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March 2, 2012

Chairman Mitch Holmes
House Pensions and Benefits Committee

Subject: Public Safety KPERS Retirement Benefits

Dear Chairman Holmes,

I have attached a draft as you requested in your phone call last night. I believe I have covered all of the points you requested. The draft will do the following:

1. Define a public safety employee to include:
 - a. The existing state DOC "security officer" as currently provided in existing KPERS statutes,
 - b. JJA employees holding positions similar to DOC "security officers,"
 - c. law enforcement officers,
 - d. firefighters, and
 - e. local corrections officers.
2. References existing definitions in current KPERS statutes for each of the positions above.
 - a. Local corrections officer is defined using exact language from a section of an existing KPERS statute.
 - b. Applicable JJA employee is defined by reference to the provisions defining which DOC employees are included in the existing plan. [This will probably need refined, but I have not had an opportunity to work with JJA on this to see if those parameters will work for JJA.]
3. As you requested, a participating employer option for these provisions are included
 - a. The employees of those employers opting to include their public safety employees in under this provision are placed in tier II with the public safety provisions applicable.
 - b. The employees of those employers opting to not include their public safety employees under this provision are placed in tier III without the public safety provisions applicable to them.

There are two areas I encountered that I am not sure what your desire is:

1. You mentioned something about limiting this to non-administrative assignments. As I explored the statutes on the state corrections officers, I was not sure exactly how you would want to approach that issue. In the existing corrections officer statutes, it appears a person moving into a higher position within the agency remains eligible provided they had three consecutive years in one of the defined positions immediately prior to such promotion or transfer. This adds some stability and prevents people from moving in and out of participation. I believe this is especially important with the split you wanted between tier II participation for those in the plan and tier III participation for those the employer opts to not include in the plan. The provisions in existing statute I am referring to are in K.S.A. 74-4914a subsection (1)(b). They can easily be added to the definitions if desired.
2. There would be some argument for including EMS employees who are not otherwise covered by being firefighters or law enforcement officers. There are not many local agencies who have employees in these positions but I am guessing there are some. If it is your desire to include them there is a definition in existing statute found in K.S.A. 65-6001 subsection (j). We would probably have to add something clarifying their primary employment duties. So something like, "Emergency services employee as defined in K.S.A. 65-6001 subsection (j) and amendments thereto, whose primary employment duty is to respond to and provide care for persons requiring emergency medical care."

For your convenience I have attached a copy of the existing KPERS statutes on the Corrections Officer plan. I am certain there are other KPERS statutes that will have to have technical amendments to encompass the proposed plan.

Clearly I have put this together quickly and I have not had time to vet it with other public safety professions, with DOC or with JJA. I would like to have time to do that before it is finalized. I am kind of going out on a limb here where I could be causing an unintended consequence I am not aware of or there could be better solutions to the definitions.

I have attempted to utilize the provisions of the existing corrections plan without any change affecting them. Please let me know if this is not on target with what you are seeking.

We are also available to work with the revisor or provide any other assistance that may be needed. Thank you for asking us to participate in this process and to help put these ideas together.

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Retirement date for certain public safety employees

Fashioned from existing statutes for state corrections officers, K.S.A. 74-4914a through 74-4914e.

Public Safety employee defined

Public safety officer shall include any KPERS member who is a Kansas Department of Corrections employee as defined in K.S.A. 74-4914a, and amendments thereto; a Juvenile Justice Authority employee performing duties equivalent to those described in K.S.A. 74-4914a, and amendments thereto, as applicable to juvenile detainees; a law enforcement officer as defined by "policeman" in K.S.A. 74-4952 subsection (12) , and amendments thereto; any firefighter as defined in K.S.A. 74-4952 subsection (11) , and amendments thereto; any local government corrections officer.

Local Government Corrections Officer defined

Local Government Corrections Officer means an employee who is specifically designated, appointed, commissioned or styled as such by the governing body or city manager of the participating employer and certified to the retirement system as such. [*From K.S.A. 74-4953 subsection (12)*]

Participating employer option

Any participating employer may elect to place public safety employees who are not members of the Kansas police and fire retirement system under public safety retirement provisions as described below. Such option shall be for all public safety employees of the employer at the time the option is made and for all future public safety employees. [*This needs a policy decision on whether the option is a onetime opportunity to be made within a certain time window or if employers can later choose to place public safety employees under this provision.*] Such employees will become members of KPERS Tier II.

If the participating employer chooses not to place their public safety employees under the public safety provisions, those employees will become members of KPERS Tier III.

Retirement provisions for public safety employees

The following existing statutes would be replicated for all public safety employees of any participating employer choosing to place them under these public safety retirement provisions. The term "correctional employee" would have to be replaced with "public safety employee" throughout.

K.S.A. 74-4914b

K.S.A. 74-4914c

K.S.A. 74-4914d

K.S.A. 74-4914e

Current Statutes for state DOC corrections officers
(K.S.A. 74-4914a through K.S.A. 74-4914e)

74-4914a. Retirement date for certain employees of the department of corrections; security officer defined. (1) As used in K.S.A. 74-4914a to 74-4914e, inclusive, and amendments thereto, "security officer" means any person, as certified to the board by the secretary of corrections, who is employed on or after the effective date of this act as an employee of the department of corrections:

- (a) Who is in any position in a job class in the corrections officer class series including but not limited to corrections officer I, corrections officer II, corrections supervisor I, corrections supervisor II and corrections supervisor III, or in a position in the corrections counselor I, corrections counselor II, unit team supervisor or corrections classification administrator job class, as all such job classes are described on the effective date of this act in the state job classification plan in effect for the classified service under the Kansas civil service act or who is in a position in any successor job class or classes that have been approved under K.S.A. 75-2938, and amendments thereto, and that have substantially the same duties and responsibilities thereof;
- (b) who is promoted prior to or on or after the effective date of this act from a position in any job class under paragraph (a) to any position in any job class of warden or deputy warden of any correctional institution, the job class of work release supervisor, the job class of training officer, correctional institutions, or the job class of corrections administrator — security specialist as such job classes are described on the effective date of this act in the state job classification plan in effect for the classified service under the Kansas civil service act or to any successor job class or classes that are approved under K.S.A. 75-2938, and amendments thereto, and that have substantially the same duties and responsibilities, if the person was employed and had at least three consecutive years of service in any one or more positions in any one or more job classes described in paragraph (a) immediately preceding promotion to the position in a job class under this paragraph (b);
- (c) who is in any position for which the duties and responsibilities directly and primarily involve operation of power plant facilities within any correctional institution and involve regular contact with inmates;
- (d) who is in any position for which the duties and responsibilities directly and primarily involve the operation of the correctional industries activity of the department of corrections within a correctional institution and involve regular contact with inmates;
- (e) who is in any position for which the duties and responsibilities directly and primarily involve supervision of food service operations within any correctional institution and involve regular contact with inmates; or
- (f) who is in any position for which the duties and responsibilities directly and primarily involve supervision of maintenance operations within any correctional institution and involve regular contact with inmates.

(2) As used in K.S.A. 74-4914a to 74-4914e, inclusive, and amendments thereto, references to the department of corrections include correctional institutions as defined by K.S.A. 75-5202 and amendments thereto unless the context requires otherwise.

(3) The words and phrases used in K.S.A. 74-4914a to 74-4914e, inclusive, and amendments thereto, shall have the meanings ascribed thereto in K.S.A. 74-4902, and amendments thereto, unless a different meaning is plainly required by the context.

74-4914b. Same; application of 74-4901 to 74-4929. Except as otherwise provided in K.S.A. 74-4914a to 74-4914d, inclusive, and amendments thereto, the provisions of K.S.A. 74-4901 to 74-4929, and any acts amendatory thereof or supplemental thereto, shall apply to all security officers.

74-4914c. Certain correctional employees; normal and early retirement dates; early retirement benefit reduction. (1) Notwithstanding the provisions of K.S.A. 74-4914, 74-4915 and subsection (23) of K.S.A. 74-4902, and amendments thereto, the normal retirement date for all security officers, as defined by paragraph (a) or (b) of subsection (1) of K.S.A. 74-4914a and amendments thereto, with at least three consecutive years of service as such security officer immediately preceding the date of retirement, shall be the first day of the month coinciding with or following the attainment of age 55, and commencing July 1, 2000, the first day of the month coinciding with or following the date that the total of the number of years of credited service and the number of years of attained age of the security officer is equal to or more than 85. Any such security officer may retire before such normal retirement date on the first day of any month coinciding with or following the attainment of age 50 or completion of 10 years of credited service, whichever occurs later.

(2) (a) Except as otherwise provided in paragraph (b) of this subsection (2), any security officer, as defined by paragraph (a) or (b) of subsection (1) of K.S.A. 74-4914a and amendments thereto, who retires before the normal retirement date shall receive an annual retirement benefit equal to the annual retirement benefit payable had such security officer retired on the normal retirement date but based upon such security officer's final average salary and years of participating and prior service credited to the date of actual retirement reduced by an amount equal to the product of (i) such annual retirement benefit payable had such security officer retired on the normal retirement date, multiplied by (ii) the product of .6% multiplied by the number of months difference, to the nearest whole month, between such security officer's attained age at the time of retirement and age 55.

(b) Any security officer, as defined by paragraph (a) or (b) of subsection (1) of K.S.A. 74-4914a and amendments thereto, who retires on or after July 1, 1982, and prior to July 1, 1987, before the normal retirement date shall receive an annual retirement benefit equal to the annual retirement benefit payable had such security officer retired on the normal retirement date but based upon such security officer's final average salary and years of participating and prior service credited to the date of actual retirement reduced by an amount equal to the product of (i) such annual retirement benefit payable had such security officer retired on the normal retirement date,

multiplied by (ii) the product of .3% multiplied by the number of months difference, to the nearest whole month, between such security officer's attained age at the time of retirement and age 55.

(c) Any security officer, as defined by paragraph (a) or (b) of subsection (1) of K.S.A. 74-4914a and amendments thereto, who retires on or after July 1, 1990, before the normal retirement date shall receive an annual retirement benefit equal to the annual retirement benefit payable had such security officer retired on the normal retirement date but based upon such security officer's final average salary and years of participating and prior service credited to the date of actual retirement reduced by an amount equal to the product of (i) such annual retirement benefit payable had such security officer retired on the normal retirement date, multiplied by (ii) the product of .2% multiplied by the number of months difference, to the nearest whole month, between such security officer's attained age at the time of retirement and age 55.

(3) Notwithstanding the provisions of K.S.A. 74-4914, 74-4915 and subsection (23) of K.S.A. 74-4902, the normal retirement date for all security officers, as defined by paragraph (c), (d), (e) or (f) of subsection (1) of K.S.A. 74-4914a and amendments thereto, with at least three consecutive years of service as such security officer immediately preceding the date of retirement, shall be the first day of the month coinciding with or following the attainment of age 60, and commencing July 1, 2000, the first day of the month coinciding with or following the date that the total of the number of years of credited service and the number of years of attained age of the security officer is equal to or more than 85. Any such security officer may retire before such normal retirement date on the first day of any month coinciding with or following the attainment of age 55 or completion of 10 years of credited service, whichever occurs later.

(4) (a) Except as otherwise provided in paragraph (b) of this subsection (4), any security officer, as defined by paragraph (c), (d), (e) or (f) of subsection (1) of K.S.A. 74-4914a and amendments thereto, who retires before the normal retirement date shall receive an annual retirement benefit equal to the annual retirement benefit payable had such security officer retired on the normal retirement date but based upon such security officer's final average salary and years of participating and prior service credited to the date of actual retirement reduced by an amount equal to the product of (i) such annual retirement benefit payable had such security officer retired on the normal retirement date, multiplied by (ii) the product of .6% multiplied by the number of months difference, to the nearest whole month, between such security officer's attained age at the time of retirement and age 60.

(b) Any security officer, as defined by paragraph (c), (d), (e) or (f) of subsection (1) of K.S.A. 74-4914a and amendments thereto, who retires on or after July 1, 1982, and prior to July 1, 1987, before the normal retirement date shall receive an annual retirement benefit equal to the annual retirement benefit payable had such security officer retired on the normal retirement date but based upon such security officer's final average salary and years of participating and prior service credited to the date of actual retirement reduced by an amount equal to the product of (i) such annual retirement benefit payable had such security officer retired on the normal retirement date, multiplied by (ii) the product of .3% multiplied by the number of months difference, to the nearest whole month, between such security officer's attained age at the time of retirement and age 60.

(c) Any security officer, as defined by paragraph (c), (d), (e) or (f) of subsection (1) of K.S.A. 74-4914a and amendments thereto, who retires on or after July 1, 1990, before the normal retirement date shall receive an annual retirement benefit equal to the annual retirement benefit payable had such security officer retired on the normal retirement date but based upon such security officer's final average salary and years of participating and prior service credited to the date of actual retirement reduced by an amount equal to the product of (i) such annual retirement benefit payable had such security officer retired on the normal retirement date, multiplied by (ii) the product of .2% multiplied by the number of months difference, to the nearest whole month, between such security officer's attained age at the time of retirement and age 60.

74-4914d. Certain employees of department of corrections; employer contribution rate. [See Revisor's Note] Any additional cost resulting from the normal retirement date and retirement before such normal retirement date for security officers as provided in K.S.A. 74-4914c, and amendments thereto, and disability benefits as provided in K.S.A. 74-4914e, and amendments thereto, shall be added to the employer rate of contribution for the department of corrections as otherwise determined under K.S.A. 74-4920, and amendments thereto, except that the employer rate of contribution for the department of corrections including any such additional cost added to such employer rate of contribution pursuant to this section shall in no event exceed the employer rate of contribution for the department of corrections for the immediately preceding fiscal year by more than the following amounts expressed as a percentage of compensation upon which security officers contribute during the period: (a) For the fiscal year commencing in calendar year 2006, an amount not to exceed more than 0.5% of the amount of the immediately preceding fiscal year; and (b) for the fiscal year commencing in calendar year 2007, and in each subsequent calendar year, an amount not to exceed more than 0.6% of the amount of the immediately preceding fiscal year.

74-4914e. Disability benefits for correctional employees; insured benefit inapplicable; death of employee, payment of benefits. (1) As used in this section:

(a) "Correctional employee" means any member of the system who is a security officer or other employee of the department of corrections and who is in a position for which the duties and responsibilities involve regular contact with inmates as certified by the secretary of corrections;

(b) "disability" means the total inability to perform permanently the duties of the position of a correctional employee in which the correctional employee was employed at the time of disability;

(c) "service-connected" means any physical or mental disability resulting from external force, violence or disease occasioned by an act of duty as a correctional employee and includes, for any correctional employee after five years of credited service, any death or disability resulting from a heart disease or disease of the lung or respiratory tract, except that in the event that the correctional employee ceases to be a contributing member except by reason of a service-connected disability for a period of six months or more and then again becomes a contributing member the provision relating to death or disability resulting from a heart disease or disease of

the lung or respiratory tract shall not apply until such correctional employee has again become a contributing member for a period of not less than two years or unless clear and precise evidence is presented that the heart disease or disease of the lung or respiratory tract was in fact occasioned by an act of duty as a correctional employee; and

(d) "final average salary" means the average highest annual compensation paid to a correctional employee for any three of the last five years of participating service immediately preceding the date of disability, or if participating service is less than three years, then the average annual compensation paid to the correctional employee during the full period of participating service or if a correctional employee has less than one calendar year of participating service the correctional employee's final average salary shall be computed by multiplying the correctional employee's highest monthly salary received in that year by 12.

(2) If any active contributing correctional employee becomes totally and permanently disabled due to service-connected causes as defined in subsection (1), such correctional employee shall be retired and the following benefits shall become payable and shall continue until the correctional employee's death or until the correctional employee recovers from the disability if a report of the event in a form acceptable to the board is filed in the office of the executive director of the board within 220 days after the date of the event or act of duty causing such disability and an application for such benefit, in such form and manner as the board shall prescribe, is filed by the correctional employee or the correctional employee's authorized representative in the office of the executive director of the board within two years of the date of disability:

(a) The correctional employee shall receive a retirement benefit equal to 50% of the correctional employee's final average salary. Such benefit shall accrue from the day upon which the correctional employee ceases to draw compensation.

(b) Each of the correctional employee's unmarried children under the age of 18 years or each of the correctional employee's children under the age of 23 years who are full-time students as provided in K.S.A. 74-49,117 and amendments thereto shall receive an annual benefit equal to 10% of the correctional employee's final average salary. Such benefit shall accrue from the day upon which the correctional employee ceases to draw compensation and shall end on the first day of the month in which each such child or children attains the age of 18 years, die or marry, whichever occurs earlier or in which each such child or children attains the age of 23 years, if such child or children are full-time students as provided in K.S.A. 74-49,117 and amendments thereto.

(c) In no case shall the total benefits payable under paragraphs (a) and (b) of this subsection (2) be in excess of 75% of the correctional employee's final average salary.

(d) In the event a correctional employee who is retired under paragraph (a) of this subsection (2), dies within two years after the date of such retirement, then benefits may be payable under subsection (2) of K.S.A. 74-4916 and amendments thereto.

(e) In the event a correctional employee who is retired under paragraph (a) of this subsection (2), dies more than two years after the date of such retirement, and the proximate cause of such

death is the service-connected cause from which the disability resulted, then benefits may be payable under subsection (2) of K.S.A. 74-4916 and amendments thereto.

(f) In the event a correctional employee who is retired under subsection (2) dies after the date of retirement and no benefits are payable under paragraphs (d) and (e) the following benefits shall be payable:

(i) To the correctional employee's spouse, if lawfully wedded to the correctional employee at the time of the correctional employee's death, a lump-sum benefit equal to 50% of the correctional employee's final average salary at the time of the correctional employee's retirement.

(ii) To the correctional employee's spouse, if lawfully wedded to the correctional employee at the time of the correctional employee's death, an annual benefit equal to 50% of the correctional employee's retirement benefit payable in monthly installments, to accrue from the first day of the month following the correctional employee's date of death and ending on the first day of the month in which the spouse dies. If there is no surviving spouse, or if after the death of the spouse there remain one or more children under the age of 18 years or one or more children under the age of 23 years who is a full-time student as provided in K.S.A. 74-49,117, and amendments thereto, the annual spouse's benefit shall be payable in equal shares to such children and each child's share shall end on the first day of the month in which such child attains the age of 18 years or dies, whichever occurs earlier or in which such child attains the age of 23 years, if such child is a full-time student as provided in K.S.A. 74-49,117, and amendments thereto.

The provisions of this subsection shall apply in all cases of such correctional employees who die after October 1, 1996.

(3) If any correctional employee who is an active contributing member prior to such correctional employee's normal retirement becomes totally and permanently disabled for a period of 180 days from causes not service-connected, and not as the result of a willfully negligent or intentional act of the correctional employee, such correctional employee shall be retired and the following benefit shall become payable and shall continue until the correctional employee's death or until the correctional employee recovers from such disability whichever occurs first if a report of the disability in a form acceptable to the board is filed in the office of the executive director of the board within 220 days after the date of the commencement of such disability and if an application for such benefit in such form and manner as the board shall prescribe is filed in the office of the executive director of the board within two years of the date of disability:

A retirement benefit equal to 2% of the correctional employee's final average salary multiplied by the number of years of credited service, except that such retirement benefit shall be at least equal to 25% of the member's final average salary but not to exceed the amount of the retirement benefit provided in paragraph (a) of subsection (2). Such benefit shall not become payable until satisfactory evidence is presented to the board that the correctional employee is and has been for a period of 180 days totally and permanently disabled, but benefits shall accrue from the day upon which the correctional employee ceases to draw compensation.

(4) Any correctional employee who is employed for compensation by an employer other than the department of corrections and whose disability is incurred in the course of such other employment shall not be eligible for any of the benefits provided in subsection (3).

(5) If a correctional employee becomes totally and permanently disabled and no benefits are payable under subsections (2) or (3), the sum of the correctional employee's accumulated contributions shall be paid to the correctional employee.

(6) Any correctional employee receiving benefits under this section shall submit to medical examination, not oftener than annually, by one or more physicians or any other practitioners of the healing arts holding a valid license issued by Kansas state board of healing arts, as the board of trustees may direct. If upon such medical examination the examiners report to the board that the retirant is physically able and capable of resuming employment with the participating employer from whose employment the correctional employee retired, the disability benefits shall terminate. A retirant who has been receiving benefits under the provisions of this section and who returns to employment of a participating employer shall immediately commence accruing service credit which shall be added to that which has been accrued by virtue of previous service.

(7) Any retirant who has been receiving benefits under the provisions of this section for a period of five years shall be deemed finally retired and shall not be subject to further medical examinations, except that if the board of trustees shall have reasonable grounds to question whether the retirant remains totally and permanently disabled, a further medical examination or examinations may be required.

(8) Refusal or neglect to submit to examination as provided in subsection (6) shall be sufficient cause for suspending or discontinuing benefit payments under this section and if such refusal or neglect shall continue for a period of one year, the correctional employee's rights in and to all benefits under the system may be revoked by the board.

(9) Any retirement benefits payable under the provisions of this section shall be in lieu of all other benefits under the system.

(10) Each correctional employee shall report to such member's participating employer any event or act of duty causing disability within 200 days after such event or act of duty. The department of corrections shall file in the office of the executive director of the board, in a form acceptable to the board, a report of the event or act of duty causing disability within 220 days after the event or act of duty.

(11) Benefits payable under this section shall be reduced by the original amount of any disability benefits received under the federal social security act or the workers compensation act. For any correctional employee already retired on the effective date of this act, no reduction of the original social security benefits shall be applicable to benefits paid prior to the effective date of this act. In no case shall a correctional employee who is entitled to receive benefits under this section receive less than \$100 per month.

(12) The provisions of this section shall apply to disabilities occurring after June 30, 1982, and prior to July 1, 1995. At the direction of the board of trustees, the actuary shall conduct an experience evaluation of benefits payable under this section and the board shall provide copies of such study to the governor and members of the legislature.

(13) The provisions of K.S.A. 74-4927 and amendments thereto relating to insured disability benefits shall not be applicable to correctional employees subject to the provisions of this section.

(14) In the event a correctional employee who is retired under subsection (3) dies after the date of retirement and no benefits are payable under that subsection, the following benefits shall be payable:

(i) To the correctional employee's spouse, if lawfully wedded to the correctional employee at the time of the correctional employee's death, a lump-sum benefit equal to 50% of the correctional employee's final average salary at the time of the correctional employee's retirement.

(ii) To the correctional employee's spouse, if lawfully wedded to the correctional employee at the time of the correctional employee's death, an annual benefit equal to 50% of the correctional employee's retirement benefit payable in monthly installments, to accrue from the first day of the month following the correctional employee's date of death and ending on the first day of the month in which the spouse dies. If there is no surviving spouse, or if after the death of the spouse there remain one or more children under the age of 18 years or one or more children under the age of 23 years who is a full-time student as provided in K.S.A. 74-49,117, and amendments thereto, the annual spouse's benefit shall be payable in equal shares to such children and each child's share shall end on the first day of the month in which such child attains the age of 18 years or dies, whichever occurs earlier or in which such child attains the age of 23 years, if such child is a full-time student as provided in K.S.A. 74-49,117, and amendments thereto.

The provisions of this subsection shall apply in all cases of such correctional employees who die after October 1, 1996.