

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

Minutes of the 1st Meeting of the 2022 Interim

June 21, 2022

Call to Order and Roll Call

The first meeting of the Interim Joint Committee on State Government was held on Tuesday, June 21, 2022, at 1:00 PM, in Room 149 of the Capitol Annex. Senator Robby Mills, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Robby Mills, Co-Chair; Representatives Jerry T. Miller, Co-Chair, and Kevin D. Bratcher, Co-Chair; Senators Ralph Alvarado, Christian McDaniel, Michael J. Nemes, Wil Schroder, Adrienne Southworth, Brandon J. Storm, and Phillip Wheeler; Representatives John Blanton, Adam Bowling, McKenzie Cantrell, Jennifer Decker, Joseph M. Fischer, Jim Gooch Jr., Derrick Graham, Richard Heath, Samara Heavrin, Keturah Herron, Mary Beth Imes, DJ Johnson, Matthew Koch, Savannah Maddox, Jason Nemes, Tom Smith, Nancy Tate, James Tipton, Ken Upchurch, and Russell Webber.

Guests: Senator David Givens; Vic Maddox, Chris Lewis, Bryan Hubbard and Blake Christopher, Office of the Attorney General.

LRC Staff: Alisha Miller, Daniel Carter, Michael Callan, Andrew Salman, Shannon Tubbs, and Peggy Sciantarelli.

Moment of Silence

At the request of Representative Graham, the committee observed a moment of silence in memory of former state representative Wilson Stone, who passed away on June 17, 2022.

Opioid Settlement

Guest speakers from the Office of the Attorney General were Victor Maddox, Deputy Attorney General; Chris Lewis, Executive Director, Office of Consumer Protection; Bryan Hubbard, Chair and Executive Director of the Kentucky Opioid Abatement Advisory Commission, and Special Counsel to the Office of Medicaid Fraud and Abuse Control; and Blake Christopher, Deputy General Counsel. The speakers from the Attorney General's office provided an update on opioid litigation and the status of related settlements with opioid distributors and manufacturers. Their slide presentation included charts showing yearly settlement totals for the 18-year payment period.

Mr. Maddox told the committee that suits were brought in circuit courts around the state against national pharmaceutical distributors of opioids—McKesson, Cardinal Health, and AmerisourceBergen—and Janssen/Johnson & Johnson (Janssen J&J), a manufacturer of opioid products. They were sued for their roles in contributing to the country’s opioid epidemic. Kentucky will receive \$483 million, approximately 2.09 percent of the \$26 billion global settlement. The \$26 billion includes about \$1.6 billion for attorney fees; the remainder is abatement funds for distribution to the states according to an agreed upon formula established by the multi-state attorney-general plaintiffs. The formula is a function of state population and the severity of a state’s opioid crisis.

HB 427, enacted during the 2021 Regular Session—codified as KRS 15.291 and 15.293—provides for creation of the Kentucky Opioid Abatement Advisory Commission, which is responsible for administering and distributing the funds at the state level. The statute provides for Kentucky’s \$483 million to be divided on a 50/50 basis, with half going directly to the Commonwealth and the other half to city and county governments. The payments are to be spread over an 18-year period. The first payment was due in April 2022, and the second annual payment is due around July 15, 2022.

Mr. Maddox stated that in February 2020, he attended a conference at which the broad terms of the settlement were completed. It took almost another year to finalize the settlement, largely due to questions about attorney fees and the size of the attorney pool. The Commonwealth used outside counsel for the settlement, and he and Mr. Lewis assisted in renegotiating that contract in July 2020. The contract provided that the Commonwealth’s lawyers would not be paid anything from funds directed to the Commonwealth of Kentucky.

Mr. Lewis pointed out that the Janssen/J&J settlement structure differs somewhat from the distributor settlement. The statutory bar provided that any state which had 100 percent representation would receive the entire first four years’ payments in the first payment. As a result, Kentucky’s fifth payment for that settlement is due in July 2025. The amount is not reduced because of early payment, and Kentucky will receive the full amount that would have been paid over the four years. Combined totals for the distributor and the Jansen/J&J settlements show that over the 18-year period Kentucky will receive \$483,774,596.96, with half of that amount going to cities and counties.

Mr. Maddox reviewed the Commonwealth’s pending litigation against TEVA/Allergan (Fayette Circuit), CVS (Franklin County), Walgreens (Boone County), Endo (Franklin County), and Mallinckrodt (Madison County/Delaware Bankruptcy Court). Kentucky also has a claim pending in the Purdue bankruptcy case (Southern District of New York). Endo is a manufacturer of pharmaceuticals and has been settling some of its cases around the country. The Mallinckrodt case is now final. The Kentucky Attorney General’s office served as one of the lead states on an adhoc committee to represent states’

interest in the Mallinckrodt case. Payment in that case is expected to begin in the next 80-90 days. Depending on the chosen payoff option, Kentucky should receive between \$15.3 million and \$21.8 million. Payout in the Purdue bankruptcy case represents a settlement to Kentucky of about \$91 million, half of which will go directly to cities and counties. There was a challenge to the approval of the bankruptcy plan, and that case is currently before the Second Circuit Court of Appeals. A decision in that case is expected in the next 3-4 months. Mr. Maddox noted that in December 2015, the Commonwealth settled some litigation against Purdue Pharma that resulted in a \$24 million settlement to the state; however, there are two remaining payments on that settlement.

Mr. Christopher emphasized that all settlement funds must be used for opioid abatement. Settlement payments will first go to the national administrator, who will then send the payments to the Commonwealth's Opioid Abatement Trust Fund. HB 427 provides for annual certification, and local governments and recipients of Commission funds must submit regular certifications of compliance.

Mr. Hubbard stated that he is the Attorney General's designee on the 11-member Commission. General Cameron's other five appointees are Dr. Jason Roop, faculty member of Campbellsville University, representing victims of the opioid crisis; Van Ingram, executive director of the Kentucky Office of Drug Control Policy, representing the drug treatment and prevention community; Vic Brown, executive director, Appalachian High Intensity Drug Trafficking Area (AHIDTA), representing law enforcement; Von Purdy, vice president of Simmons College, representing citizens at large; and Karen Butcher of Georgetown KY, also representing citizens at large. Other members are State Treasurer Allison Ball; Eric Friedlander, Secretary of the Cabinet for Health and Family Services; and Dr. Sharon Walsh, representing the University of Kentucky's HEALing Communities Study Team. The Commission also includes two nonvoting members: state Representative Danny Bentley, appointed by the Speaker of the House, and Karen Kelly of Somerset KY, appointed by the President of the Senate. After initial staggered terms, voting members serve two-year terms. Nonvoting members serve at the pleasure of the Senate President and the Speaker of the House. The Commission expects to begin meeting during late summer in locations throughout the state. The first meetings will address drafting and publishing regulations. An online application process is expected to be in place by the end of 2022, with review of the applications beginning in 2023.

Representative Nemes commended the speakers and the office of Attorney General Cameron for their efforts. He stated that Kentucky communities have been devastated as a direct consequence of the over prescribing of opioids and the problem of illegal drugs coming across the border. He questioned why a physician is not included in the litigation list and why doctors are not being held more accountable. Mr. Maddox stated that, to his knowledge, claims have not been brought against doctors. Because of physician licensure requirements and government oversight, to do so would probably require a different series

of lawsuits. That is something to consider, however, and he will relay that to General Cameron and others who are involved in the multi-state effort.

Mr. Maddox emphasized that KRS 15.291 includes 29 separate categories of abatement. The settlement agreement itself provides for a much larger list of potential abatement programs. He expects the Commission, on the state's behalf, to dedicate substantial time and effort toward identifying the most effective abatement programs and then developing priorities for use of the funds. There is good information from federal law enforcement agencies that drug cartels are bringing in huge quantities of fentanyl and other drugs, which are then distributed across the country, including in Louisville and Lexington and small towns in the Commonwealth. He recommended that the legislature look at ways to enhance law enforcement's ability to bring resources to bear against these illegal drug operations. Hopefully, the litigation and the settlements that have been put in place will impose serious abatement and injunctive measures and be effective in stopping the abuses at the company level.

Senator McDaniel asked about the Attorney General's involvement relating to SB 90, which was enacted during the 2022 Regular Session and appropriated funds from the Opioid Abatement Trust Fund for a behavioral health conditional dismissal program. Mr. Christopher said it is his understanding that the Commission will not play a specific role in setting up the diversion, housing, and assistance program envisioned in SB 90, but he suspects that the Commission will be looking at that program's effectiveness. Mr. Hubbard said the Commission is going to have open eyes, minds, and ears to whatever models demonstrate the greatest promise of delivering durable recovery going forward. Senator McDaniel said the problem is driven by the tremendous financial motivation inside the drug distribution industry. As plans are developed, thought must be given to ways to make it financially painful for those who exist outside of the current legal construct.

Senator Wheeler also questioned why the litigations do not include any physicians. He stated that because of the financial rewards, some in the medical community have collaborated with drug dealers and drug companies, and few have been held accountable. A physician in his region agreed to a \$20 million consent judgment based on his dispensing of opioids. Suboxone clinics that are supported by Medicaid funds have begun to contribute to the problem, and that medication is becoming a street drug. The prosecutorial system has done little to stop this type of abuse. He hopes the agency and the Commission will look at abuses at the local level that have arisen from the opioid pandemic. Mr. Maddox stated that they will look at that issue more closely. He added that the AG's office has had some successful criminal prosecutions, especially in the Medicaid fraud area.

Mr. Hubbard stated that although there are no doctors or physician practices on the Commission's list, within the Attorney General's Medicaid fraud office there is a list of physicians who are subject to criminal investigation. Some members of his office favor direct prosecution of physicians for their prescribing behavior, but their enforcement ability

to prosecute prescribing behavior as part of trafficking is hobbled by the lack of the necessary legal framework. His office also works on some cases jointly with federal partners in the Department of Justice, the U.S. Attorney's offices in the eastern and western districts of Kentucky, the FBI, and the DEA. The AG's Medicaid office has also supplied a tremendous amount of evidentiary ammunition for some high profile federal cases.

Mr. Hubbard told the committee that suboxone demonstrates promise in the treatment of opioid addiction when it is administered in a clinically appropriate and ethical manner. The reality is that there are bad actors who are engaged in rehabilitation medicine when in fact they are glorified drug dealers who do their drug dealing via the respectability of a prescription pad. Data shows that suboxone pill prescriptions have proliferated over the past five years, and it is an arresting figure. The suboxone issue is one that the Commission will need to look at seriously. He opined that, over time, the Commission will be able to demonstrate, too, that the prescription drug problem in eastern Kentucky is linked with the drug problems in Louisville—the west end in particular—with the intent to take appropriate action.

Senator Wheeler mentioned the possibility of decreasing the reimbursement rate for suboxone therapy to make it less profitable for the bad actors. Mr. Hubbard said that the actual cost of individual pills has decreased over the past five years. It would require a significant amount of prosecutorial firepower for his office to prosecute operators of suboxone clinics who foster addiction rather than cure it.

Representative Tipton spoke of the need to work cooperatively with cities and counties to ensure that the funds are not being directed to programs that are repetitive or overlapping. Mr. Hubbard said that it would be an absolute priority of the Commission to communicate and coordinate with cities and counties and to make sure that funds are not used wastefully or repetitively. Mr. Christopher suggested that conversations regarding funding needs should begin beyond county borders now, prior to the online application process going live later in 2022.

Senate Bill 88/GA (2022 RS) - AN ACT relating to sessions of the General Assembly

Senator David Givens, sponsor of SB 88, told the committee that the legislation was prompted by enactment of HB 4, a proposed constitutional amendment passed during the 2021 Regular Session. He briefly touched on the provisions of HB 4. (As summarized on the LRC website, HB 4 proposes to repeal existing Sections 36, 42, and 55 of the Kentucky Constitution to eliminate the existing dates by which the General Assembly must adjourn in any regular session; propose new sections of the Kentucky Constitution to establish that no regular session of the General Assembly shall extend beyond 30 legislative days in odd-numbered years or 60 legislative days in even-numbered years; establish that the General Assembly may be convened upon a Joint Proclamation of the President of the Senate and the Speaker of the House for no more than 12 legislative days annually; establish that no

Act of the General Assembly shall become law until July 1 of the year passed, or 90 days after passage, or as otherwise provided by the Kentucky Constitution; and specify in cases of emergency a bill becomes law when signed by the Governor or when it otherwise becomes law under Section 88 of the Kentucky Constitution.)

Senator Givens stated his overarching goal and hopeful charge is for the members of the committee to advocate for passage of the constitutional amendment when it appears on the ballot in November 2022. SB 88 would provide the statutory framework upon passage of the constitutional amendment. It would establish parameters for the General Assembly when called into session by joint proclamation; adjust the compensation of members of the General Assembly during a veto recess period; and would be effective only upon ratification of HB 4, the proposed constitutional amendment. Senator Givens said he feels that this is likely the most significant legislation he has ever have worked on. However, since SB 88 did not pass during the 2022 Regular Session, the General Assembly will need to pass other legislation in January 2023 to provide the statutory framework if voters ratify the constitutional amendment. He noted that SB 181—legislation similar to SB 88—did not pass during the 2021 Regular Session when HB 4 was enacted.

Senator Givens briefly discussed concerns that had been voiced about the executive powers of the Governor in times of emergency. He urged the committee to be ambassadors for passage of the constitutional amendment and the enabling provisions outlined in SB 88.

When Senator Mills asked about the “life” of proposed legislation if the General Assembly is able to call itself into session, Senator Givens stated that a bipartisan group that worked on the legislation decided that rather than allowing a bill to die at the end of a regular session, it could be held over for purposes of legislative action until December 31 of the year in which it was filed. He stated that many legislative bodies do this, and he thinks it is appropriate.

Representative Gooch asked whether allowing legislation to remain open until the end of the year might lead to the deliberate holding over of politically controversial bills in an election year until after the November elections. Senator Givens stated that the possibility would exist, but he believes there are built-in constraints relating to legislative sessions which he hopes would prevent that sort of abuse.

Representative Heath said he supports the proposed constitutional amendment, and he believes his constituents are on board with it. People in his area have expressed concern about some of the executive actions taken by the Governor relating to COVID, and they were surprised to learn that the General Assembly, when called into special session, is only able to consider issues decided by the Governor. Representative Heath said he will do his part to promote passage of the constitutional amendment in his district.

Senator Givens stated that during the uncertain times of the COVID emergency in 2020, when the Senate President was temporarily ill, he, as President Pro Tem, and Speaker Osborne sent a letter to the Governor requesting a pause in the legislative session and asked him to later call the General Assembly back into session to conclude the business of the regular session. The Governor's response was "no," and this put the General Assembly in the position of sometimes having to make rush decisions without sufficient information. Under the proposed constitutional amendment, the legislature would have been able to pause itself and then move forward later in an effective manner. In closing, Senator Givens asked the members to support passage of the constitutional amendment and the statutory framework as set forth in SB 88. He also encouraged them to contact him if they have questions or concerns.

Senator Mills thanked Senator Givens for his testimony. There were no further questions, and the meeting was adjourned at 2:11 p.m.