

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

Minutes of the 1st Meeting of the 2024 Interim

June 18, 2024

Call to Order and Roll Call

The 1st meeting of the Interim Joint Committee on State Government was held on June 18, 2024, at 11:00 AM 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: Representatives Kevin D. Bratcher Co-Chair; David Hale Co-Chair; Senator Robby Mills Co-Chair; Senators Cassie Chambers Armstrong, Greg Elkins, Denise Harper Angel, Amanda Mays Bledsoe, Christian McDaniel, Michael J. Nemes, Brandon J. Storm, and Gex Williams; Representatives Jared Bauman, Tina Bojanowski, Adam Bowling, Josh Branscum, Adrielle Camuel, Beverly Chester-Burton, Jennifer Decker, Jim Gooch Jr., Derrick Graham, Richard Heath, Samara Heavrin, Keturah Herron, John Hodgson, Thomas Huff, Mary Beth Imes, DJ Johnson, Matthew Koch, Scott Lewis, Matt Lockett, Savannah Maddox, Kimberly Poore Moser, Josie Raymond, Wade Williams, and Susan Witten.

Guests: Michael Adams, Secretary of State; Karen Sellers, Executive Director, and Taylor Brown, General Counsel, State Board of Elections; Tabatha Clemons, President, Kentucky County Clerks Association; Phillip Burnett, Jr., Commissioner, Kentucky State Police; Lisa Lee, Commissioner, Department for Medicaid Services, Cabinet for Health and Family Services; Matthew Courtney, Ed.D., Office of Continuous Improvement and Support, Department of Education; and Rob Sanders, Legislative Co-Chair, Kentucky Commonwealth's Attorneys' Association

LRC Staff: Daniel Carter, Christina Gordley, Alaina Spence, Shannon Tubbs, Hannah Gray, Jesse Farler, and Angela Rhodes.

Kentucky Agencies and Illegal Immigration

Michael Adams, Secretary of State, stated that current federal law prohibits noncitizens from voting in federal elections but contains no prohibition on noncitizen voting in state and local elections. The elections clause of the United States Constitution places states in charge of state and local elections. Kentucky's Constitution implies, but does not state, that noncitizens cannot vote in Kentucky's state and local elections. The General

Assembly has proposed a constitutional amendment to be considered by voters in November to make the implicit prohibition explicit. Until the amendment becomes law, the policy of the Secretary of State, State Board of Elections, and County Clerks are that noncitizens are not permitted to vote in any Kentucky election. Secretary Adams added that in his tenure, he has seen no evidence of noncitizens voting or attempting to vote in Kentucky elections.

Taylor Brown, General Counsel, State Board of Elections, presented three ways that a voter registers in Kentucky: 1) online application; 2) paper application; or 3) obtaining a driver's license or Real ID. If an applicant fraudulently fills out the form, they must swear or affirm, with signature under felony penalty of perjury, that they are a United States citizen. The majority of voter registration applications are received by driver's license or Real ID.

Mr. Brown testified that the State Board of Elections could not recall any known encounters of an undocumented immigrant successfully going through the voter registration application process and becoming an active voter. In 2024, House Bill 44 requires that the Administrative Office of the Courts provide the State Board of Elections, the Attorney General, and the U.S. Attorney's Office a monthly list of individuals excused from jury duty for not being a U.S. citizen. If a noncitizen is found, the State Board of Elections will immediately purge the registration and law enforcement can prosecute the felony perjury and any associated criminal offenses associated with that registration.

Tabatha Clemons, President, Kentucky County Clerks Association, expressed that the association mirrors the Secretary of State's statements regarding undocumented immigrants and voting. One county reported having one person attempt to vote who could not produce identification. That person was offered to get identification or have a hearing with the County Board of Elections, neither of which took place.

Phillip Burnett, Jr., Commissioner, Kentucky State Police (KSP), stated that KSP is very limited in tracking interactions with undocumented immigrants. There is no mechanism within KSP to track any arrests or interactions with undocumented immigrants. Case law prohibits KSP from asking motorists about their ethnicity or immigration status. If there is an interaction with an undocumented immigrant, they are treated like an unlicensed driver and issued a citation. If warranted, KSP can reach out to their federal partners for assistance. If the arrested person is a foreign national, KSP is required to contact the prosecutor to ensure the individual's consulate is notified.

In response to a question from Senator Mills, Mr. Burnett stated that once an interaction is made, the undocumented immigrant is treated no different than a US citizen and given a citation or warning, but if there is an arrest the prosecutor would contact their consulate.

In response to a question from Representative Gooch, Mr. Burnett stated that with this particular topic federal law supersedes state law.

In response to a question from Senator Williams, Mr. Burnett stated that upon an arrest, KSP will notify the prosecutor, but does not have the responsibility to notify federal agencies.

In response to a question from Senator Nemes, Mr. Burnett stated that the only way to track a person's race or ethnicity would be through what is reported by the arresting officer or what the person self-reports on the citation. In response to a follow-up question, Mr. Burnett stated that an undocumented immigrant is treated like an unlicensed driver or someone who does not have an ID and the officer will gather what information they can about the person at the time of citation or arrest.

In response to a question from Senator Mills, Mr. Burnett stated KSP does not have any data on drug arrests of undocumented immigrants, but it could be listed within the crime report. If KSP has no valid identification and an undocumented immigrant is arrested, that person is listed as John Doe in the jail until a positive identification.

Rob Sanders, Legislative Co-Chair, Kentucky Commonwealth's Attorneys' Association, stated that there is very little infrastructure with respect to data collection and tracking of undocumented individuals arrested. Per the Kenton County Jailer, there were 1,361 arrests from June 1, 2019 to June 1, 2024 of undocumented immigrants (in Kenton County). Of those, 106 were picked up by Immigration and Customs Enforcement (ICE).

The lack of tracking presents a particular difficult problem when it comes to an undocumented immigrant who has committed a very serious offense because if they have never been previously arrested in the United States, it is difficult to put out arrest warrants for someone with no authentication of their identity. There are also problems with undocumented victims, which are targets for criminals to prey upon. Undocumented victims flee in fear of being deported if they participate in the criminal justice process. An undocumented victim has means of obtaining legal status in the United States if there is a need for the victim to participate in the prosecution in order to successfully convict the criminal. The prosecutor(s) do not receive any notification

when they are encountering an undocumented immigrant unless there is an ICE hold on the undocumented immigrant.

In response to a question from Senator Mills, Mr. Sanders stated he is unaware of the trigger for ICE involvement when an undocumented immigrant is arrested, but violent and drug related offenses are most recognized. In response to a follow-up, Mr. Sanders stated there is nothing to prevent of his office from inquiring about immigration status, but it is not common practice.

In response to a question from Representative Maddox, Mr. Sanders stated he is not aware of undocumented immigrants being brought in the Northern Kentucky area by way of bus. He added that to his knowledge that a local government would not be notified if that were to happen.

In response to a question from Representative Hodgson regarding how ICE knows of an arrest, Mr. Sanders stated he did not know how and possibly a better question to the Jailers Association.

Lisa Lee, Commissioner, Department for Medicaid Services, Cabinet for Health and Family Services, stated certain federal laws and regulations govern health care for undocumented individuals, which are the Personal Responsibility and Work Opportunity Act of 1996, Emergency Medical Treatment and Labor Act, and 42 CFR Subsection 440.255.

Undocumented immigrants are ineligible to enroll in Medicaid, CHIP, or to purchase coverage through the ACA Marketplaces, but Medicaid payments for emergency services may be made on behalf of individuals who are otherwise eligible for Medicaid but for their immigration status. Medicaid receives approximately 70 percent federal match for services provided to undocumented individuals.

To qualify for emergency Medicaid enrollment, an individual must reside in the state and have a medical condition that qualifies as an emergency under Medicaid guidelines, in addition to meeting all other Medicaid eligibility criteria, except for the eligibility requirement of citizenship/immigration status. Typically, health care providers or hospitals will assist with initiating the Emergency Medicaid application and gathering any needed documentation. Kentucky has a single streamlined application for all Medicaid programs, the application process is the same, with the addition of requiring a written statement from a licensed physician explaining the emergency condition, date of emergency treatment, and specific language that the medical provider considers the condition an emergency medical condition. The state reviews the information and

determines eligibility. If eligible, Medicaid is issued for an initial two-month period with extension requests reviewed and granted on a case-by-case basis, so long as the same medical emergency continues to be verified by a physician. Birth of a child grants only the month of birth and the month after with no extension of coverage. Coverage is issued as fee-for-service and is not subject to Managed Care. Once the emergency is resolved, the coverage ends.

Ms. Lee provided the costs of emergency Medicaid in Kentucky from 2016 to date 2024. She included the undocumented member county, total claims paid, average per member, the federal share costs, and state share costs. The most common diagnosis codes for undocumented individuals are labor and delivery, end-stage renal disease, kidney failure, sepsis, and Covid-19 (beginning in 2020).

In response to a question from Senator Mills, Ms. Lee stated that within a hospital setting, at some point the status is asked of the undocumented individual. In response to a follow-up, Ms. Lee stated a child born of an undocumented individual in the United States is deemed eligible for Medicaid only if the undocumented individual is receiving emergency Medicaid at the time.

In response to a question from Representative Hodgson, Ms. Lee stated before making an offer of registration (to vote) under the Federal Help American Vote Act, verification through the application and technology process is performed.

In response to a question from Representative Johnson, Ms. Lee stated Medicaid services are only offered in emergency room hospitals to undocumented individuals if the emergency places the life of the undocumented individual in jeopardy or danger if not treated. In response to a follow-up, Ms. Lee stated that services cannot be denied at a hospital.

In response to a question from Senator Mills, Ms. Lee stated that emergency claims are reported to the Centers for Medicare and Medicaid Services who pays approximately 70 to 75 percent of Medicaid claims. She is unsure if undocumented individuals are reported separately.

Matthew Courtney, Ed.D., Office of Continuous Improvement and Support, Department of Education, presented that he cannot speak directly to undocumented immigrants for grades K through 12 due to Plyler v. Doe, a 1987 Supreme Court decision that held that public schools in the United States are a public service available to all students who meet the local residency requirements. As a result of this ruling, the United States Department of Education has instructed schools not to inquire about citizenship status

when enrolling students. A citizenship status is not deemed a relevant part of determining residency in order to enroll student.

Mr. Courtney offered information related to the number of total immigrant and English learner students, who can be documented, undocumented, refugees, asylees, or temporary work visa of the parent. He provided information regarding federal allocations including total Title III allocation and immigrant set-aside totals. Mr. Courtney could not offer any information for post-secondary education.

In response to a question from Senator Mills, Mr. Courtney agreed that English learners' costs school systems a substantial amount of money to service and educate.

In response to a question from Representative Bojanowski, Mr. Courtney stated he can provide follow-up information of how long it takes until a multilanguage student to get their mastery of English. He added that it is a federal rule that there is a one-year delay in testing.

Discussion of 2024 RS HB 575

Representative Heath stated that House Bill 500 was presented in 2023, and passed the House but ran out of time before making it out of the Senate. House Bill 500 prohibited countries on a federal list from purchasing agricultural land if considered hostile to the United States. This list is used to prohibit countries from buying Kentucky farmland. With modifications, Representative Heath and Representative Hale presented House Bill 575 in the 2024 Session, which did not pass.

Representative Heath provided the members with informational examples on why the bill should pass along with proposed changes in hopes for passage in the 2025 Session. He added there are 19 states that have already passed similar legislation.

Representative Hale commented that he was a primary co-sponsor along with many other co-sponsors. He and Representative Heath has been in communication with many other states. The bill is an issue of safety to our country and the state.

Next Scheduled Meeting

The next scheduled meeting is set for Monday, July 29, 2024.

Adjournment

There was no further business, and the meeting was adjourned.