.

### KANSAS JUDICIAL DISTRICTS



As one would anticipate, caseloads vary widely among districts. For example, judges in the 17<sup>th</sup> judicial district had an average caseload per judge of 638 cases in FY 2013 compared to the 27<sup>th</sup> judicial district, where each judge had an average of 2,677 cases. The average statewide caseload per judge in FY 2013 was 1,723 cases. See Statistical History of Case Filings by Judicial District FY 2004 through FY 2013, at <http://intranet.kscourts.org:7780/stats/>. It was the recognition of the inefficiencies involved in such discrepancies that served as the basis for the first Weighted Caseload Study done in the state in 2011. This study examined the needs of each county as they relate to judges and court clerk staff based on a thorough examination of the types of cases heard in that county. Court resources required to process a traffic ticket are relatively small, while a complex civil or criminal case involves significantly more resources. The Weighted Caseload Study, conducted by the National Center for State Courts, with the assistance of Kansas judges and court staff around the state, took these considerations into account. The study is updated each year and the Council had the benefit of the most recent judge and clerk staff analysis for FY 2013.

The following maps show the Weighted Caseload Study analysis of clerk staffing personnel needs and judge needs by county, based on FY 2013 caseloads.



\*Although the judicial map notes 17 excess judicial positions, if the one judge per county rule remains, the result is a net deficit of 11 judges.

## COURTS WORK FOR KANSANS

The courts do more than the occasional high-profile case that attracts public attention. Most of the work done by Kansas courts involves everyday issues and problems that impact the lives and communities of ordinary Kansans.

### Abused and Neglected Children

Kansas courts play a life-altering role in the lives of abused and neglected children.

They decide whether to:

- Remove a child from a parent to protect the safety of the child and the child's best interests;
- Place a child in foster care;
- Reunite a child and parent or terminate parental rights; and
- Allow adoption of a child.

In FY 2013, Kansas courts presided over:

- 6,569 newly filed child in need of care cases
- 1,847 newly filed adoptions

In addition, periodic reviews and other services were provided in thousands of cases filed in previous years.

### Troubled Youths

Kansas court services officers, judges, and court staff work with thousands of troubled youths to:

- Ensure community safety
- Hold young people accountable for their conduct
- Change negative behaviors

Kansas court services officers began FY 2013 supervising a total of 5,162 juvenile offenders and children in need of care. A

total of 4,458 additional juveniles were added to supervision in that year and 3,383 completed supervision or were otherwise removed from caseloads.

- Supervised juveniles completed 28,924 community service hours.
- Court services officers collected \$259,056 in restitution from juvenile offenders for the benefit of crime victims.
- Reports to the court were written in 940 CINC cases and 3,493 juvenile offender cases.
- A total of 171 juveniles were provided pretrial supervision and 7,958 juveniles on diversion were supervised.

### Victims Seeking Protection

By issuing protective orders, Kansas courts help shield victims of violence, abuse, and harassment from further harm. In FY 2013, Kansas judges granted:

- 8,024 protection from abuse orders
- 4,758 protection from stalking orders

### Families in Crisis

Families in crisis have problems that demand significant court time and resources. Motions and other ongoing court actions may be heard in cases filed in previous years, with some cases remaining active for

many years. In FY 2013, Kansas courts handled new filings in:

- 13,149 marriage dissolutions
- 5,884 non-divorce visitation, support and custody cases
- 1,312 interstate child support enforcement cases
- 5,151 paternity cases
- 3,418 mental health and substance abuse commitment cases

## Civil Justice

Kansans from every walk of life rely on the courts to resolve their civil legal problems. In FY 2013, Kansas courts handled new case filings in:

- 5,811 small claims cases
- 3,049 liens
- 92,233 debt collection cases
- 8,128 other contract and employment cases
- 8,732 other law and equity matters
- 3,391 tort claims
- 550 judicial review of agency action cases

In 2012, the United States Chamber of Commerce ranked Kansas 5<sup>th</sup> among the 50 states in the overall fairness of its litigation environment. Similarly high rankings were achieved in individual categories and in previous years.

## Housing Problems

Courts are where tenants, landlords, lenders, and homeowners assert and protect their

rights. In FY 2013, Kansas courts dealt with new filings in:

- 15,465 landlord/tenant cases
- 9,200 mortgage foreclosures

## Criminal Justice

Criminal cases dominate court time and resources, with both judges and court staff spending more time on criminal cases than any other type of case. In 2013, Kansas courts dealt with new filings in:

- 18,437 felony cases
- 14,867 misdemeanor cases
- 5,019 DUI cases
- 171,053 traffic, and fish and game cases

Kansas court services officers began FY 2013 supervising 16,958 offenders. A total of 21,649 offenders were added to supervision and 21,915 offenders completed supervision or were otherwise removed from caseloads.

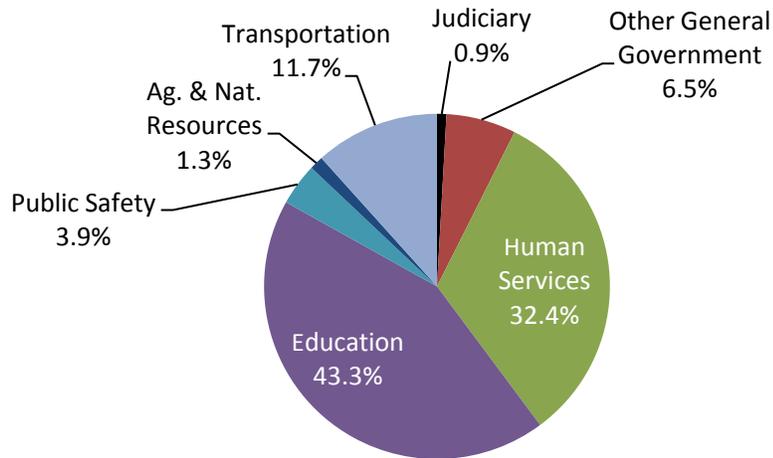
- Supervised offenders completed 31,110 community service hours.
- Court services officers collected \$3,391,506 in restitution from offenders for the benefit of crime victims.
- Reports to the court were written in 16,706 felony cases and 3,652 misdemeanor cases.
- A total of 13,957 offenders were provided pretrial supervision and 1,211 persons on diversion were supervised

## FINANCING THE JUDICIAL BRANCH

Every year the Chief Justice of the Supreme Court submits the Judicial Branch budget to the Legislature. K.S.A. 20-158. The Legislature determines the amount to be allocated to the Judicial Branch.

The Kansas Judicial Branch represents less than 1% of the entire state budget.

**FY 2014 Approved Budget All Funds by Governmental  
Function  
(97 Agencies)**



<b>Judiciary</b>	<b>\$127,483,571</b>
<b>Ag. &amp; Nat. Resources</b>	\$187,838,430
<b>Public Safety</b>	\$573,329,318
<b>Other General Government</b>	\$949,066,898
<b>Transportation</b>	\$1,693,380,337
<b>Human Services</b>	\$4,707,356,551
<b>Education</b>	<u>\$6,286,876,631</u>
<b>Total</b>	<b>\$14,525,331,736</b>

It is important to note here the distinction between State General Fund (SGF) dollars and “all funds.” The State General Fund revenue comes primarily from taxes. The SGF receives the most attention in the budget because it is the largest source of the uncommitted revenue available to the state. The Legislature may spend SGF dollars for any governmental purpose.

In contrast, expenditures from all funding sources include both SGF expenditures and expenditures from special revenue funds. Special revenue funds, by contrast, are dedicated to a specific purpose. For instance, the Legislature may not spend monies from the State Highway Fund to build new prisons. When the Judicial Branch all funds budget is cited in this report, it includes both SGF and special revenue derived from sources such as a docket fees.

Employee salaries comprise approximately 96% of the Judicial Branch all funds budget.

### **FY 2015 Budget Request by Expenditure Type All Funds**

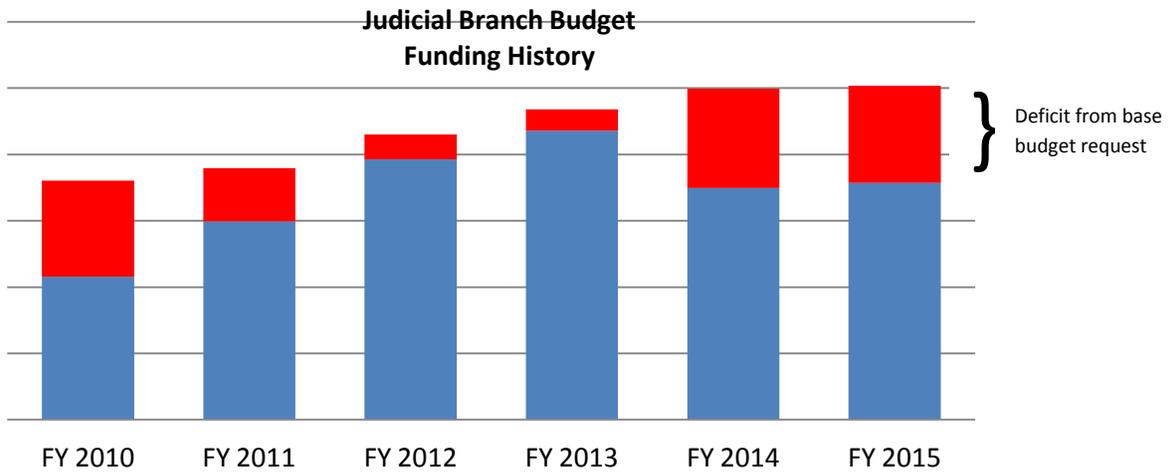


In addition, to further the mission of the court, county commissioners are statutorily required to “adequately fund the operation of the district court in the county and shall be responsible for all expenses incurred for the operation of the district court in the county.” K.S.A. 20-348. The chief judge of each judicial district is responsible for submitting a budget to the board of county commissioners of each county in his or her district. K.S.A. 20-349. Counties generally pay for court-appointed counsel on misdemeanor cases, interpreters, pro tem judges, supplemental court staff, computers, office supplies, and building and maintenance of the courthouse. In addition, some counties supplement the salary of their district magistrate judges. In 2013, counties contributed approximately \$32 million for the operation of the courts.

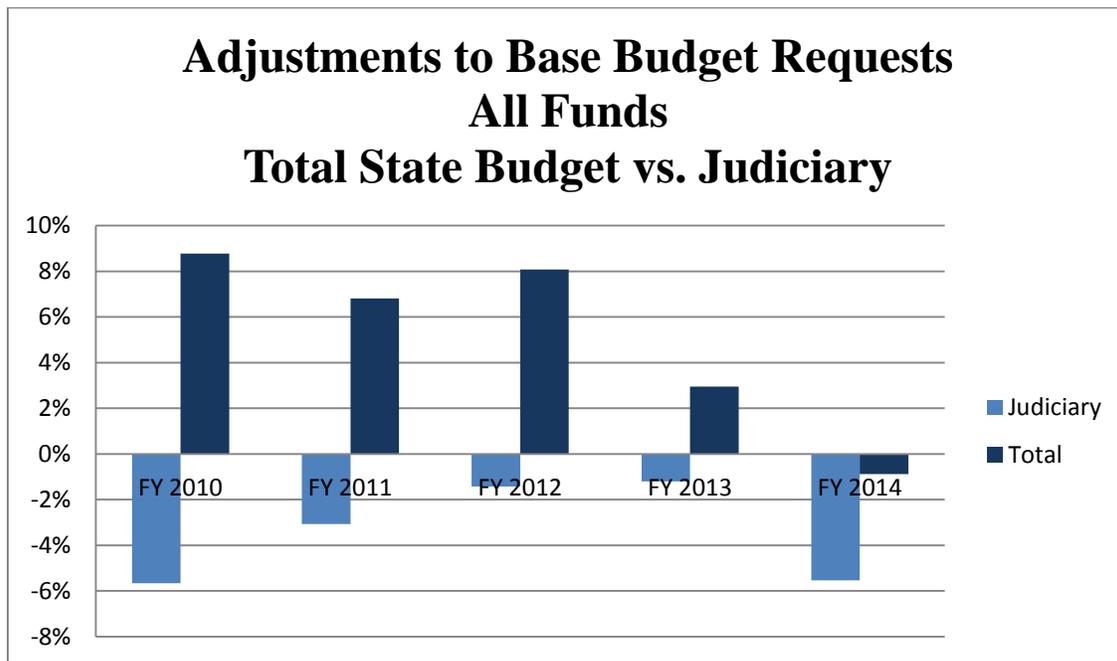
The state has experienced significant reductions in revenue over the last few years. As a result, the Judicial Branch base budget request has been cut by the Legislature each of the last five years. As reported by Chief Justice Nuss in the 2013 State of the Judiciary, this has resulted in the Court focusing its efforts on operating even more efficiently.

“[In 2012,] the Kansas Supreme Court had closed all state courts for lack of money . . . . While virtually unavoidable due to the poor state of the economy, this unfortunate restriction on Kansans’ access to justice also had a positive effect. It helped convince the Supreme Court to be even more efficient, to make the best use of the hard-earned money of our taxpayers, and to continue to improve our administration of justice.”

Gaining efficiency through programs like e-filing, and reducing expenditures by maintaining vacancies, furloughing employees, reducing court hours in some districts, and reducing training, are inadequate to eliminate the deficit, even when combined with revenue enhancements through increased filing fees. As the following chart shows, the Judicial Branch maintenance budget request (the amount needed to maintain current operations, with no enhancements) has been continually underfunded. These budget cuts will reach crisis proportions in FY 2014 and FY 2015.



The following chart illustrates the legislative adjustments made to the Judicial Branch base budget in relation to the total state base budget adjustments over the last five years.



During the 2013 Legislative Session, and after all three branches of government had submitted their budgets, the Governor requested that FY 2015 budgets also be considered and voted on by the Legislature. However, adjusted FY 2015 budgets were not submitted for review and discussion. Instead, the Governor effectively duplicated the FY 2014 budget for FY 2015 and the Legislature adopted both budgets with minor adjustments. As a result, the Judicial Branch is required, as are the other two branches and other state-funded entities, to submit a supplemental budget request in the 2014 Legislative Session to adequately reflect its base budget needs for FY 2015. In addition, the Judicial Branch FY 2014 legislatively approved budget represented a significant reduction from the amount requested simply to maintain current operations.

Recognizing this critical budget deficit for the Judicial Branch for FY 2014, the 2013 Legislature adopted a recommendation made in the Kansas Supreme Court’s Blue Ribbon Commission (BRC) Report. “Recommendations for Improving the Kansas Judicial System: Report of the Kansas Supreme Court’s Blue Ribbon Commission,” Jan. 3, 2012, at 90. <http://www.kscourts.org/BRC-Report/BRC%20Report%20Hyperlinked%202.3.12.pdf>. Legislation was adopted to allow all docket fees collected and deposited in special funds to go directly to the Judicial Branch in FY 2014 and FY 2015. See L. 2013, ch. 136, sec. 101(c) and 102(c). However, contrary to the BRC Report, an amount equal to the enhancement was deducted from the Judicial Branch SGF request, making this a budget neutral change to the extent docket fee revenue remains stable. But, based on this legislative strategy, if docket fee revenue continues to decline as it has over the last two years, an inability to fund court operations

is inevitable. The BRC Report did not intend docket fee revenue to supplant SGF. In fact, the BRC Report emphasized, by citing two Interim Committee on the Judiciary reports, that “court funding should be the responsibility of the state and the funding should come from the State General Fund.” BRC Report at 97. It noted that courts are a core function of government and that, just as the Executive and Legislative Branches are not expected to be self-funding, neither should the Judicial Branch. BRC Report at 98.

However, again recognizing the looming budget crisis for the Judicial Branch in FY 2014, the Legislature did allow the Judicial Branch to spend down existing balances in special funds for operations. This spend down will allow the Judicial Branch to weather its budget deficit in FY 2014, but those funds will be depleted in FY 2014 and not available to offset the FY 2015 deficit. There is no dispute that in FY 2015 the Judicial Branch is faced with an \$8.25 million budget deficit. If the Judicial Branch enhanced budget is considered, the deficit is over \$16 million.

**FY 2015 Changes from the Approved Budget\***

<b>Judicial Branch Enhanced SGF Budget</b>	\$111,877,461
<b>Enhancements:</b>	
Additional Clerks	\$1,085,071
Additional Judges	\$1,693,809
Non-judicial Undermarket Salary Adjustment	\$3,961,654
Judicial Salary Increase	\$729,468
Judicial Center Remodel	\$373,725
<b>Judicial Branch Non-Enhanced Budget</b>	\$104,033,734
<b>Judicial Branch Approved SGF Budget</b>	\$95,783,948
<b>Difference from Enhanced Budget</b>	<b>(\$16,093,513)</b>
<b>Difference from Base Budget</b>	<b>(\$8,249,786)</b>

\*Source: Kansas Legislative Research Department

## **THE COURT BUDGET ADVISORY COUNCIL**

On September 10, 2013, Chief Justice Lawton Nuss appointed a non-partisan cross-section of Kansas residents to examine cuts to the FY 2015 Judicial Branch budget that would be necessary if the 2014 Legislature is unwilling to reconsider the FY 2015 budget. He stated:

“We have submitted a base budget that is necessary to maintain current court operations. If the Legislature does not fund court operations at the requested level, cuts will be necessary. The Council will recommend and prioritize those cuts with an eye to the public safety and economic impacts of suggested cuts, as well as the impact on access to justice of our residents and businesses.”

The Council’s duties were as follows:

- Study the consequences in the event the Legislature does not appropriate the full FY 2015 (year beginning July 1, 2014) Judicial Branch budget request submitted by the Judicial Branch in September 2013.
- Develop recommendations – operational, structural, or both – for the Supreme Court’s consideration if the 2014 Legislature does not appropriate the FY 2015 Judicial Branch base budget request. These recommendations may include, but not be limited to, a multi-million dollar reduction of expenditures.
- Prioritize its recommendations.
- Communicate at least bi-weekly with the Chief Justice in person via the Council chair.
- Appoint Council Advisors both from inside and outside of the Judicial Branch.
- Allow persons who are not Council members or advisors the opportunity to provide/present information to the Council.
- Report its findings and recommendations in writing to the Supreme Court by December 13, 2013.
- Take other actions the Council deems appropriate.

The Council met October 7, 2013, to determine budget reduction strategies that merited further review by the Council. The Council was divided into three teams of three members each. Each team was assigned two areas to consider for reductions. From October 7 through November 20, the teams met and discussed their assigned reduction strategies. Each team was assigned a staff member from the Office of Judicial Administration to help gather information. In addition, each team was assigned an advisor related to its assignment. For each budget reduction strategy examined, the teams were required to complete a Budget Reduction Strategy Worksheet that required a description of the strategy, the estimated gross and net budget

reduction, and the short-term and long-term negative and positive impacts, as well as the public safety, economic, and access to justice impacts. Those worksheets are attached to this report. Persons who were not Council members or advisors were sought for input. The Chair of the Council met every two weeks with the Chief Justice to update him on the progress of the Council. At its final meeting on November 21, 2013, the Council examined each strategy and made its final recommendations. An examination of each strategy and the Council's recommendations follow.

## **BUDGET REDUCTION STRATEGIES**

In examining budget reduction strategies, the Council considered short-term and long-term impacts, as well as public safety, access to justice, and economic impacts. But the Council also adhered to several guiding principles and assumptions.

### ***Guiding Principles and Assumptions***

First, the Council assumed that there would be no change to the one judge per county requirement of K.S.A. 20-301b or other statutes requiring the placement of district and district magistrate judges in certain counties and districts. Although repealing these statutory requirements was recommended by the BRC, attempts since the BRC Report was released have not been approved by the Legislature. BRC Report at 31. The Council agrees with the BRC that, in order to effectively manage court resources, the Judicial Branch should be able to control the placement of judges and clerks unhindered by statutory requirements. However, the Council also recognizes that the courthouse and its resident judge are important to the community and their loss would adversely impact the whole community. Courthouses would remain open for other necessary business such as paying taxes, filing mortgages, and renewing driver's licenses. Judges could be made available from other counties as needed. This presents a clear choice between the perceived needs of the community and the needs of Kansas courts when faced with increasingly limited resources and state revenue, a decision the Council is sure the Legislature will continue to consider.

Second, the Council was keenly aware of the impact its recommendations, if adopted, would have on access to justice. Therefore, the Council attempted to identify options that would have the least impact on the people of Kansas. Keeping the courts open for as long as possible was a priority.

Third, the Council considered the impact that each budget strategy may have on other branches, particularly state Executive Branch agencies. The Council tried to avoid, when possible, simply transferring the problem from the Judicial Branch to the Executive Branch, realizing that all funding comes from the pockets of Kansas taxpayers. However, because the

Judicial Branch does collaterally impact the Executive Branch in many ways, this was not always possible.

Fourth, the Council was also cognizant of the dire consequences many of these recommendations would have on highly valued Judicial Branch employees. Because of several years of cuts and furloughs, current employee morale is low. As the economy improves, some Judicial Branch employees look to jobs within the Executive Branch, counties and, cities, or in the private sector that pay more, receive regular merit and/or cost of living increases, and are not under a constant threat of furloughs and critical understaffing due to maintaining vacancies.

Fifth, the Council considered disparate geographic impacts and, to the extent possible, attempted to minimize those disparities.

Finally, the Council struggled with the need for permanent versus temporary budget reductions. The Council's task was to consider only FY 2015 budget reduction strategies. Our advisors suggested a more long term approach may be beneficial. They generally believed that the reductions imposed in 2013 would be permanent due to the extreme reduction in state revenue now and in the future. However, because the immediate need is to address FY 2015 using strategies that have an immediate impact, the Council's recommendations, for the most part, are short term and assume the Judicial Branch will not face the same or even greater reductions from its base budget every year. In an effort to fully share the Council discussions, for those strategies which compel a long-term rather than short-term approach, long-term strategies are included.

### ***Specific Strategies Considered***

With those principles in mind, at its final meeting on November 21, 2013, the Council examined 11 different budget reduction strategies. They are examined in detail below.

#### **STAFF REDUCTIONS – COURT SERVICES OFFICERS**

Although the Kansas court system is unified, it is not uniform. An example of a district-by-district variation is in the duties that each district has developed for Court Services Officers (CSOs). By statute, CSOs are required to prepare presentence investigation reports, prepare post adjudication reports for juveniles, supervise probation for felony and misdemeanor offenders, supervise juvenile offenders, arrest probation violators, prepare Level of Service Inventory-Revised™ (LSI-R) assessments, conduct pretrial bond supervision, supervise offenders on court-based house arrest programs, supervise persons on conditional release, and supervise children in need of care who are not in the custody of the Kansas Department for Children and Families (DCF), among other duties.

CSOs also perform many discretionary functions around the state including screening applications for protection from abuse (PFA) and protection from stalking (PFS) orders, conducting domestic mediations, providing domestic case management services, supervising offenders placed on diversion by the prosecutor's office, supervising conditionally released sexual predators, conducting criminal history reviews before plea or conviction, and supervising children in need of care who are in the custody of DCF. We note these are important functions that chief judges in affected districts clearly have the authority to assign. Although these functions arose out of a proven community need in those districts, they are discretionary CSO activities that are not statutorily mandated by the Legislature. Moreover, these discretionary activities are not delivered consistently throughout the state.

The Council determined that there are approximately 48 full-time equivalent (FTE) CSO positions in five judicial districts that are performing *solely* discretionary duties. The Council concluded that economic savings could be realized if the discretionary CSO duties which are not statutorily mandated were eliminated. Based on acceptable caseload levels, our review indicated that, if those positions were eliminated and positions made available to understaffed areas for strictly statutorily required tasks, 16 positions could be transferred, leaving 32 positions unfilled. However, as of November 9, 2013, 12.5 of these CSO positions are vacant and part of another reduction strategy. Accordingly, the Council, contrary to the recommendation of the team, recommends that the remaining 19.5 FTE positions be eliminated for an estimated annual savings of \$1.08 million.

The Council took no position on severance packages for the eliminated positions. Any package offered would reduce the estimated savings for this reduction strategy.

This strategy does not come without negative consequences. Besides the clear impact of employees losing their jobs and the resulting impact to the economy, this recommendation would result in an increased burden on DCF to administer cases, an increased burden on law enforcement, district and county attorneys, domestic violence shelters, and the remaining court staff in the area of PFA and PFS orders and diversion supervision, and an increased burden on judges and the remaining court staff in the area of domestic case management.

#### **AUTHORIZED BUT UNFILLED VACANCIES (80 TO 120)**

The Council recommends maintaining the 80 authorized but unfilled court staff positions through FY 2015 and increasing the number of authorized but unfilled positions up to 120 as necessary.

In an effort to absorb budget cuts, since 2009 the Judicial Branch has maintained approximately 80 authorized but unfilled positions, representing an annual budget savings of \$2.5 million. The vacancies that remain unfilled consist of CSOs, court reporters, clerks, administrative assistants, and other nonjudicial positions. The numbers and types of vacant positions have fluctuated throughout the year as the Office of Judicial Administration Personnel staff balances the needs of each judicial district. Personnel staff considers the importance of the unfilled positions and the length of time a particular position has remained unfilled to determine which positions should be filled and which should remain unfilled. By using this “rolling” method of maintaining and filling vacancies, all districts have shared the pain of unfilled positions, although districts often have little control over which employees may leave. Even though there may be some delay filling a position, many positions are eventually filled so relief does ultimately arrive. It is because of this strategy and the fact that the positions are needed, that the Council is not recommending an outright elimination of 80 to 120 positions. Over time, it may become possible to transfer some positions to areas of greater need as the positions with the least need begin to populate the list indefinitely. Unfortunately, maintaining vacancies does carry negative consequences through increased workload in short-staffed districts. Anecdotally, the Council was advised that some low-performing employees are retained in short-staffed judicial districts because it is preferable to have a low-performing employee over no employee.

The Judicial Branch base budget for FY 2015 recommends filling all positions and, therefore, no longer maintaining the 80 rotating vacancies. The chief judges in several judicial districts reported to the Council that maintaining 80 vacancies creates a hardship and delays the administration of justice. Following are some of the comments received from the chief judges.

- “Continuing the hiring freeze is detrimental, especially for smaller districts. If I lose one CSO, the caseload is absorbed by less staff than in a larger district and that could make things close to unmanageable.” [ Midsized District]
- “Since 2008 we have always been short-staffed. At one point we had as many as 18 vacancies, and currently we have eight. We have struggled to keep up with processing papers in a timely manner, and on the probation side, have required our probation people to handle bigger case loads. We have shut down the clerk’s offices from 12:00 p.m. to 1:00 p.m. to allow for better coordination of their efforts. We have maintained, as well as possible, due in large part to the experience of our staff, and their ability to take on more work. The increase of handling more work can only be stretched so far. If we lose this experience we will see a significant drop in our ability to handle the caseloads. . . . We currently struggle with the freeze imposed on positions. That is, when a position is vacated, it may be months or even years before the position is considered for being refilled. The positions freeze has brought about significant challenges and frustrations. An example is that when promoting a current employee, we always have to consider that

we are creating another vacancy by the promotion. This adds to the frustration of not only the staff, but also of management. Failure to adequately fund the judicial budget will only increase and enhance these problems.” [Urban District]

- “I would also suggest that the current state of affairs (lack of funding to promptly fill employee vacancies) creates a disincentive to promote deserving and experienced people from within, as such promotion creates another vacancy which may not receive permission to fill for a considerable period of time. Any vacancy shifts workload on those remaining without any prospect of additional compensation, negatively affecting already poor morale. Despite low morale, the vast majority of our employees continue to serve this state with a level of dedication which is vastly underappreciated. There are a very few who don’t, but since both you and they know that the district may not be able to replace them anytime soon, no one wants to cause someone else to quit, as it may lead to an even worse department work situation.” [Midsized District]
- “We are tired of the 80 vacancies being the norm for the Legislature and then getting cut even more.” [Midsized District]

Two chief judges from rural districts wrote in to express support for the above comments.

While the Council agrees that many problems are created by this inability to fill approved positions due to a lack of proper funding, the Judicial Branch has chosen to follow this strategy as part of its effort to avoid closing the courts and has done so in a way that has been painful, but manageable on a short-term basis. The Council recommends that this budget reduction strategy be continued until proper funding is established. Although the team recommended that this number be held steady and not increased, the Council believes this number should be increased before instituting staff furloughs. It is estimated that 100 vacancies would save \$3.1 million and 120 vacancies would save \$3.75 million.

**REQUIRE DISTRICT MAGISTRATE JUDGES TO SERVE AS COURT CLERKS  
WHERE EXCESS JUDICIAL CAPACITY EXISTS**

The Judicial Staffing Map that reflects District Grouping Case Weights for 2013 indicates that there is an excess of judicial resources in six judicial districts. In other words, there are more judges in some districts than the Weighted Caseload Study would indicate are needed. However, the judges in those districts are required due to the “one judge per county” rule of K.S.A. 20-301b and other judge placement statutes. Similarly, the 2013 Clerk Staffing Map indicates an excess of clerk staff resources in many of those same districts. In some counties, this excess capacity could be applied to reduce cost to the Judicial Branch by appointing the district magistrate judge in a county as the clerk of the district court and eliminating the separate clerk position. This strategy could be executed by Supreme Court Order under the Court’s broad

authority to manage the courts. This could result in eliminating the clerk of the district court position in perhaps as many as 15 counties for an estimated savings of \$830,000.

This strategy has many positives. It can result in an immediate savings, reduce the need for furloughs by approximately three days, and help to keep the courts open. Nebraska currently has magistrate judge positions designated as “clerk magistrates.” These judges serve as both the judge and the clerk. See Neb. Rev. Stat. § 24-507 and Neb. Rev. Stat. § 24-519.

But the Council also expressed several concerns with this strategy. First, having not been selected or elected on a platform of financial and clerical acumen, a district magistrate judge may not necessarily have the qualifications to perform clerk duties. Second, the chief clerk for the district would be in position to supervise a district magistrate judge on the performance of his or her clerical duties. Third, there was a concern expressed that citizens calling in to the clerk’s office for filing or payment information may feel uncomfortable talking to the judge who might preside over their case and that such direct “client” contact may result in prohibited ex parte conversations, requiring the judge to recuse him or herself. Fourth, with the county courthouse essentially becoming in some situations a one-person operation, the absence of the judge would result in either closing the court or requiring clerks or judges from other counties to travel to fill in for the absent judge. If neighboring counties are also staffed by just one district magistrate judge, a domino effect could result. Fifth, questions from the public or filings would have to be delayed while the judge was on the bench or otherwise occupied with judicial duties which would take priority. Finally, this would limit the ability of the chief judge of the judicial district to assign the district magistrate judge to another county to hear cases when needed.

For these reasons, absent further study, the Council does not recommend this budget reduction strategy in FY 2015.

#### **COURT CLERKS – STAFF REDUCTIONS**

The Council does not recommend any net reductions of court clerk staff.

The 2013 Weighted Caseload Study indicates that 42 counties currently have authorized clerk staffing levels that exceed need. This excess capacity constitutes approximately 41 FTE positions. A targeted reduction in those counties that have actual excess clerk staffing, minus the district court clerk positions in those counties that are intentionally maintained as vacancies, could generate a savings of slightly more than \$1 million. Due to the significant savings that could be realized, this reduction strategy is very appealing.

The Council was concerned about this strategy due to the net shortage of district court clerk positions statewide. According to the Weighted Caseload Study, the state as a whole is

understaffed in the area of court clerks by approximately 58 FTE. In addition, as of November 2013, 42 authorized court clerk positions are intentionally being held vacant, resulting in a current staffing need statewide of 100 clerks. One could consider that, if there is an excess capacity in some counties of 41 FTE and 42 FTE are already vacant, the savings have already been realized, although not targeted. Because of the grossly inadequate court clerk staffing levels in other areas of the state, the Council believed it is better to maintain the Judicial Branch's flexibility to keep the positions with the option to add positions in those counties that have the most serious need, rather than completely eliminate the positions. In addition, reductions in some areas of the state would result in court closures if the remaining staff is inadequate to cover temporary staffing needs from vacations, illnesses, family leave, etc. Accordingly, the Council's recommendation, which was consistent with the team's recommendation, is budget neutral. This is consistent with the position the Council took on CSO positions, offsetting the positions that could be eliminated to the extent possible with the statewide need. However, in the case of court clerks, there is no net excess.

#### **FURLOUGHS**

The Council recommends furloughs as a budget reduction strategy for FY 2015.

A furlough is a period of time during which employees do not work and do not get paid. So, furloughs are a pay cut. The Council believes that furloughs should be implemented as a last resort. Although a furlough of Judicial Branch personnel results in an immediate savings of about \$250,000 per day, the Council could identify no long-term positive effects. In fact, the long-term effects can be very damaging as employees wonder if another furlough will be coming, lowering morale and productivity. Because furloughs do not stop or reduce court workload, employees are forced to do the same amount of work in fewer hours at less pay than they "signed on" for. Recruiting new employees becomes difficult because furloughs weigh on the minds of recruits. Likewise, turnover increases as employees seek employment with more stability. Chief Justice of the New Mexico Supreme Court, Charles W. Daniels, recognized this in his 2011 State of the Court Report:

"But the practical reality is this: Furlough closures of backlogged courts don't save a dime for the taxpayer or for the government. It's not like a furlough closure of a museum or a park or a tourist train, where you can actually save money by cutting services to the public on a given day. The work of busy courts just gets even more backed up and still takes the same resources, the same employee time, the same expense to process."

A study by the University of California, Berkeley, Center for Labor Research and Education concluded that California's furloughing of state workers did not result in the budget

savings anticipated, saving only about 37 cents on the dollar. Reductions in income resulted in reductions in tax revenue received from the affected employees and less spending power resulted in further damage to the economy. See Ken Jacobs, *The High Cost of Furloughs*, UC Berkeley Ctr. for Labor Research and Educ., Oct. 2009. In addition, furloughed employees are able to apply for unemployment compensation at a cost to state government.

Likewise, several chief judges expressed concerns regarding the impacts of furloughs.

- “We have experienced good results in keeping employees, but the strong potential of another year without a raise, and a number of days of furlough, will result in a number of issues. First, employees will be less involved in their job performance. Why work hard if nobody cares? Secondly, we will lose a large percentage of our employees should furloughs take place. We know that such things are very difficult to estimate, but we believe that number here could be as high as 20%. Clear signs show that the economy is slowly recovering, at least here in the Metro area, and as that takes place, many of our employees will leave. While this will have a reduction in costs in the short run, replacing and retraining for these lost positions has an immense cost. It takes 18 months to two years for a new employee to perform the functions of the position well, and in the interim we will see a significant drop in performance of the court. Also note that, as the private sector improves, the court will continue to suffer in the quality of job applicants. Who would want to come to work for a concern that doesn’t give raises, and faces furloughs or layoffs every year? I understand that leadership in the House indicated that, if an employee was unhappy working for the court, the employee should just go get a different job. If we have furloughs this will be the result, at least for a large number of employees here in this district. This could have a long-lasting effect on the performance of the court. As to the discussion of furloughs, the vast majority of staff feels that, if we take furloughs, we should do all the time in one stretch.” [Urban District]

Two chief judges from rural districts wrote in to express support for the above comments.

- “[In this district] our overall workload is going up. Caseloads are ahead of this time last year, our CSOs are taking on the additional LSI-R responsibility on top of everything else, clerks in one county try to help out in other counties (while putting their own paid leave time on hold), and we say thank you to the most dedicated Judicial Branch employees by telling them that they will receive no raise, that their net pay will go down due to increased KPERS contributions, and that they may face many weeks of furlough with no or greatly reduced income during that period. Heck, I am surprised that any of them stay. I fear that those eligible for retirement will bail out and take their experience with them and we will lose some really good people simply because we are not taking care of them.” [Midsize District]

- “Furloughs could cause inadequate supervision of probation clients (our standards would have to be modified/lowered) and could cause unnecessary delays in court proceedings. If those on probation or supervision know we are closed and won’t be performing UAs [substance abuse testing], etc., it could lead to further problems down the road.” [Midsized District]
- “The use of rolling furloughs or skeleton crews will significantly increase the possibility of errors in all cases, many of which deal with individual liberties, neglected and abused children, family issues, and important business disputes. We expect our probation officers to properly supervise those on probation. We do not want to lower our standards for the entire year. Let’s all do our jobs the right way for as long as we can. We should address cases properly for as long as we have the resources to do so. Then, if we run out of funds, we should pause and put everything on hold until funding is restored.” [Kansas District Judges Association]

However, the Council also recognizes that, when 96% of the Judicial Branch all funds budget is for salaries, and the decision for the next fiscal year is often not made by the Legislature until just a few weeks before the fiscal year is to begin, staff reductions, maintaining vacancies, and staff furloughs become the only options to realize savings. Each carry the same negative impacts—backlogs, high turnover as employees are forced to find alternate employment, low morale, and delaying or denying access to justice. However, the Council saw no way to avoid furloughing employees given the severity of the Judicial Branch’s budget situation. The Council’s focus was in attempting to come up with other strategies that would minimize the number of furlough days that may ultimately be necessary if all needed funding is not obtained.

Although the team recommended that rolling furloughs be implemented to reduce a percentage of staff on different days in an effort to keep the courts open, the full Council did not come to a consensus on the method of furlough. Input from the Kansas Association of District Court Clerks and Administrators (KADCCA) and the Kansas District Judges Association (KDJA) favored block furloughs, aggregating needed furlough days at the end of the fiscal year, as the amount of the judiciary’s budget shortfall becomes more certain. With staff already at unacceptably low levels in some districts, KADCCA was concerned that the accuracy and timeliness of court cases would be jeopardized if the court staff was required to process the same volume of work with only half the employees and under stressful conditions. The Council believed there are pros and cons to each method of furlough and therefore, the Council believed it was best to leave the method of implementation to the Supreme Court to effectively manage the courts based on the needs that exist at the time of implementation.

Finally, furloughs represent a salary cut for Judicial Branch employees. In considering whether to simply uniformly reduce salaries or furlough employees, furloughing was considered the preferable approach. The Council believed it unreasonable to impose a salary reduction on employees already working in understaffed conditions related to maintaining vacancies and still expect them to work the same number of hours. At least with the furlough, employees get the corresponding time off during which they could receive unemployment compensation or obtain temporary employment to offset such an unanticipated pay reduction.

In sum, the Council recommends furloughs only to the extent that other recommended options result in less savings than needed to address the budget deficit.

#### **DELAY FILLING JUDGE OF THE DISTRICT COURT VACANCIES**

The Council recommends that current law be amended to provide statutory authority to delay filling vacancies when they occur in the offices of district judges and district magistrate judges. Some amount of turnover savings is generated each time there is a vacancy in office.

In merit selection judicial districts, the notice currently given by the Chief Justice to the chairperson of the district judicial nominating commission, which under current law is given “promptly” whenever a vacancy occurs or will occur, would instead be given no later than 120 days following the date the vacancy occurs or will occur. See K.S.A. 20-2909. In election judicial districts, the vacancy would be filled by the Governor following receipt of notice from the Clerk of the Supreme Court, which shall be given no later than 120 days following the date the vacancy occurs or will occur. See K.S.A. 25-312a. In addition, the 60-day period after the vacancy occurs provided under current law for the Governor to make the appointment would be extended to 120 days after the notice is received from the Clerk of the Supreme Court. We note that, as structured, this recommendation sets out the maximum number of “delay days” that could occur and gives the Court flexibility to fill those positions with a greater need more quickly. The Council strongly believed that control over which judicial positions remain vacant must remain with the Judicial Branch. It should also be noted that the team recommended the delay not exceed 90 days. However, the full Council’s recommendation is 120 days in an effort to maximize savings.

Estimated savings for FY 2015 assumes a conservative estimate of four district judge retirements and four district magistrate judge retirements at a cost savings of \$438,381.

## **RATIO OF DISTRICT JUDGES TO DISTRICT MAGISTRATE JUDGES**

Due to the inability to predict FY 2015 savings, replacing district court judges with magistrate judges in those districts that do not have district magistrate judges is not part of the Council's recommendations. However, as recommended by the BRC, the Council also believes that the ratio of district magistrate judges to district judges should be increased. As district judges retire or leave the bench, the Supreme Court should, with the input and assistance of the district's chief judge, determine if the district judge position can be transitioned to a district magistrate judge position.

Reducing the number of district judges and increasing the corresponding number of district magistrate judges would result in a long-term savings of approximately \$77,000 per judicial position. As stated by the BRC, if the mix of district judges to district magistrate judges in the districts that have district magistrate judges were adopted in the six judicial districts where there are no district magistrate positions, "the savings in salaries and benefits would be over \$2.6 million without any overall change in the total number of judicial positions." BRC Report at 55.

The Council considered making this part of its recommendation for FY 2015 but, because it is impossible to predict which, if any, qualifying judicial positions would become available in FY 2015, the Council could not predict any savings. However, if the opportunity presents itself in FY 2015, the Council recommends that positions be so converted and that any realized savings be applied in accordance with the Council's prioritized budget reduction strategy.

This strategy may require some statutory change.

## **LONGEVITY BONUSES**

Although the Council considered a budget reduction strategy of eliminating the longevity bonuses for eligible Judicial Branch employees, it is not recommending implementing this budget reduction strategy.

Currently, many state officers and employees receive a longevity bonus pursuant to K.S.A. 2012 Supp. 75-5541. Justices, judges, and district magistrate judges do not receive longevity bonuses. After ten years of service, eligible employees receive a yearly bonus equivalent to \$40 for each year of state service up to a maximum of 25 years (or \$1,000). Pursuant to Judicial Branch personnel rules, an otherwise eligible employee must receive at least a "satisfactory" rating on his or her most recent performance review to qualify. Recently, the legislation was amended to make the statute inapplicable to anyone employed on or after June 15, 2008. Accordingly, over time longevity bonuses will be phased out as currently covered employees leave or retire. It is estimated that, in FY 2015, approximately 954 FTE Judicial

Branch employees will receive \$871,000 in longevity payments. This is 60% of all nonjudicial Judicial Branch employees. Because longevity bonuses are created by statute, an amendment would have to be made to K.S.A. 2012 Supp. 75-5541 to exclude Judicial Branch employees. This would create inequity between Judicial Branch employees and Legislative and Executive Branch employees.

Executive Branch employees were also treated more favorably when it came to the market adjustments committed to by the 2008 Legislature. As background, the 2008 Legislature agreed to increase wages of state employees because the pay plans had fallen significantly behind the job market. Both Executive Branch and Judicial Branch employees received increases in fiscal year 2009. The proposed plan for the Executive Branch included a five-year implementation. While the Judicial Branch requested bringing salaries up to market in one year, the 2008 Legislature chose to implement the increase over a three-year period to provide a phased-in approach for both branches. Docket fees were increased to provide for a 5.25% increase in FY 2009. While funding for the second year of the three-year plan was proposed, it was never funded by the Legislature. In contrast, the Executive Branch received funding for market adjustments in fiscal years 2008, 2009, 2010, and 2013. Maintaining parity with the Executive Branch pay plans requires additional funding of the Judicial Branch's second installment plan and this is included in the Judicial Branch enhanced budget request for FY 2015.

Eliminating the longevity bonus would negatively impact employee morale, which remains very low. Chief judges from around the state report that when Judicial Branch employees get a chance to move to Executive Branch positions, or to county or city positions in their judicial districts where cost of living adjustments are being made, furloughs do not continually loom overhead, and salaries are higher, they move, resulting in staff turnover. If this budget reduction strategy were adopted, Judicial Branch employees would have yet another incentive to leave the Judicial Branch and accept positions in the Executive Branch, where they could retain their longevity bonuses.

The elimination of the longevity bonus would also affect, in some cases, an employee's future KPERS benefit.

For all of these reasons, the Council does not recommend that this budget reduction strategy be adopted.

## REDUCE COURT TRAINING BUDGET

The Council recommends reducing the court education budget for one year by 50%.

Supreme Court Rule 501 (2013 Kan. Ct. R. Annot. 717) requires Kansas judges to obtain 13 hours of continuing judicial education each year. This has been accomplished through various means. For many years, the Office of Judicial Administration put on both fall and spring conferences where judges from around the state were brought to one location for training. When budget reductions were imposed in 2009 and employees were furloughed, the Supreme Court also instituted other budget reduction strategies. One strategy was to eliminate one judicial conference a year and instead to provide regional training conferences in the fall to reduce costs. Since 2009, the Supreme Court has continued this process and continues to realize the savings. The Supreme Court also provides training to court services officers, clerks of the district court, and court administrators. Trainings for these groups are not mandated by any continuing professional education requirements, but are part of the Supreme Court's overall responsibility to maintain a well-trained workforce in managing the state's judicial system. Finally, many important court-appointed committees meet in Topeka or elsewhere around the state to, among other things, advise the Supreme Court on necessary statutory or procedural changes throughout the Judicial Branch.

This strategy would eliminate 50% of the education budget. Some on the Council expressed a belief that reducing training dollars was very short-sighted. Clearly, court employees need to be trained to adequately perform their duties and to avoid errors that may result in cases being dismissed or reversed, or lawsuits that result from unnecessary periods of incarceration, or errors handling paperwork, such as arrest warrants and driver's license suspensions. However, in comparison with the impacts of other potential budget reduction strategies, and the availability of technology for web-based training and meetings, the Council determined that the proposed 50% reduction would still allow the Office of Judicial Administration to provide necessary training, although minimally and in a different manner than previously provided. It should be noted that increasing the use of electronic training "through conference calls, GoToMeeting-like processes, and webinars" was also a recommendation of the BRC and has been undertaken in some instances already. BRC Report at 145. However, this electronic training may require some enhancements to existing technology or purchasing additional equipment and software to implement interactive electronic training programs.

### **REDUCE ACCESS TO JUSTICE GRANT**

The Council recommends that its Access to Justice Grant to Kansas Legal Services (KLS) be reduced by \$250,000 in FY 2015.

As background, KLS has been the sole grant recipient for the Access to Justice Grant since 1997. Until FY 2014, a portion of court fees was pre-designated for the Access to Justice Grant, to be awarded through a competitive process. When the fees were all brought under the authority of the Supreme Court, it decided, for FY 2014, to fund the Access to Justice Grant out of its total existing and anticipated funds. The Court budgeted to provide KLS with \$700,070 in an Access to Justice Grant in FY 2014. This strategy assumes that the Court would grant KLS a similar amount in FY 2015.

Presuming the award would go to KLS in FY 2015, a reduction of \$250,000 in the award would equal 3.2% of the CY 2012 KLS budget of \$7.8 million. The \$8.25 million shortfall to the Judicial Branch's FY 2015 base budget request of \$135.2 million represents a shortfall of 6.1%. Likewise, the \$250,000 reduction could result in roughly nine furlough days for KLS. This is similar to the furlough days recommended in the Council's final prioritized strategy for court employees. Thus, this strategy also helps to spread the impact of the judiciary's budget shortfall across all segments of the state's judicial system.

The Council noted the important work done by KLS for our most vulnerable Kansans. The work of KLS attorneys, particularly in the areas of protection from abuse and stalking orders, divorce, and child support actions, helps to stabilize families. In addition, the hotline KLS provides for pro se potential court users is an invaluable service to local district courts and that any elimination or diminution in those services will result in increased work for court staff, judges, district attorneys, domestic violence shelters, and DCF staff.

### **ELIMINATION OF COURT REPORTERS**

As recommended by the BRC, the Council also recommends that the Supreme Court review the number and use of court reporters in Kansas. BRC Report at 83-87. However, because it was concerned with the ability to insure accurate transcripts of court proceedings while reducing the number of court reporter positions in time to realize any savings in FY 2015, this is not part of the Council's recommendations.

The primary function of a court reporter's record or transcript in a case is to enable appellate review of the proceedings. When a party requests a transcript of the hearing or trial, the court reporter provides the transcript to the party for a fee based on a cost per page. This fee

is transmitted directly to the court reporter for services rendered and results in additional compensation to the court reporter.

There are 132 approved official court reporter positions in the Judicial Branch budget at an annual cost, should all positions be filled, of approximately \$9 million. Due to the limited training offered around the country for court reporters, the resulting difficulty in filling positions in rural areas, and the advent of high-quality digital audio recording equipment, some courts around the country have eliminated court reporters in favor of transcriptionists. The states of Utah and Kentucky have eliminated court reporter positions completely, as have many federal courts, including Kansas federal magistrate and bankruptcy courts.

When a court undertakes to record its proceedings solely by digital audio, the preferred method is to have a transcriptionist or court clerk in the courtroom simultaneously listening to the proceedings. If people are inaudible or talking over each other, the individual monitoring the proceedings can stop the proceedings for clarification or proper audio capture. The individual monitoring the proceeding will also index the recording so that various testimony or witnesses can be quickly retrieved. The cost savings become apparent. The team investigating this strategy estimated the following savings, if one includes the cost of installing digital audio equipment in each courtroom divested of a court reporter.

Salary and fringe benefits, mid-salary range court reporter .....	\$62,933
Salary and fringe benefits, mid-salary range transcriptionist .....	(\$43,040)
Average cost per courtroom of audio recording equipment .....	(\$10,000)
Net savings per position, first year of implementation .....	\$9,893

Of course, if digital audio recording is already in place, the savings are greater. Some states, in civil cases, simply provide the requesting party with a copy of the digital recording at minimal cost and it is that party's responsibility to get the proceeding transcribed, by a private certified court reporter, and filed with the appellate court. Others have a transcriptionist simply transcribe the audio. Because the audio is digital, any transcriptionist in any part of the state can transcribe the proceedings, so there is no need to wait for a particular court reporter, who has made unique notes to be available, thus expanding the pool of transcriptionists available and making the best use of resources statewide.

The team recommended that, by July 1, 2015, (which would be the beginning of FY 2016), one-half of the current court reporter positions be eliminated. The net savings for FY 2015 would depend on the timing of implementation. A full year of savings was estimated to be \$652,938, which included \$10,000 per position to institute digital audio recording. But some courthouses already have adequate digital audio recording equipment in place. Moreover, the team recognized that FY2015 would not be able to recognize a full year of savings and the

maximum savings would probably be at least half that amount. In addition, the team recommended that a severance package be considered, the cost of which was not estimated or included in the anticipated savings figure. However, after examining severance packages that were offered to state employees in 1996, it appears that any FY 2015 savings would be negligible if a similar program were offered. See L. 1996, ch. 255.

The Council believed that transitioning from court reporters to transcriptionists is a necessary long-term budget strategy that would have little, if any, impact on access to justice or public safety. There was disagreement as to whether statutory change would be needed. A minority of team members believed that statutory change was needed to require the board of county commissioners to provide recording equipment in their respective county courthouses to meet certain minimum standards by July 1, 2015. Without such equipment in place, there would be no efficient way to transition away from court reporters on the scale recommended by the team. The majority of the team addressed this concern by including an estimated \$10,000 per courtroom, to be paid by the Legislature, the counties, the Judicial Branch, or a combination of all three, as a part of this strategy. Because paying for the equipment in the courthouse still resulted in a long-term savings, albeit not as much, the majority of the team recommended this approach.

The Council believed that a more targeted approach was needed to pilot elimination in those counties where adequate digital audio recording is already in place to see if there are any negative consequences not anticipated by the team. Because there do not appear to be any identifiable savings for FY 2015 based on the team recommendation, which included a severance package and payment of the cost of digital audio recording equipment, the Council was not prepared to make this strategy part of its final recommendation. However, the Council, consistent with the recommendations in the BRC Report, does support this budget reduction strategy and, if any implementation is possible in FY 2015, the Council recommends that any realized savings be applied in accordance with the Council's prioritized budget reduction strategy.

## PRIORITIZED RECOMMENDATIONS FOR FY 2015

The following strategies are placed in priority order beginning with the strategy that results in the least comparative impact to the court and ending with the strategy that results in the most severe comparative impact on the court. If the budget shortage is less than \$8.25 million, it is recommended that items be removed from the bottom up as increased funding allows.

<b>Budget Reduction Strategy</b>	<b>Estimated Savings</b>
Delay Judicial Openings (requires statutory change)	\$438,000
Maintain 80 Nonjudicial Position Vacancies	\$2,500,000
Reduce Training Budget by 50%	\$206,000
Eliminate 19.5 FTE Court Services Officer Positions that are Performing Solely Discretionary Duties	\$1,080,000
Reduce Access to Justice Grant	\$250,000
Maintain Total of 120 Vacancies (Additional 40)	\$1,250,000
Furlough Nonjudicial Employees (10 days)	\$2,526,000
<b>Total</b>	<b>\$8,250,000*</b>

\*The Council could not quantify any savings for FY 2015 for two budget reduction strategies, reducing the number of court reporters and increasing the use of district magistrate judges in select judicial districts. If any savings can be realized by implementation of these strategies in FY 2015, the Council recommends that they be adopted and savings be applied to reduce the number of furlough days required.

## LONG-TERM RECOMMENDATIONS

Although not part of the Council's charge, the members felt it was also important to share its conclusions with regard to budget reduction strategies that it believes should be pursued even though they require a longer term to implement than FY 2015.

### *Weighted Caseload Study for CSOs*

It is difficult to make any recommendations concerning eliminating or realigning court services officer positions in the state without a Weighted Caseload Study similar to that performed for judges and clerks. As indicated in the previous discussion of reduction strategies, court services officers have varying job duties around the state. Some perform only discretionary duties, some perform only statutorily mandated duties, and others perform a combination of the two. Any reduction in staff beyond that recommended in this report would need to be based on an analysis of actual need. Such an analysis could be accomplished through a Weighted Caseload Study. Funding for such a study would need to be provided by the Legislature.

### *Examine Law Library Expenditures*

The Kansas Supreme Court law library is under the supervision of the Kansas Supreme Court, which appoints a law librarian. K.S.A. 20-155. The law library is open to the public from 8:00 a.m. to 5:00 p.m. Monday through Friday and is located on the first floor of the Kansas Judicial Center.

As electronic legal research is now the norm, many attorneys and law firms have abandoned their traditional law libraries in favor of electronic legal research services. Similarly, courts around the country are considering their needs for a law library and whether an investment in hardbound books is wise. Currently, the Judicial Branch spends about \$1 million to maintain a law library. These expenses are offset, to some extent, from income received from the sale of hardbound and softbound volumes of the Kansas Reports and the Kansas Court of Appeals Reports. K.S.A. 20-156; K.S.A. 20-213. However, the number of subscriptions is steadily decreasing, as is income from those sales, even though subscription prices have been periodically increased. In addition, Kansas statutes require that numerous copies of both reports be supplied for free to various entities, including one copy for each active judge in the state. As one chief judge in an urban district wrote, "Stop supplying us with 23 hardbound copies of the Kansas Reports. We mostly send them off to storage and have no good places to store them anymore." This raises a question of whether the statutes concerning distribution of free volumes should also be reviewed and updated. See K.S.A. 20-208 through K.S.A. 20-211.

The Council recommends that law library-related expenditures and usage be examined, along with existing statutory requirements. The Council suggests that valuable input may be provided from the law librarians at Washburn University School of Law and the University of Kansas School of Law.

### ***Elimination of Court Reporters***

The rationale for this item being a long-term versus a short-term strategy has already been explained in this report. However, the Council recommends, as did the BRC, that this strategy be pursued and that the Supreme Court consider a pilot project to identify any problems with this strategy going forward. In addition, consideration should be given to the best method to ensure that county courthouses around the state have the necessary technological capacity to implement this strategy. It should be noted that the Council did receive and consider information from the Kansas Court Reporter Association, which opposes any elimination of court reporters. It included copies of reports from Florida, Iowa, and California, as well as a very thorough report from the National Court Reporters Association.

### ***Ratio of District Magistrate Judges to District Judges***

Increased use of limited jurisdiction district magistrate judges is both time efficient and cost efficient. It is cost efficient because the salary for a district magistrate judge is less than the salary of a district judge. It is time efficient because magistrate judges are able to hear the vast majority of the cases filed with the court and it allows the general jurisdiction judges in the district to concentrate on more complex cases that take significant judicial research and resources while quickly moving cases through the magistrate courts that do not require the same amount of judicial intervention. As already discussed in this report, and as recommended by the BRC, the Council believes that, particularly in those judicial districts that have no district magistrate judges, future district judge openings be examined for replacement with district magistrate judges. In some situations, statutory changes may be necessary to implement this strategy.

## CONCLUSION

During debriefing at its final meeting, many members of the Council described this process as intense. The Council expressed frustration that eliminating people, either through maintaining vacancies, staff reductions, or furloughs in an already strained system was its only real option given that 96% of the Judicial Branch all funds budget is in salaries. The Council's frustration was exacerbated by the fact that many of the Judicial Branch's personnel and non-personnel expenditures are statutorily mandated by the Legislature. Thus, the opportunity to realize savings without legislative action is limited. For this reason, achieving additional savings requires a return to these same strategies, even though they have been employed in prior years. Because of the reductions that have already been imposed, employee morale is understandably low and many employees are leaving the Judicial Branch for more money and more job stability in the private sector, the Executive Branch, or in county or municipal government. As a result, training costs rise and experience levels and institutional knowledge disappear. Moreover, this reduction in the institutional memory and experience of Judicial Branch employees may have the effect of reducing the public's perception of a high performing court system that consistently delivers a high level of justice to the people and business of our state – something that has been recognized nationally.

Frustration was also expressed that the Judicial Branch does not have a constituency to deliver its concerns to local legislators. People will not realize the severity of the damage to the Judicial Branch until it is too late: until families have to wait more than a year for a divorce or a support order or are not able to get a timely protection from abuse order; until businesses see significant delays in collecting debts owed or in their complex business cases tying up millions of dollars in capital because courts must first focus their time on criminal cases; until residents are the victims of crimes committed by those on probation because court services offices did not have the staff to properly monitor probationers; until counties see their jail bills increase because defendants are incarcerated awaiting trial or hearing for longer and longer periods of time; until heirs have to wait years for an estate to close and have their rightful inheritance distributed; until families endure unconscionable delays in getting loved ones with mental health or substance abuse issues committed or released; until city progress is halted because of delays in the condemnation process and businesses no longer find the court system acceptable enough to locate their business there; until perpetrators get away because there was insufficient staff to process a warrant request or friends are unjustly arrested because there was insufficient staff to timely cancel a warrant; or until courts are shuttered early in the day or week or month. When people need their courts, they need them now, not later. Justice delayed is indeed justice denied. In fact, this concept was so important to Kansans that it is contained in our state Constitution.

“All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay.” Kan. Const. Bill of Rights, § 18

It was with these concerns in mind that the Council pursued its difficult mission to recommend and prioritize budget cuts. Unfortunately, none of the options examined were good. All of them impact the delivery of justice and all of them will inevitably result in delays. Accordingly, they all impact the promise to all Kansans made in the Kansas Constitution that justice shall be administered without delay. The only solution that will keep that promise is proper funding of the Judicial Branch.

# APPENDIX



## COURT BUDGET ADVISORY COUNCIL BUDGET REDUCTION STRATEGY

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### **Budget Reduction Strategy:** Identify budget savings in the area of Court Services Officers

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**Description:** Review the duties of Court Service Officers (CSOs) and give recommendations on if and how these duties might be adjusted so as to eliminate the need for more personnel while still providing adequate safety for the public until the Judicial Branch can be properly funded.

Our recommendation is to limit CSOs to their STATUTORY duties, unless those were completely fulfilled, then the chief judge could request they take on other duties. CSO positions that are assigned to perform only discretionary duties should be transferred to judicial districts that currently do not have sufficient CSOs to perform statutory duties. However, under no circumstances should the total number of CSOs throughout the state fall below the current levels.

Without a Weighted Caseload Study, it is difficult to make decisions regarding public safety. Pure statistics were used to assist with the analysis; however, the team strongly recommends that a Weighted Caseload Study be performed before implementing solutions based upon numbers that may not be reflective of the actual need. Statistics do not take into account things like time spent on employee management, training, and travel. They do not recognize that all offenders are not created equal. Some offenders need little supervision and others require more. Depending on the offender's risk of reoffending, supervision requirements differ. Various required reports also vary in time requirements; however, with the statistics available, all cases and reports are treated equally.

In reviewing the duties of CSOs, the team looked at both the statutory duties and the discretionary duties of the position. Currently, it is not possible to determine the number of CSOs performing statutory duties. It is possible to determine the number of CSOs who are only performing discretionary duties. There are five judicial districts and approximately 48 officers who are performing only discretionary duties.

Based on acceptable caseload, statistics indicate that, if positions were available to understaffed districts, 16 of the 48 would be transferred to other districts. This action would leave 32 positions unfilled. Currently, 12.5 of these CSOs are vacant. Since the vacancy savings are counted by another strategy, savings can be calculated for 19.5 FTE.

Below are the discretionary duties considered for elimination:

- Domestic mediation, case management, and home studies
- Supervision of Child in Need of Care (CINC) in the custody of the Kansas Department for Children and Families
- Screening applications for Protection from Abuse (PFA) and Protection From Stalking (PFS) orders

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**Gross Budget Reduction(\$):**  
**19.5 FTE @ approximately \$55,334 = \$1.08 million**

**Net Budget Reduction(\$):**  
**Approximately \$1.08 million**

**Positive Short Term Impacts:**

- Allow CSO to perform statutory duties directly related to offender supervision
- Immediate budget reduction in 2015 if positions are eliminated and not shifted to statutorily required duties.

**Negative Short Term Impacts:** (The impacts listed below are limited to districts currently providing those services.)

All

- Disruption in lives of displaced employees
- Loss of employees due to retirement and other employment
- Disaffected employees due to unfavorable work environment

Domestic

- Increase in motions for hearings and court trials
- Increase in motions filed through the clerk's office
- Increased cost to litigants if they have to hire attorneys to litigate disputes or private mediators
- Increased number of pro se litigants (significant impact on judge and clerk time)
- No outlet for parents to resolve conflicts resulting in children being subjected parental conflict
- Low income litigants would have no options for domestic services

CINC

- Increased burden on DCF to administer cases
- Increased burden on clerks
- Loss of service in coordinating and tracking cases

PFA/PFS

- Increased burden on judges to review applications
- Increased burden on domestic violence advocates/shelters to screen and support victims
- Victims would lose a resource helpful in obtaining referrals to services
- Victims may turn to law enforcement for investigations and to county and district attorneys for prosecution

**Positive Long Term Impacts:**

Domestic

- Private mediators may see an increase in business

CINC

- Costs associated with case coordination would be the burden of DCF, the agency responsible for children in need of care.

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**Negative Long Term Impacts:**

- All short term impacts are also considered long term impacts. The burden on the courts may grow over time.
- The burden on employees would impact employee recruitment and retention.

**Public Safety Impacts:**

- Eliminating these services would likely result in increased domestic violence incidents

**Access to Justice Impacts:**

- The public relies on the Judicial Branch to resolve disputes. Judges, however, are not the only source of justice available within the Judicial Branch. Court services officers who provide these services are typically more accessible, less formal, and less expensive than traditional court proceedings. Over time, the district courts have found these services valuable and cost effective.

**Economic Impacts:**

- DCF may need more resources to administer all CINC cases
- Increase cost to litigants for mediation services
- Additional judicial and clerk staff needed in the Judicial Branch
- Increased resources may be needed by domestic violence shelters
- Possible increased revenue to private mediators.

**Time required for full implementation:**

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## COURT BUDGET ADVISORY COUNCIL BUDGET REDUCTION STRATEGY

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**Budget Reduction Strategy:** Strategic Hiring Freeze—80 unfilled vacancies

**Description:** The task of Team 1 was to look at the approximately 80 unfilled vacancies that have been maintained over the last few fiscal years and recommend to the Chief Justice if this number should be maintained, increased, or decreased to best fit the fiscal constraints that the Judicial Branch is operating under.

**Gross Budget Reduction(\$):** \$2.5 million

**Net Budget Reduction(\$):** \$2.5 million

**Positive Short Term Impacts:**

Immediate budget reduction in 2015.

**Negative Short Term Impacts:**

See below.

**Positive Long Term Impacts:**

None. This only impacts 2015.

**Negative Long Term Impacts:**

See below.

**Public Safety Impacts:**

1. Delays in timely presentence investigation (PSI) reports required before a defendant can be sentenced. These delays create overcrowding situations in county jails and may allow certain defendants free on bond the opportunity for committing additional crimes. Unfilled CSO positions result in reduced supervision of offenders that have been placed on probation and/or parole.
2. Arrest warrants and bench warrants may not be processed by the court in a timely manner.
3. Protection from Abuse (PFA) orders and Protection from Stalking (PFS) orders not being processed in a timely manner
4. Transcripts not being completely in a timely manner, delaying motions and appeals.

**Access to Justice Impacts:**

Offenders may remain in pretrial custody longer and lack of staff will cause a delay in processing all cases, but will disproportionately impact civil case filings.

**Economic Impacts:**

Delays in case processing result in defendants remaining in jails longer, at a cost to the county. Because criminal cases are governed by timelines set in the United States Constitution, any backlog will disproportionately impact civil cases. This includes not only complex civil corporate litigation, but divorces, child custody, and some child in need of care proceedings. A lot of CINC matters also have statutory time constraints.

**Time required for full implementation:**

Full implementation in 2015.

**Narrative:**

The vacancies that remain unfilled consist of CSOs, court reporters, clerks, and administrative assistants. These numbers and types of positions open fluctuate throughout the year as Personnel Staff has done a good job of filling different positions that have been open for some time by allowing other positions to come open due to resignations and retirements. Personnel has remained cognizant as to the importance of the position unfilled and also the length of time a particular position has been unfilled. By using this “rolling” method, all districts have shared the pain of unfilled positions.

While many problems are created by this inability to fill these approved positions due to a lack of proper funding, the Judicial Branch has chosen to follow this policy and has done it in a way that has been manageable in the short term. The team recommends that this policy be continued until proper funding is established. However, the team also recommends that this number of unfilled vacancies be held steady and NOT be allowed to increase in any fashion. Chief judges from around the state have reported that operations are currently being negatively affected by this hiring freeze.

We do note that, although we do not recommend that more than 80 vacancies be maintained, a vacancy equates to approximately \$31,250 per position maintaining 100 unfilled positions would save \$3.1 million and 120 unfilled positions would save \$3.75 million.



## COURT BUDGET ADVISORY COUNCIL BUDGET REDUCTION STRATEGY

**Budget Reduction Strategy:** Combine the Duties of the District Magistrate Judge (DMJ) and the Clerk of the District Court in Districts in which District Case Weights Indicate Excess Judicial Capacity

**Description:** The Judicial Staffing Map that reflects District Grouping Case Weights for 2013 indicates that there is an excess of judicial resources in six Judicial Districts. Similarly, the 2013 Clerk Staffing Map indicates an excess of clerk staff resources in those same districts. This excess capacity could be applied to reduce the cost to the Judiciary by appointing the DMJ in a county as the clerk of the district court and assigning the responsibilities of the clerk of the district court in counties in those judicial districts to DMJs who reside in those districts. This strategy would be executed by Supreme Court Order under its broad authority to manage the courts. This would result in eliminating the clerk of the district court position in those counties. We estimate that this would result in a reduction of 15 positions and savings of approximately \$830,000.

**Gross Budget Reduction(\$): \$830,000**

**Net Budget Reduction(\$):~\$830,000**

### **Positive Short Term Impacts:**

- Immediate savings of \$830,000.
- Both the court and the clerk's office remain open; minimal impact on availability of the courts to the public and the bar.
- Elimination of appearance of inefficiency in the judiciary.
- Reduces the need for furloughs by approximately three days.

### **Negative Short Term Impacts:**

- Structural management challenges arising from clerk of the district court's management of the administrative process and the district judge's management of the judicial process.
- Perception that western Kansas counties are bearing a disproportionate share of achieving cost savings for the Judiciary.
- Savings offset by potential additional travel by DMJs.
- Quality control issues in the clerk's office.
- As a practical matter, may result in yet additional burden on remaining clerk staff with corresponding adverse impact on staff morale.
- Morale impact on affected counties; close proximity of displaced clerk staff to DMJs who are assuming clerks' roles.

### **Positive Long Term Impacts:**

- Few

### **Negative Long Term Impacts:**

- Same as short term impacts.

**Public Safety Impacts:**

- None

**Access to Justice Impacts:**

- Perceived distinction between the court and the court's administrative staff blurred by DMJ interacting in administrative capacity with the public and the bar.
- Interaction between the DMJ in administrative capacity and the public and the bar could increase the risk of *ex parte* communication between litigants and DMJs.
- Potential perception that the Supreme Court is usurping the authority of the electorate.
- Public and Bar's access to the court clerk interrupted when DMJ is on the bench.
- Public and Bar's access to the court clerk interrupted when district judge assigns DMJ to hear matters in other counties within the district.
- Availability of the clerk's office when the DMJ is out of the office due to leave or judicial education.

**Economic Impacts:**

- Elimination of a full time, **salaried** position and benefits adversely impacts county.

**Time required for full implementation:**

Immediate implementation.

**Team 2 Recommendation:**

Team 2 opposes this strategy as unworkable on a split vote.



## COURT BUDGET ADVISORY COUNCIL BUDGET REDUCTION STRATEGY

**Budget Reduction Strategy:** Reduce Clerk staffs in counties that 2013 Weighted Case Load Study (WCLS) indicates have excess capacity.

**Description:** The 2013 WCLS indicates that 42 counties currently have clerk staffing levels that exceed need. According to the WCLS, this excess capacity constitutes 40 positions. A reduction in those counties that are indicated to have excess clerk staffing could generate a savings of \$1.008 million. That savings, however, is duplicative of the savings that is realized to the extent that the current hiring freeze is extended with the net savings approaching zero. This reduction in force could be achieved either by attrition or by reduction in force.

**Gross Budget Reduction (\$):** Difficult to estimate, but possibly \$1.045 million.

**Net Budget Reduction(\$):** Difficult to calculate

### Positive Short Term Impacts:

- To the extent not duplicated by the extension of the current hiring freeze, the savings would be realized immediately.
- The savings realized would reduce the number of furlough days required.

### Negative Short Term Impacts:

- Perception that western Kansas counties are bearing a disproportionate share of achieving cost savings for the judiciary.
- Leaves the state with an overall nonjudicial staffing level that is, according to the WCLS, even more inadequate to meet demand than the current level of staffing.
- Reduces or eliminates the flexibility within the statewide clerk staff to support the 36 counties that have caseloads in excess of their capacity.
- Savings offset by potential additional travel by DMJs.
- The cost savings could be reduced by overlap with 80 positions that are currently authorized and unfilled.
- Management challenges of implementing reduction in force.
- May result in yet additional burden on remaining clerk staff with corresponding adverse impact on staff morale.

### Positive Long Term Impacts:

- Achieves partial reallocation of nonjudicial staff resources to address excess capacity, but does not address the overall inadequacy of nonjudicial staffing levels.

### Negative Long Term Impacts:

Same as short term impacts.

### Public Safety Impacts:

- The court closing that might result from the lack of flexibility in providing staff coverage described elsewhere could have a negative impact on the public safety of those who benefit from domestic protection orders.
- Similarly, these court closings could limit the ability of court services officers to supervise probationers from whom the public is still entitled to protection.

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**Access to Justice Impacts:**

- Will probably result in intermittent closing of clerk's offices as a consequence of reduced flexibility to cover temporary staffing needs arising from vacations, illness, family leave, etc.
- Adverse impact on quality of work performed by the clerk's office.

**Economic Impacts:**

- The elimination of 28 positions, largely in western Kansas, would have an adverse impact on the economies of the communities in which those employees who are subject to the reduction in force live.

**Time required for full implementation:**

3-6 months.

**Team 2 Recommendation:**

Team 2 unanimously opposed this strategy.

**Narrative:** This strategy highlights a challenge that was identified by the BRC but remains unaddressed – the mismatch between need and capacity in the nonjudicial staffs across Kansas. The 2013 WCLS identifies approximately 42 counties that would appear to have excess capacity in their authorized non-judicial staffs. That excess authorized capacity would appear to include a total of 40 authorized positions. Those apparently excess authorized positions are concentrated in the western part of the state. Assuming an average salary of \$36,000, those 40 authorized positions represent a cost of approximately \$1.44 million.

The 2013 WCLS, however, also identifies approximately 36 counties that have a need for approximately 98 additional positions. Thus, the Kansas clerk of the district court offices appear, in the aggregate, to be understaffed by approximately 58 positions. If the 40 excess authorized positions were to be eliminated through a reduction in force, the level to which the state would be underserved would be the 98 positions indicated by the WCLS in 36 counties.

Another way of looking at this issue is to consider the possible extension of the existing hiring freeze. Forty-two of the approximately 88 positions subject to the freeze are in the category of authorized positions for which the WCLS suggests there is a 40 position excess capacity. Thus, from a certain perspective, the excess capacity identified by the WCLS has been eliminated by the hiring freeze. Thus savings that might result from the elimination of these 40 authorized positions has already been realized by the hiring freeze and will have already been realized going into the future to the extent that the hiring freeze is continued.

Nonetheless, it could be argued that a reduction in force be targeted at those 40 authorized positions in the 42 counties that the WCLS indicates have excess nonjudicial staff capacity. It appears that, as of November 14, 2013, 12 of the frozen positions are in the category of employees for which the WCLS indicates an excess capacity and are in one of the 42 counties for which the WCLS indicates that there is excess capacity. That would leave 28 positions in the arguably excess capacity category. Thus, arguably, a targeted reduction in force in those counties could earn a savings (assuming an average compensation of \$36,000) of \$1.008 million. In that event, however, we will have exacerbated the overall extent to which the state is underserved. Moreover, all of the negative impacts described above will exist.

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## COURT BUDGET ADVISORY COUNCIL BUDGET REDUCTION STRATEGY

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### Budget Reduction Strategy: Furloughs

**Description:** Furloughs should be implemented as a last resort and in such a fashion as to minimize the impact of the furloughs on the public and the bar's access to the Kansas Courts. To that end, furloughs should be administered on a reduced staff basis and spread across the entire fiscal year such that the courts, including the clerk's and court services offices remain open to the maximum extent possible.

**Gross Budget Reduction(\$): \$250,000/day**

**Net Budget Reduction(\$): \$250,000/day**

#### Positive Short Term Impacts:

- Immediate reduction of expense
- All parts of the state will be perceived as contributing equally to resolution of the judiciary's budget deficit.

#### Negative Short Term Impacts:

- Reduced staff furloughs will place additional pressure on the clerks, CSOs, court reporters, and judicial support staff with additional negative impacts on staff morale.
- Managing furloughs on a reduced staff basis will be difficult because it will be difficult to monitor and ensure that each employee is subject to the appropriate hours of furlough.
- The shared work unemployment insurance program may not be available for employees in any week with more than two days of furlough. The advantages of the shared work program that will be lost include the ability of OJA to assist and handle most of the paperwork for the affected employees and waiver of the requirement that employees look for other employment to be eligible for unemployment benefits.
- The full impact of the judiciary's budget deficit may not be experienced by the public, the bar, or the Legislature as a result of the extraordinary sacrifices made by the judiciary's nonjudicial staff through a reduced staff-based furlough system.
- Disruption in the professional and personal lives of both the judicial and the nonjudicial staffs of the judiciary.
- Reduction in the quality of the service provided to the bar and the public by the court's staff.

#### Positive Long Term Impacts:

- None

#### Negative Long Term Impacts:

- As we understand the FLSA implications, furloughs result in the transformation of exempt employees into non-exempt employees. It is possible that spreading furloughs throughout the 26 pay periods of the fiscal year could result in such a transformation for the entire year. This would create the dilemma of either preventing formerly exempt employees from "catching up" on work that accumulated during the furlough or requiring the payment of overtime compensation to these now non-exempt employees, thus

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reducing the cost reduction benefit generated by the furlough. This impact needs to be evaluated further by qualified employment law counsel.

- Furloughs, especially furloughs occurring over large blocks of time, will have an adverse impact on the public's perception of the judiciary and the quality of justice afforded the citizens of Kansas. The citizens of Kansas should and do perceive the judiciary as providing them with some of the key elements of both government and justice. To the extent that budgetary constraints result in impaired services or closed courts, the public's confidence in the judiciary and in Kansas government in general will be adversely impacted.
- The uncertainty that furloughs create for employees of the judiciary could lead to additional attrition that further exacerbates current staffing and recruiting issues.

#### **Public Safety Impacts:**

- Closing the clerk's and court service's offices for any period of time will interrupt the flow of domestic protective orders between the courts and law enforcement agencies with the possible exposure of the protected parties to the dangers that mandated the issuance of the protective orders in the first place. This negative impact is exacerbated greatly if the furloughs are instituted for extended blocks of time.
- Closing the court services offices would interrupt the management and supervision of individuals who have been ordered to be supervised by court services and impede the ability of CSOs to revoke probationers who continue to commit crimes.

#### **Access to Justice Impacts:**

- Implementing furloughs on a reduced staff basis will minimize the impact of the furloughs on the bar and the public by maximizing the hours the clerk's and other judicial support offices are open for business.
- Even though the reduced staff approach to furloughs will minimize court closings, clerk's offices in small rural counties may nonetheless be closed because there may be insufficient staff to operate the offices on a reduced staff basis.
- Closing the clerk's offices will interrupt the flow of electronically filed traffic citations, thus exposing some defendants in traffic violation charges to extended and unnecessary incarceration. This impact is exacerbated greatly if the furloughs are instituted for extended blocks of time.
- Closing the clerk's offices will prevent the criminal courts from proceeding with statutorily mandated criminal trials, thus resulting in the release of criminal defendants without trial pursuant to statutory provisions mandating prompt trials for criminal defendants. The risk of such releases is substantially exacerbated if the furloughs are instituted for extended blocks of time.
- Closing the clerk's offices will impede the pre-trial arraignment process in criminal proceedings, thus extending the time that a defendant may be incarcerated pending the posting of bail.
- Because of speedy trial considerations, even more preference will need to be shown to criminal cases to mitigate the negative consequences described above. This will then result in further delays in civil trials (including child protective cases), thus adversely impacting civil as well as criminal justice.

**Economic Impacts:**

- Closing the clerk's offices would probably result in qualification of the impacted state employees for unemployment benefits. The judiciary cannot address the issue given the anticipated length of furloughs necessary. As a result, the cost of unemployment benefits would shift to other state agencies.
- The reduced salaries and other compensation resulting from the furloughs, regardless of the form of implementation will have a multiplier effect on the economies of the communities in which the clerk and court services staff live.
- This economic impact is probably exacerbated where the furloughs are for blocks of extended time periods.

**Time required for full implementation:**

Four to six weeks to design and prepare a furlough order and to create a furlough plan.

**Team 2 Recommendation:** Team 2 unanimously prioritized the form of furlough:

1. Implementation of a rolling furlough system based on temporary staff reductions/furloughs spread throughout the fiscal year.
2. Implementation of a rolling furlough system that closes the courts on non-consecutive days throughout the fiscal year.
3. Block furlough that aggregates the needed furlough days at the end of the fiscal year as the amount of the judiciary's budget shortfall becomes more certain.

**Additional Narrative:** Furloughs are a highly visible and controversial mechanism for achieving cost savings, particularly when considered in the context of the recent shutdown of the federal government as the result budgetary and appropriation constraints on the federal level. The Kansas Judiciary's experience with the 2009 furloughs demonstrated that this mechanism for cost savings was not well received by either the public or the Kansas Legislature. Nonetheless, furloughs are probably a necessary constituent of a cost savings plan in a system where 96% of the cost is in salary and benefits as contrasted with program expenditures.

In analyzing the impact of furloughs, Team 2 considered three different methodologies for implementing furloughs:

- 1) Implementation of a furlough plan that mandates the same number of furlough days for all clerks, court services officers, and court support employees, but directs that the furlough days be implemented in a rolling fashion over the entire fiscal year by reducing the staff on any given furlough day so as to keep the clerks, court services, and court support offices open and operating to the maximum extent possible.
- 2) Implementation of a furlough plan that results in the closing of clerks, court services, and court support offices on a rolling basis that is spread out equally throughout the fiscal year.
- 3) Implementation of a single block furlough in which all court offices are closed for a single, extended block of time.

In evaluating these alternatives, Team 2 considered the input provided to Judge Wilson by various district judges and district magistrate judges on an anonymous basis. We also considered the valuable perspectives and insight from our experienced staff advisors. In addition, we received and considered a letter from the Kansas Association of District Court Clerks and Administrators dated November 15, 2013. We also solicited input from District Magistrate Judge Sheila Hochhauser, whom we understand to be the President of the Kansas District Magistrate Judges Association, and Chief Judge Tom Foster, whom we understand to be the President of the Kansas District Judges Association.

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The Kansas Association of District Court Clerks and Administrators opposed any furlough method that would keep courts open, but reduce staffing levels to achieve cost savings. The KADCCA believes that the accuracy and timeliness of court cases would be jeopardized if the court staffs were required to process the same volume of work with only half the staff under stressful conditions. The KADCCA also expressed concern about the impact of reduced staffing furloughs on the morale of its members.

Judge Foster did not provide written commentary as to the furlough of nonjudicial employees, but he did relate the District Judges Association's position on furloughs to us. Judge Foster advised us that his association opposes rolling furloughs either on a reduced staff basis or based on distributing furlough days throughout the fiscal year. If furloughs are required, the District Judges Association believes that they should be implemented in a single block near the end of the fiscal year at such time as there is relative certainty as to the extent of furloughs required to satisfy the judiciary's budgetary constraints. Judge Foster advised us that it was his association's perspective that the rolling furloughs are unfair to the public and the nonjudicial staff and that they have an adverse effect on the quality of the work delivered by those staffs. Moreover, Judge Foster indicated that rolling furloughs create confusion within the bar and the public as to when the rolling furloughs will take place. Last, Judge Foster questioned the cost of administering a rolling furlough.

Judge Hochhauser indicated that she desired to discuss the matter with her Executive Committee. At the time that this recommendation was submitted, however, we have not been advised of the District Magistrate Judges' Association's position on furloughs.

After considerable discussion, Team 2 concluded that the guiding principle for the judiciary in implementing a furlough plan should be to deliver to the citizens of Kansas a functioning court system that provides the civil and criminal justice that is compassionate, swift, and accurate, notwithstanding the financial exigencies that may face the judiciary. As the BRC stated, "Ours is a complex system of government requiring persistent effort, using different strategies and constantly evolving methods to accomplish a single goal: JUSTICE." While the impending financial exigency is daunting, in the final analysis it is but another element of complexity that has to be considered, but does not change the ultimate goal of providing justice to the citizens of Kansas.

Given this guiding principle, Team 2 has concluded that the "right" way to implement a furlough plan is to do so in a manner that minimizes the extent to which the furloughs result in court office closings. With all due respect to the opinions expressed by both the KADCCA and the Kansas District Judges Association, we believe that a plan of rolling furloughs based on reduced staffing levels results in the least disruption to Kansas' justice system. We also believe that, within these guidelines, the specifics of implementing such a plan of rolling furloughs should be determined on individual judicial district or county. We recognize that there are considerable difficulties in the management and administration of a plan of rolling furloughs. Moreover, we understand that there are potentially significant employment related legal issues inherent in such a system.

Furloughs are not an attractive means of managing cost. But, as noted above, they are almost a necessity where the vast majority of costs to be reduced are salary and benefit expense. In the final analysis, Team 2 has concluded that a system of rolling furloughs, based on reduced staffing, minimizes the interruption in the Kansas judicial system for our state's citizens.

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	<b>Merit Selection Districts (Delay of 60 Days)</b>	<b>Election Districts (Delay of 90 Days – Dependent upon the Governor taking the full 90 days to appoint)</b>	<b>Delay of 120 days in Both Merit Selection and Election Judicial Districts – Four District Judges, Four District Magistrate Judges</b>
2 District Judges	\$77,449	\$116,174	\$309,797
2 District Magistrate Judges	\$42,109	\$63,164	\$168,437
<b>GROSS SAVINGS TOTAL -- Eight Judges</b>		\$179,338	\$478,234
Minus ten days because full delay may not occur	(19,926)	(19,927)	(39,853)
<b>NET SAVINGS TOTAL</b>		\$159,411	\$438,381

**Positive Short Term Impacts:** Depending upon the way current law is amended, the Governor and judicial nominating commissions could have additional time to seek and consider applicants for judicial office.

**Negative Short Term Impacts:** Judicial Districts will cope with this delay in filling judicial vacancies as they do now – other judges in the district will work longer hours, some cases will be delayed, and additional senior judge usage will occur.

**Positive Long Term Impacts:** None noted.

**Negative Long Term Impacts:** At some point, the public’s access to justice will be diminished. A variety of statutory and constitutional provisions demand that certain proceedings (most notably in criminal and child in need of care cases) be held within a set time frame. Therefore, litigant in other types of cases, such as civil, limited actions (largely debt collection cases), probate, and other cases will bear the brunt of the resulting case delay.

Other judges may be able to work longer hours for some period of time, but could find that they are unable to do so for an extended period of time.

**Public Safety Impacts:** The most serious impact would occur if criminal cases were required to be dismissed because certain criminal proceedings are not taken within the time frames specified by statute.

Probationers who would normally appear promptly before a judge for failure to meet a term of probation may find this consequence to be delayed. This could impact public safety as serious conditions are not addressed or as repeated violations occur due to this lack of timely consequences.

**Access to Justice Impacts:** As noted above, the public may find that their access to justice is delayed or diminished, particularly in civil cases, limited actions cases (debt collections), probate, and other case types.

**Economic Impacts:** Businesses could be impacted negatively because they are unable to collect some of the debt that would normally be the subject of limited actions cases. Major civil litigation, such as contract disputes, could also be delayed for a significant period of time.

**Time required for full implementation:** Implementation would begin immediately with the enactment of necessary legislation, and would continue as vacancies occur.

## Statutory Amendments Needed to Accomplish Recommendations

### District Judges and District Magistrate Judges in Election Judicial Districts:

**25-312a. Vacancy in office of judge of the district court; how filled.** Except as otherwise provided in K.S.A. 20-2903 through 20-2913, and amendments thereto, whenever a vacancy occurs in the office of judge of the district court, it shall be filled by appointment by the governor *following the receipt of notice from the clerk of the supreme court, which shall be given not later than 120 days following the date the vacancy occurs or will occur.* If the vacancy occurs on or after May 1 of the second year of the term, the person so appointed shall serve for the remainder of the unexpired term and until a successor is elected and qualified. If the vacancy occurs before May 1 of the second year of the term, the person appointed to fill the vacancy shall serve until a successor is elected and qualified at the next general election to serve the remainder of the unexpired term. Any appointment made by the governor as required by this section shall be made within ~~60~~ 90 days after the vacancy occurs.

### District Judges in Merit Selection Judicial Districts:

**20-2909. Same; vacancy in office of judge of the district court; nominations for successor by district judicial nominating commission; tendering nominations; certification of nominations to governor; time limitations.** (a) (1) Whenever a vacancy occurs in the office of judge of the district court in any judicial district, or whenever a vacancy will occur in such office on a specified future date, the chief justice of the supreme court ~~promptly~~ shall give notice of such vacancy to the chairperson of the district judicial nominating commission of such judicial district *not later than 120 days following the date the vacancy occurs or will occur.*

(2) The chairperson, in consultation with members of the commission, within five days after receipt of such notice, shall set a schedule for accepting nominations and conducting interviews for the purpose of nominating persons for appointment to such office. It shall be the duty of the commission to nominate not less than two nor more than three persons for each office which is vacant, and shall submit the names of the persons so nominated to the governor. Any person nominated shall have the qualifications prescribed by subsection (b) of K.S.A. 20-2903 and amendments thereto, and in order to obtain the best qualified persons as nominees, the commission shall not limit its consideration of potential nominees to those persons whose names have been submitted to the commission or who have expressed a willingness to serve. The commission may authorize one or more members of the commission to tender a nomination to any qualified person in order to ascertain the person's willingness to serve if nominated, but any such tender of nomination shall be subject to final action of the commission under the conditions prescribed by subsection (b) of K.S.A. 20-2907 and amendments thereto.

### District Magistrate Judges in Merit Selection Judicial Districts:

**20-2914. Same; vacancies in district magistrate judge positions; method of selection.** (a) Whenever a vacancy shall occur in the office of district magistrate judge in any judicial district which has approved the proposition of nonpartisan selection of district court judges, or whenever a vacancy will occur in such office on a specified future date, the chief justice of the supreme court ~~promptly~~ shall give notice of such vacancy to the chairperson of the district judicial nominating commission of such judicial district *not later than 120 days following the date the vacancy occurs or will occur.* The chairperson, in consultation with members of the commission, within five days after receipt of such notice, shall set a schedule for accepting nominations and conduction[conducting] interviews for the purpose of selecting a person to fill such vacancy. Any person so selected shall have the qualifications prescribed by subsection (c) of K.S.A. 20-334, and in order to obtain the best qualified person as a district magistrate judge, the commission shall not limit its consideration of potential appointees to those persons whose names have been submitted to the commission or who have expressed a

willingness to serve. The commission may authorize one or more members of the commission to tender an appointment to any qualified person in order to ascertain such person's willingness to serve if appointed. Any such tender of appointment shall be subject to final action of the commission under the conditions prescribed by subsection (b) of K.S.A. 20-2907, and amendments thereto.

(b) Any appointment made pursuant to subsection (a) shall be contingent upon the acceptance of such appointment by the person so appointed and, if such person is not regularly admitted to practice law in Kansas, the appointment shall be made on a temporary basis until such person has been certified by the supreme court as qualified to hold such office, in the manner provided by K.S.A. 20-337, and amendments thereto.



## COURT BUDGET ADVISORY COUNCIL BUDGET REDUCTION STRATEGY

**Budget Reduction Strategy:** Replace District Judge Positions with District Magistrate Judge Positions as Attrition Occurs and as Caseload Permits

**Description:** Currently, a majority of the 31 judicial districts have both district judges and district magistrate judges. Six judicial districts (the 1<sup>st</sup>, 3<sup>rd</sup>, 7<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, and 29<sup>th</sup>) do not have district magistrate judges.

The Blue Ribbon Commission report notes that, in the 25 judicial districts with district magistrate judges, there are a total of 172 judges of the district court, including 93 district judges (54 percent) and 79 district magistrate judges (46 percent).

The Blue Ribbon Commission report further notes that the current salary of a district judge is approximately \$120,000. When fringe benefits, including family health insurance, are added, the total cost is approximately \$169,000 per judge. The salary of a district magistrate judge (excluding supplemental pay paid by some counties) is approximately \$62,000. When fringe benefits, including family health insurance, are added, the total cost is approximately \$92,000 per district magistrate judge. Reducing the number of district judges and increasing the corresponding number of district magistrate judges would result in a savings of approximately \$77,000 per judicial position. If the mix of district judges and district magistrate judges in the 25 judicial districts noted earlier (54%/46%) existed in the 6 judicial districts where there are no district magistrate judge positions, the savings in salaries and benefits would be over \$2.6 million without any overall change in the total number of judicial positions.

The team acknowledges that the 54/46 percentage mix of district judges is based on the numbers of district judges and district magistrate judges in the 25 judicial districts with district magistrate judges, and not on actual caseload figures. For that reason, the team recommends that the mix be adjusted to 65 percent district judges and 35 percent district magistrate judges. The team further recommends that those districts that currently have district magistrate judges also be examined to ascertain whether current caseloads would justify replacing some district judge positions with additional district magistrate judge positions.

**Because the team recommends that the replacement of district judges with district magistrate judges be accomplished as the incumbent district judges leave office, it is possible that budgetary savings could not be reached for some time, given the terms of incumbent judges and the point at which current judges are likely to retire or otherwise leave office.**

**Gross Budget Reduction (\$):**

Savings of approximately \$77,000 per judicial position would be achieved.

**Positive Short Term Impacts:**

Budgetary

**Negative Short Term Impacts:**

None identified

**Positive Long Term Impacts:**

None identified

**Negative Long Term Impacts:**

None identified

**Public Safety Impacts:**

None identified

**Access to Justice Impacts:**

None identified

**Economic Impacts:****Time required for full implementation:**

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### Statutory Amendments

The mechanism to add district magistrate judge positions is already in place. The statutory amendment needed to add district magistrate judge positions was made in 1998 when K.S.A. 20-355 (below) was amended to provide for the “additional judge of the district court” positions, rather than “additional district judge” positions. K.S.A. 20-301a (below) provides that the term “judge of the district court” means both district judges and district magistrate judges.

Each judicial district in which converting district judge positions to district magistrate judge positions is contemplated would need to be examined to see if the existing number of district judge positions exceeds the number of positions specified in statute (K.S.A. 4-202 through 4-231) to determine if a statutory change would be needed. Steve Grieb e-mailed a chart that shows which judicial positions are required by statute. The required legislation would be similar to portions of 2013 HB 2113, which is appended below.

There is also a timing issue. To add district magistrate judge positions, the certification requirements of K.S.A. 20-355 would need to be met. This requires certification of the need for these positions to the Secretary of State on or before April 15 (in election districts) and on or before May 15 (in merit selection districts). In election districts, the judge would be elected at the first general election. In merit selection districts, the additional position would be created on July 1 of the year in which the position is approved.

**20-355. Additional divisions, district court judges or district magistrate judges; determination and certification by supreme court; powers and duties of supreme court; manner of selection.** (a) On or before April 15 of every even-numbered year, the supreme court shall examine the need for more or less divisions or district magistrate judge positions of the district court in each judicial district which has not approved the proposition of nonpartisan selection of judges of the district court, as provided in K.S.A. 20-2901, and amendments thereto, except that on or before May 15, 1998, the supreme court shall examine the need for more or less divisions or district magistrate judge positions of the district court in each judicial district which has not approved the proposition of nonpartisan selection of judges of the district court. On or before May 15 of each year, the supreme court shall examine the need for more or less divisions or positions of the district court in judicial districts which have approved such proposition. Whenever the supreme court shall determine that in order to effectively expedite the business of the district court in any judicial district in this state, the need exists for an additional judge of the district court and an additional division or position in such court, the supreme court shall so certify to the secretary of state, and where the need for such additional judge of the district court and division or position is in a judicial district in which such proposition of nonpartisan selection of judges of

the district court has been approved, such certification also shall be made to the chairperson of the district judicial nominating commission of such judicial district. Any additional division or position so certified shall be designated as the next numbered division or position of such court.

(b) Upon certification of an additional judge of the district court and an additional division or position of the district court in any judicial district which has not approved the proposition of nonpartisan selection of judges of the district court, the first judge of the district court of such new division or position shall be elected at the general election held in November of the year in which the division or position is determined to be necessary and such judge shall take office on the second Monday in January of the following year. No judge of any such new division shall be appointed pending the first election to fill such office.

(c) Upon certification of an additional judge of the district court and an additional division or position of the district court in any judicial district which has approved the proposition of nonpartisan selection of judges of the district court, the additional division or position shall be created on July 15 of the year in which such certification is made, and the additional district judge shall be selected and take office in the manner prescribed by subsection (b) of K.S.A. 20-2913, and amendments thereto. The additional position shall be created on July 1 of the year in which the position is approved, and the additional district magistrate judge shall be selected and take office in the manner prescribed by K.S.A. 20-2914 and amendments thereto.

(d) The supreme court shall determine the county or judicial district in which the newly created division or position shall be placed.

(e) Any additional district judge or district magistrate judge position created by this section shall be considered a position created by the supreme court and not a civil appointment to a state office pursuant to K.S.A. 46-234, and amendments thereto.

### **20-301a. Classes of judges; judge of the district court defined; jurisdiction, power and authority.**

There shall be two classes of judges of the district courts established pursuant to K.S.A. 20-301: District judges and district magistrate judges. As used in this act, "judge of the district court" means any of such judges. Such judges shall have the jurisdiction, powers and duties prescribed by this act and otherwise prescribed by law. The judicial power and authority of a judge of the district court in each judicial district may be exercised anywhere within such judicial district and may be exercised anywhere within any other judicial district when assigned to hear any proceeding or try any cause in such judicial district, as provided in K.S.A. 20-319 and amendments thereto.

*Session of 2013*

### **HOUSE BILL No. 2113**

By Committee on Judiciary

1-28

AN ACT concerning the judicial branch of government; relating to judges; authority of supreme court; amending K.S.A. 4-202, 4-203, 4-204, 4-205, 4-206, 4-207, 4-208, 4-209, 4-210, 4-211, 4-212, 4-213, 4-214, 4-215, 4-216, 4-217, 4-218, 4-219, 4-220, 4-221, 4-222, 4-223a, 4-224, 4-225, 4-226, 4-227, 4-228, 4-229, 4-230, 4-231 and 4-232 and repealing the existing sections; also repealing K.S.A. 20-301b and 20-338.

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

New Section 1. The supreme court of the state of Kansas shall allocate all judicial resources as the court determines necessary and appropriate. This allocation shall include assignment of district judges and district magistrate judges to judicial districts and to the county or counties in which each shall serve and in which each shall maintain an office.

Sec. 2. K.S.A. 4-202 is hereby amended to read as follows: 4-202. The counties of Atchison and Leavenworth shall constitute the first 1<sup>st</sup> judicial district. ~~Subject to the provisions of K.S.A. 20-354a, and amendments thereto, there shall be four district judges in such district.~~

Sec. 3. K.S.A. 4-203 is hereby amended to read as follows: 4-203. The counties of Pottawatomie, Wabaunsee, Jackson and Jefferson shall constitute the second 2<sup>nd</sup> judicial district. ~~There shall be two district judges~~

~~in such district.~~

Sec. 4. K.S.A. 4-204 is hereby amended to read as follows: 4-204. The county of Shawnee shall constitute the ~~third 3rd~~ judicial district. ~~There shall be 13 district judges in such district.~~ Sec. 5. K.S.A. 4-205 is hereby amended to read as follows: 4-205. The counties of Franklin, Anderson, Coffey and Osage shall constitute the ~~fourth 4th~~ judicial district. ~~There shall be three district judges in such district.~~

Sec. 6. K.S.A. 4-206 is hereby amended to read as follows: 4-206. The counties of Chase and Lyon shall constitute the ~~fifth 5th~~ judicial district. ~~There shall be two district judges in such district.~~

Sec. 7. K.S.A. 4-207 is hereby amended to read as follows: 4-207. The counties of Miami, Linn and Bourbon shall constitute the ~~sixth 6<sup>th</sup>~~ judicial district. There shall be three district judges in such district. ~~At least one district judge position shall be in Bourbon county.~~

Sec. 8. K.S.A. 4-208 is hereby amended to read as follows: 4-208. The county of Douglas shall constitute the ~~seventh 7th~~ judicial district. ~~There shall be four district judges in such district.~~

Sec. 9. K.S.A. 4-209 is hereby amended to read as follows: 4-209. The counties of Geary, Dickinson, Marion and Morris shall constitute the ~~eighth 8th~~ judicial district. There shall be four district judges in such district. ~~The judge holding one of the district judge positions shall be a resident of Dickinson, Marion or Morris county and the judge holding another such position shall be a resident of Geary county. The position of the third district judge shall be in Marion county and the position of the fourth district judge shall be in Geary county.~~

Sec. 10. K.S.A. 4-210 is hereby amended to read as follows: 4-210. The counties of McPherson and Harvey shall constitute the ~~ninth 9<sup>th</sup>~~ judicial district. There shall be three district judges in such district. ~~At least one district judge position shall be in McPherson county and at least one shall be in Harvey county.~~

Sec. 11. K.S.A. 4-211 is hereby amended to read as follows: 4-211. The county of Johnson shall constitute the 10th judicial district. ~~There shall be 16 district judges in such district.~~

Sec. 12. K.S.A. 4-212 is hereby amended to read as follows: 4-212. The counties of Crawford, Cherokee and Labette shall constitute the 11<sup>th</sup> judicial district. ~~There shall be six district judges in such district. The district judges of the 11th judicial district shall hold court in the cities of Pittsburg and Girard in Crawford county, the city of Columbus in Cherokee county and the cities of Parsons and Oswego in Labette county.~~

Sec. 13. K.S.A. 4-213 is hereby amended to read as follows: 4-213. The counties of Jewell, Mitchell, Lincoln, Republic, Cloud, and Washington shall constitute the ~~twelfth 12th~~ judicial district. ~~There shall be one district judge in such district.~~

Sec. 14. K.S.A. 4-214 is hereby amended to read as follows: 4-214. The counties of Butler, Greenwood and Elk shall constitute the 13<sup>th</sup> judicial district. ~~There shall be three district judges in such district. The judge holding one of the district judge positions shall be a resident of Greenwood or Elk county and the judge holding another such position shall be a resident of Butler county. The position of the third district judge shall be in Butler county.~~

Sec. 15. K.S.A. 4-215 is hereby amended to read as follows: 4-215. The counties of Montgomery and Chautauqua shall constitute the 14<sup>th</sup> judicial district. ~~There shall be three district judges in such district. At least two district judge positions shall be in Montgomery county. The district judges of the 14th judicial district shall hold court in the cities of Coffeyville and Independence in Montgomery county and the city of Sedan in Chautauqua county.~~

Sec. 16. K.S.A. 4-216 is hereby amended to read as follows: 4-216. The counties of Sherman, Thomas, Sheridan, Cheyenne, Rawlins, Wallace and Logan shall constitute the 15th judicial district. ~~There shall be two district judges in such district.~~

Sec. 17. K.S.A. 4-217 is hereby amended to read as follows: 4-217. The counties of Gray, Ford, Kiowa, Meade, Clark and Comanche shall constitute the 16th judicial district. ~~There shall be two district judges in such district.~~

Sec. 18. K.S.A. 4-218 is hereby amended to read as follows: 4-218. The counties of Decatur, Norton, Phillips, Smith, Graham and Osborne shall constitute the 17th judicial district. ~~There shall be one district judge of the district court of the district. The district magistrate judge holding office in position one in Graham county in the 15th judicial district, as the district was constituted on the day before the effective date of this act, shall continue to hold office for the term for which elected and shall serve as district magistrate judge of the 17th judicial district for that term and until a successor is appointed or elected and qualified.~~

Sec. 19. K.S.A. 4-219 is hereby amended to read as follows: 4-219. The county of Sedgwick shall constitute the 18th judicial district. ~~There shall be 24 district judges in such district.~~

Sec. 20. K.S.A. 4-220 is hereby amended to read as follows: 4-220. The county of Cowley shall constitute the 19th judicial district. ~~There shall be three district judges in such district.~~

Sec. 21. K.S.A. 4-221 is hereby amended to read as follows: 4-221. The counties of Stafford, Barton, Russell, Ellsworth and Rice shall constitute the 20th judicial district. ~~There shall be three district judges in such district. The judge holding one of the district judge positions shall be a resident of Stafford, Russell, Ellsworth or Rice county and the judge holding another such position shall be a resident of Barton county. The position of the third district judge shall be in Barton county.~~

Sec. 22. K.S.A. 4-222 is hereby amended to read as follows: 4-222. The counties of Riley and Clay shall constitute the 21st judicial district. ~~There shall be three district judges in such district. At least one district judge position shall be in Riley county.~~

Sec. 23. K.S.A. 4-223a is hereby amended to read as follows: 4-223a. The counties of Doniphan, Brown, Nemaha and Marshall shall constitute the 22nd judicial district. ~~There shall be two district judges in such district.~~

Sec. 24. K.S.A. 4-224 is hereby amended to read as follows: 4-224. The counties of Gove, Trego, Rooks and Ellis shall constitute the 23<sup>rd</sup> judicial district. ~~There shall be two district judges in such district.~~

Sec. 25. K.S.A. 4-225 is hereby amended to read as follows: 4-225. The counties of Edwards, Pawnee, Rush, Hodgeman, Ness and Lane shall constitute the twenty-fourth ~~24<sup>th</sup>~~ judicial district. There shall be one district judge of the district court.

Sec. 26. K.S.A. 4-226 is hereby amended to read as follows: 4-226. The counties of Scott, Wichita, Greeley, Hamilton, Kearny and Finney shall constitute the 25th judicial district. ~~There shall be three district judges in such district. At least two district judge positions shall be in Finney county.~~

Sec. 27. K.S.A. 4-227 is hereby amended to read as follows: 4-227. The counties of Stanton, Grant, Haskell, Morton, Stevens and Seward shall constitute the 26th judicial district. ~~There shall be two district judges in such district.~~

Sec. 28. K.S.A. 4-228 is hereby amended to read as follows: 4-228. The county of Reno shall constitute the 27th judicial district. ~~There shall be four district judges in such district.~~

Sec. 29. K.S.A. 4-229 is hereby amended to read as follows: 4-229. The counties of Saline and Ottawa shall constitute the 28th judicial district. ~~There shall be four district judges in such district. At least two district judge positions shall be in Saline county.~~

Sec. 30. K.S.A. 4-230 is hereby amended to read as follows: 4-230. The county of Wyandotte shall constitute the 29th judicial district. ~~There shall be 15 district judges in such district.~~

Sec. 31. K.S.A. 4-231 is hereby amended to read as follows: 4-231. The counties of Sumner, Harper, Kingman, Barber and Pratt shall constitute the 30th judicial district. ~~There shall be four district judges in such district. At least one district judge position shall be in Harper, Kingman, Barber or Pratt county and at least two such positions shall be in Sumner county.~~

Sec. 32. K.S.A. 4-232 is hereby amended to read as follows: 4-232. The counties of Allen, Neosho, Wilson and Woodson shall constitute the 31st judicial district. ~~There shall be three district judges in such district. The district judge holding office in division number two in the fourth judicial district, as that district was constituted on June 30, 1983, and the district judge holding office in division number four in the 11th judicial district, as that district was constituted on June 30, 1983, shall continue to hold office for the terms for which appointed and shall serve as district judges of the 31st judicial district for those terms and until successors are appointed and qualified. The associate district judge holding office in position four in the 11th judicial district, as that district was constituted on June 30, 1983, shall continue to hold office for the term for which appointed and shall serve as district judge of the 31st judicial district for that term and until a successor is appointed and qualified. The district magistrate judges holding office in positions one and four in the fourth judicial district, as that district was constituted on June 30, 1983, shall continue to hold office for the terms for which appointed and shall serve as district magistrate judges of the 31st judicial district for those terms and~~

~~until successors are appointed and qualified. The district court of the 31st judicial district shall hold court in the city of Iola in Allen county, the cities of Chanute and Erie in Neosho county, the city of Fredonia in Wilson county and the city of Yates Center in Woodson county.~~

Sec. 33. K.S.A. 4-202, 4-203, 4-204, 4-205, 4-206, 4-207, 4-208, 4-209, 4-210, 4-211, 4-212, 4-213, 4-214, 4-215, 4-216, 4-217, 4-218, 4-219, 4-220, 4-221, 4-222, 4-223a, 4-224, 4-225, 4-226, 4-227, 4-228, 4-229, 4-230, 4-231, 4-232, 20-301b and 20-338 are hereby repealed.

Sec. 34. This act shall take effect and be in force from and after its publication in the statute book.



## COURT BUDGET ADVISORY COUNCIL BUDGET REDUCTION STRATEGY

**Budget Reduction Strategy:** Eliminate longevity bonuses for Judicial Branch employees.

**Description:** Currently, all state officers and employees receive a longevity bonus pursuant to K.S.A. 2012 Supp. 75-5541. Employees are eligible after ten years of service. It is a one-time bonus equivalent to \$40 for each year of state service up to a maximum of 25 years. Pursuant to Judicial Branch personnel rules, an otherwise eligible employee must receive at least a “satisfactory” rating on his or her most recent performance appraisal to qualify. Recently, the legislation was amended to make the statute inapplicable to anyone employed after June 15, 2008. Accordingly, over time longevity bonuses will be completely eliminated for all state officers and employees.

**Gross Budget Reduction(\$):** \$871,000

**Net Budget Reduction(\$):** \$871,000

**Positive Short Term Impacts:** This is a direct budget savings.

**Negative Short Term Impacts:** This is a pay reduction for our most loyal and experienced employees. Employee morale will be impacted. In addition, because the executive branch agency employees will still receive longevity bonuses, this inequity will further impact morale. This would require a statutory change.

**Positive Long Term Impacts:** This is a permanent budget reduction for 2015 and on.

**Negative Long Term Impacts:** Decreased morale may result in increased turnover in our most experienced employees, leaving an experience deficit and increased training costs. By transferring to jobs in Executive Branch agencies they could retain their longevity bonuses.

**Public Safety Impacts:** None.

**Access to Justice Impacts:** None.

**Economic Impacts:** \$871,000 statewide.

**Time required for full implementation:** Can be fully implemented in 2015

### **Narrative:**

It is estimated that, in FY 2015, approximately 954 full time equivalents will receive \$871,000 in longevity payments. This is 60% of all nonjudicial Judicial Branch employees. Recently, the state statute was amended to apply only to those employees who started state employment before June 15, 2008. Accordingly, it will eventually be phased out as currently covered employees leave or retire.

Because longevity bonuses apply to all state officers and employees, a statutory amendment would have to be made to K.S.A. 2012 Supp. 75-5541 to exclude Judicial Branch employees.

This would create an inequity between Judicial Branch employees and Executive Branch Employees. Executive Branch employees were also treated more favorably when it came to the market adjustments committed to by the 2008 Legislature. As background, the 2008 Legislature agreed to increase the wages of state employees because the pay plans had fallen significantly behind the job market. Both Executive Branch and Judicial Branch employees received increases in fiscal year 2009. The proposed plan for the Executive Branch included a five-year implementation. While the Judicial Branch request was to bring salary up to market in one year, the 2008 Legislature chose to implement the increase over a three-year period to provide a phased in approach for both branches. Docket fees were increased to provide for a 5.25% increase in FY 2009. While funding for the second year of the three-year plan was proposed, it was never funded by the Legislature. In contrast, the Executive Branch received funding for market adjustments in fiscal year 2008, 2009, 2010, and 2013. Maintaining parity with the Executive Branch pay plans requires additional funding of the Judicial Branch's second installment plan and this is included in the Judicial Branch enhanced budget request for FY 2015. This reduction would also affect, in some cases, an employee's future KPERS benefit. This strategy would negatively impact employee morale, which remains at a very low level. Chief judges from around the state report that, when Judicial Branch employees get a chance to move to Executive Branch positions or to county or city positions in their judicial districts where pay raises are not frozen, furloughs do not continually loom overhead, and salaries are higher, they move, resulting in staff turnover. Replacement of personnel is slowed by the current policy of maintaining 80 vacancies. This results in a drain in experience and understaffing for long periods of time as the positions are put on hold to be filled.

Necessary statutory change:

75-5541. Longevity bonus payments; eligibility; limitations; administration

(a) Except as otherwise provided by this section, each classified employee, excluding any such employee who is on temporary appointment *and excluding any nonjudicial employee in the judicial branch of state government*, ~~and each nonjudicial employee in the unclassified service under the Kansas civil service act in a state agency in the judicial branch of state government~~, shall receive a bonus as provided by this section, which shall be referred to as a longevity bonus, under the terms and conditions and subject to the limitations prescribed by this section.

(b) After June 30, 1989, any such officer or employee who has been employed by any agency, board or department ~~within any branch of state government~~, whether or not the entire period of service is continuous with the same agency, board or department, shall be eligible to receive a longevity bonus upon completion of 120 months of state service. Length of service and service anniversary dates shall be determined pursuant to rules and regulations adopted by the secretary of administration.

(c) The amount of each longevity bonus payment shall be computed by multiplying \$40 by the number of full years of state service, not to exceed 25 years, rendered by such officer or employee as of the service anniversary date within such fiscal year.

(d) Each longevity bonus payment shall be included in the employee's regular pay warrant. The amount of the bonus shall be displayed separately on the warrant stub or advice.

(e) Longevity bonus payments shall be compensation, within the meaning of K.S.A. 74-4901 et seq., and amendments thereto, for all purposes under the Kansas public employees retirement system and shall be subject to applicable deductions for employee contributions notwithstanding the fact that payments are made annually. Longevity bonus payments shall be in addition to the

regular earnings to which an officer or employee may become entitled or for which such employee may become eligible.

(f) The purpose of longevity pay is to recognize permanent employees who have provided experience and faithful long-term service to the state of Kansas in order to encourage officers and employees to remain in the service of the state. The provisions of this section shall apply to fiscal years commencing after June 30, 1989. The amendatory language of this section shall be construed to confirm that longevity pay is intended, and has been intended since its enactment, to be a bonus as defined in 29 C.F.R. § 778.208.

(g) In accordance with the provisions of K.S.A. 75-3706, and amendments thereto, the secretary of administration shall adopt rules and regulations to implement the provisions of this section with respect to officers and employees in the executive branch of state government. ~~The supreme court may adopt policies to implement the provisions of this section with respect to officers and employees who are nonjudicial personnel of state agencies in the judicial branch of state government.~~

(h) The provisions of this section shall not apply to any state officer or employee who is employed or re-employed as a state officer or employee on or after June 15, 2008.

K.S.A. 75-5541



## COURT BUDGET ADVISORY COUNCIL BUDGET REDUCTION STRATEGY

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### **Budget Reduction Strategy:** Reduce Court Training Budget

**Description:** Supreme Court Rule 501 requires Kansas judges to obtain 13 hours of training each year. This has been accomplished through various means. For many years the Office of Judicial Administration put on fall and spring conferences where judges from around the state were brought to one location for training. When budget reductions were imposed in 2009 and employees were furloughed, the Supreme Court also instituted other budget reduction strategies. One was to eliminate one judicial conference a year and instead provide an all-judges conference in the spring and then regional training conferences in the fall to reduce costs. The Supreme Court has continued this process and budget savings. The Supreme Court also provides training to other groups, such as court services officers and court clerks. These trainings are not mandated by any continuing professional education requirements for those groups, but are part of the Supreme Court's overall responsibility to have a well-trained workforce.

This strategy would eliminate all court-sponsored training except the mandatory judicial training that is currently conducted in June of each year (which includes legislative and case law updates) and the district magistrate judge certification required by K.S.A. 20-337. It would eliminate all in-person committee meetings. It should be noted that the Supreme Court is also statutorily mandated to provide municipal judge training and that is provided through money collected on statutorily mandated municipal court costs, so that training is not impacted in this recommendation.

**Gross Budget Reduction(\$):** \$231,416

**Net Budget Reduction(\$):** \$231,416

**Positive Short Term Impacts:** Budget Reduction for 2015. Staff will not be away from office for training and meetings, which will help in handling staff reductions and freezes.

**Negative Short Term Impacts:** A well-trained staff is essential to the delivery of quality services in Kansas. Both judicial and nonjudicial personnel benefit from in-person updates and training to roll out new legislative changes, procedural changes, and to discuss common problems. Newer employees benefit from the advice and counsel of more experienced employees from other parts of the state. Many judicial districts are isolated due to location and combined training is a tremendous benefit.

Eliminating all in-person committee meetings will have a negative impact on the work of the committees and the training that results from committee work. Committees review national research, federal requirements and guidelines, and possible training strategies before implementing on-site training for judicial and nonjudicial staff.

**Positive Long Term Impacts:**  
None identified.

**Negative Long Term Impacts:** Same as negative short term impacts.

**Public Safety Impacts:** A judiciary and staff that lack sufficient training to do their jobs could result in an increase in errors made at all levels. In the criminal arena, this could result in cases being dismissed or reversed. It could result in lawsuits related to unnecessary periods of incarceration or errors in handling of paperwork, such as arrest warrants and driver's license suspensions.

**Access to Justice Impacts:** No direct impacts, although judges and staff may not have the benefit of a common approach to changes in the law both statewide and nationally. A less well-trained staff would impact the quality of justice accessed. It could also result in delays as personnel attempt to adapt to changes in the law with little training.

**Economic Impacts:** In addition to the direct economic impact of \$231,416, communities where the trainings are located would see an economic impact in terms of lost hotel room rentals, restaurant business, and gasoline sales, related to people traveling from around the state to one central location.

**Time required for full implementation:** Could be fully implemented in 2015.

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**Judicial Branch Education FY 2015**

**District Judges**

Judicial Conference	\$173,213.00
Chief Judges Meeting	\$10,499.00
Judges Regional Training	\$11,204.00
DMJ Certification Session	\$7,200.00
New Judges to Reno	\$27,600.00
New Judge Orientation	\$16,676.00
Train the Trainers Workshop	\$17,250.00
Other Judge Out-of-State Training	\$15,000.00
<b>Total</b>	<b>\$278,642.00</b>

**District Court Training**

Legislative Update Workshop	\$51,682.00
<b>Total</b>	<b>\$51,682.00</b>

<b>Other Committee Meetings</b>	<b>\$66,505.00</b>
<b>Out of State Travel</b>	<b>\$15,000.00</b>

<b>GRAND TOTAL</b>	<b>\$411,829.00</b>
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## **Supreme Court Rule 501**

**(b) Education Requirement.** A judge to whom this rule applies must earn not less than 13 hours of continuing judicial education each calendar year. Of those 13 hours, at least 2 hours must have been accredited for judicial ethics.

The rule applies to Supreme Court justices, Court of Appeals judges, district judges, district magistrate judges, and active senior judges.

Training for non-lawyer municipal judges is required by statute under K.S.A.12-4114 and K.S.A. 12-4116 and is funded through fees assessed on cases in municipal court although it is all deposited in the Judicial Education Fund. Separate funds were abolished in 2001 under K.S.A. 20-1a11.

Note: It is hoped that webinars and similar internet based training programs will be developed as time and staff allows if this reduction is required to continue into years beyond 2015. The cost of developing and providing such programming is not included in the proposed 2015 education and training budget reduction strategies.



## COURT BUDGET ADVISORY COUNCIL BUDGET REDUCTION STRATEGY

**Budget Reduction Strategy:** Reduce amount provided by the Access to Justice Grant.

**Description:** Kansas Legal Services has been the grant recipient for the Access to Justice Grant since 1997; therefore, the following discussion is based on an assumption that they would again get the grant in 2015, but in a reduced amount. But it should be noted that this is a competitive process.

As background, the Court has budgeted to provide Kansas Legal Services (KLS) with \$700,070 in an Access to Justice Grant for the last several years. Until FY 2014, a portion of court fees was pre-designated to go to this grant. When the fees were all brought under the authority of the Supreme Court, it decided, for FY 2014, to fund the Access to Justice Grant out of its total existing and anticipated funds. This strategy assumes anywhere from a \$250,000 to a \$500,000 reduction in this grant to KLS.

A reduction of \$250,000 (equivalent to 1 furlough day) in the amount awarded would equal 3.2% of the CY 2012 KLS budget of \$7.8 million. A reduction of \$500,000 (equivalent to 2 furlough days) would equal 6.4% of that same KLS budget. The \$8.2 million shortfall to the Judicial Branch's FY 2015 base budget request of \$135.2 million represents a shortfall of 6.1%.

**Gross Budget Reduction(\$):** \$250,000 –  
500,000

**Net Budget Reduction(\$):** \$250,000 –  
500,000

**Positive Short Term Impacts:** Budget savings for FY 2015 of \$250,000 – 500,000 (1 – 2 furlough days)

**Negative Short Term Impacts:** Any cuts to the KLS funds impacts the vulnerable in our society. KLS is a valuable resource to which low-income individuals in need of legal assistance are referred. KLS handles cases in the areas of consumer, employment, family, juvenile, health, housing, income maintenance, and individual rights law. KLS also operates a number of hotlines for individuals with special needs. Courts rely on KLS to answer questions and handle cases that would otherwise proceed pro se if they proceed at all. Pro se litigation presents significant challenges to our courts as litigants are unfamiliar with proper procedures.

Marilyn Harp, Executive Director of KLS, anticipates that a \$250,000 budget cut would require her to eliminate five to seven employees.

**Positive Long Term Impacts:** None identified.

**Negative Long Term Impacts:** Same as short term impacts.

**Public Safety Impacts:** KLS assists victims in obtaining protection from abuse and protection from stalking orders. A loss of this assistance could negatively impact victims coming forward and abusers continuing the conduct. KLS attorneys also assist victims of domestic abuse in divorce actions in an effort to help stabilize the family and allow the victim to live with the children independently of the abuser.

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**Access to Justice Impacts:** Same as negative short term impacts. Short term impacts could be lessened by furloughs rather than staff reductions. Ms. Harp indicated that one day of work for KLS is equivalent to \$28,500. Accordingly, \$250,000 is nine furlough days for KLS. This would be a decision for KLS, not this group.

**Economic Impacts:** Amount equal to the budget reduction. However, the work of KLS attorneys, particularly in the area of divorce and child support, helps stabilize families and provides advice on family budgeting issues to prevent families from dipping below the poverty guideline level, requiring access to public benefits. In addition, it may have the impact of increasing court costs by increasing staff time needed to respond to questions currently handled by KLS staff.

**Time required for full implementation:** Can be fully accomplished in 2015.

**Narrative:**

Kansas Legal Services is the primary provider of civil legal services to low income Kansans. Civil legal services provide fairness in the justice system, regardless of how much money people have. There is limited federal support for this agency (through the Legal Services Corporation), which continues to be reduced each year. Nearly every U.S. state provides financial support to civil legal aid programs.

KLS has offices in 11 Kansas cities and provides services to all 105 counties. KLS provides assistance to people and families in Kansas both directly and indirectly. It offers a toll-free advice line (at a cost of \$78,000) the phone to which is only given out by clerks to court users. KLS provides court clerks with business cards so that, when court users ask for advice or assistance with their case, clerks can hand them the card rather than spend time explaining that they can't help. This program receives over 7,000 calls from these referrals. Financially eligible callers get legal advice and are considered for full representation. For callers who are not low income, KLS connects them to the KBA Lawyer Referral Service and encourages them to obtain services from an attorney.

KLS provides legal representation to 12,000 low income families each year. Due to limitations on funding, legal advice is available to approximately 11,000 callers, many of whom could benefit from direct representation. This allows self represented litigants to more efficiently represent themselves. Judges and staff comment that self-representing litigants consume more time. Without the ability to talk with KLS staff in advance or during the process, it would be more time consuming. Art has had courts report that close to 40% of the domestic cases involve self-representing litigants.

KLS also makes Judicial Council forms, and other legal forms that it creates internally, available on its website. Unlike court website forms, these can actually be filled out interactively, with help provided along the way, which has a significant positive impact on the filings of pro se litigants. (Forms are typewritten and in a format that is required by the courts.) KLS reports that these forms have helped approximately 20,000 court users. KLS staff makes sure these forms are always up-to-date and user-friendly. There is no other funding source for this service.

Finally, KLS provides a support hot-line for foster children and foster parents. Parents and children often have questions about legal issues related to foster care, either generally or specifically related to their case. In addition, KLS provides a support center for guardians *ad litem* and assists in the filing of child in need of care petitions when necessary.



## COURT BUDGET ADVISORY COUNCIL BUDGET REDUCTION STRATEGY

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**Budget Reduction Strategy:** Provide Recording Equipment in Each Kansas Courtroom and Phase Out Existing Court Reporter Positions

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**Description:** As court reporters currently employed by the Judicial Branch retire or otherwise leave Judicial Branch employment, they would not be replaced. The record of proceedings would instead be made through the use of county-purchased recording equipment that meets standards specified by the Court.

This recommendation would be dependent upon having adequate recording equipment in place in each courtroom in which proceedings occur. Training would be needed for court personnel, including judges, to ensure that the record generated clearly identifies the person speaking, provides an accurate recording of the proceedings, that inaudible responses are kept to a minimum, and that any playbacks requested by the judge or jury can be provided quickly.

Transcriptionists, who would be paid at a rate lower than court reporters, would be employed to run the recording equipment, identify the person speaking, provide any requested playbacks, and transcribe the recordings as requested.

The team recommends that, by July 1, 2015, one-half of the current 132 court reporter positions be eliminated. Because counties that do not already have adequate recording equipment may have difficulty funding the equipment, the Judicial Branch could consider a grant program through which counties could apply for assistance.

### **Gross Budget Reductions (\$)**

Following are the fiscal assumptions made by the team:

Salary and fringe benefits, mid-range court reporter	\$62,933
Salary and fringe benefits, mid-range transcriptionist	(\$43,040)
Average cost per courtroom of audio recording equipment	<u>(\$10,000)</u>
Net savings per position, first year of implementation	\$9,893
Net first full-year savings, x 66 court reporters	\$652,938

Please note that FY 2015 savings will be dependent upon how many court reporters leave employment or are terminated and at what point in the fiscal year that occurs. FY 2016, which begins on July 1, 2015, would be the first full fiscal year during which one-half of the current court reporters would no longer be employed.

In subsequent years, the estimated \$10,000 up-front cost of the recording equipment would not need to be expended, and could be viewed as additional savings.

The team recommends a severance package for any court reporters who would be terminated. This could include six to eight weeks of salary and health insurance coverage for a set period of time.

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**Positive Short Term Impacts:** Some judicial districts that are experiencing difficulty filling current court reporter vacancies could shift their focus to finding recording equipment that meets their needs.

**Negative Short Term Impacts:** For at least some period of time, any budget savings resulting from not filling court reporter positions will be reduced by the costs of the equipment and training. The costs of transcriptionist positions (who will be expected both to transcribe and to run the recording equipment) will be ongoing.

**Positive Long Term Impacts:** District courts may spend less time trying to fill court reporter positions. It is unknown whether this time savings will be offset by any time needed to train transcriptionists to run the recording equipment and generate an accurate record.

**Negative Long Term Impacts:** Unknown

**Public Safety Impacts:** None identified

**Access to Justice Impacts:** An adequate number of transcriptionists would need to be employed to ensure that transcripts are available as requested within the time needed in criminal cases, or appeals will be delayed.

**Economic Impacts:**

**Time required for full implementation:** Unknown

### **Statutory Amendment that Might Be Considered**

A majority of the team members do not think that a statutory amendment is necessary to carry out this recommendation. A minority of the team members recommends the following statutory amendment:

**20-348. County commissioners responsible for certain expenses of district court operations.** Except for expenses required by law to be paid by the state, the board of county commissioners of each county have an obligation to adequately fund the operation of the district court in the county and shall be responsible for all expenses incurred for the operation of the district court in the county. *By July 1, 2015, the board of county commissioners of each county shall provide recording equipment that meets standards specified by the Kansas supreme court in each courtroom in which court proceedings will be held.*

### **Supreme Court Rule Amendment that Might Be Considered**

Supreme Court Rule 360 provides that “A district court may provide for the electronic sound recording of court proceedings by the use of equipment which meets specifications approved by the Supreme Court.” This could be amended that to provide that there shall be electronic recordings of specified proceedings or to provide that court reporters shall be used in only specified proceedings.

There currently are no Supreme Court approved specifications for electronic recording, but it would appear that many of these issues could be addressed through specifications and that no statutory amendment would be needed.

Transcript fees are currently set by the State Board of Examiners of Court Reporters and are found in the Supreme Court Rules following S.C.R. 366. It is possible that the Board may not feel that setting a fee for a copy of an electronic recording not made by a court reporter is within its scope of duties. However, it would appear that Supreme Court rule, rather than statute, is an appropriate place for specifying fees.