

**EXAMINATION OF CERTAIN POLICIES, PROCEDURES,  
AND FINANCIAL ACTIVITY OF THE  
DEPARTMENT OF CRIMINAL JUSTICE TRAINING AND THE  
KENTUCKY LAW ENFORCEMENT FOUNDATION  
PROGRAM FUND**



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September 29, 2016

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Justice and Public Safety Cabinet  
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The Auditor of Public Accounts (APA) has completed its examination of the Department of Criminal Justice Training (DOCJT) and the Kentucky Law Enforcement Foundation Program Fund (KLEFPF). This letter summarizes the procedures performed and communicates the results of those procedures.

Examination procedures included interviewing staff concerning DOCJT's environment and operating activities; reviewing financial transactions associated with DOCJT for the time period of July 1, 2006 through June 30, 2016; and reviewing additional financial activity of KLEFPF.

The purpose of this examination was not to provide an opinion on the financial statements, but to ensure appropriate processes are in place to provide strong oversight of the financial activity of DOCJT and to review specific issues brought to the attention of this office. However, we did provide schedules of KLEFPF financial activity, and DOCJT as a whole, for analysis.

Detailed findings and recommendations based on our examination are presented in this report to assist all parties involved in implementing corrective action. Overall, these findings identify a serious lack of oversight and transparency, resulting in poor policies and procedures, circumventing state procurement and hiring laws, and unnecessary expenditures.

If you have any questions or wish to discuss this report further, contact me or Alice Wilson, Assistant Auditor of Public Accounts.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Harmon".

Mike Harmon  
Auditor of Public Accounts





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## **Examination of the Department of Criminal Justice Training (DOCJT) and the Kentucky Law Enforcement Foundation Program Fund (KLEFPF)**

### **Examination Objectives**

On April 26, 2016, the Auditor of Public Accounts (APA) notified the Department of Criminal Justice Training (DOCJT) that the APA would be auditing the financial statements of the Kentucky Law Enforcement Foundation Program Fund (KLEFPF) and the related notes to the financial statements as of and for the year ended June 30, 2015. This notification followed several requests to perform an audit of KLEFPF, including an April 20, 2016 letter from the Secretary of the Justice and Public Safety Cabinet specifically requesting an audit of DOCJT that was inclusive of KLEFPF and the Kentucky Law Enforcement Council (KLEC).

After reviewing preliminary information and considering allegations of waste, fraud and abuse, the APA determined that a special examination of DOCJT would be a more appropriate engagement to address the areas of concern and allegations received.

### **DOCJT Background**

DOCJT is a department within the Justice and Public Safety Cabinet. DOCJT is comprised of the Commissioner's Office and three divisions - Training Operations, Administrative, and Training Support. DOCJT's mission is to provide quality criminal justice training and other services that will enhance the ability of the state's law enforcement personnel to reduce crime, its costs, and create a safe, secure environment for Kentucky.

### **KLEFPF Background**

DOCJT administers KLEFPF for the purpose of providing training and incentive payments to law enforcement officers. KLEFPF is funded by a 1.8% surcharge on property and casualty insurance premiums paid by Kentucky citizens.

### **Findings and Recommendations**

#### **Finding 1: Inadequate Analysis Of The Surcharge Rate Led To Surpluses Which Were Swept To The Commonwealth's General Fund And Therefore Not Expended For Law Enforcement Objectives**

After the surcharge rate was increased in 2010, the fund experienced both dramatically increasing receipts and significant General Fund sweeps. Additionally, DOCJT's operating expenditures increased over this period. These operational expenses were compounded by debt service and building maintenance costs. Rather than preserving the surplus surcharge receipts, increasing incentive payments to law enforcement officers, or reducing the surcharge rate when actual receipts significantly exceeded KLEFPF's needs, the surplus funds were swept into the Commonwealth's General Fund through the state's budgeting process in fiscal years 2011 through 2016. Through inquiry with Department of Revenue (DOR) officials, we were unable to identify evidence indicating the Justice and Public Safety Cabinet had historically provided any information to the Commissioner of Revenue to support the surcharge rate. As a result of the sweeps and other appropriations from the fund, millions in KLEFPF funds have been appropriated for projects that are not necessarily within the mission of KLEFPF.

**Recommendation:** We recommend the Justice and Public Safety Cabinet work with DOR to refine the process of analyzing the adequacy of the surcharge rate. The analysis used to justify surcharge rate increases should be documented and maintained. Also, the Justice and Public Safety Cabinet should work with DOCJT staff to continuously monitor the performance of the fund.

**Finding 2: DOCJT Utilized A Contract With Eastern Kentucky University To Circumvent State Procurement Laws And Regulations**

Procurement practices at DOCJT, as an executive branch department within the Justice and Public Safety Cabinet, are governed by the Kentucky Model Procurement Code, codified in KRS Chapter 45A, and the Finance and Administration Cabinet Manual of Policies and Procedures. Testing identified a contract with Eastern Kentucky University (EKU) for goods and services which allowed DOCJT to circumvent state procurement laws and policies, including DOCJT's small purchase authority limitation. Another effect of using the ECU contract to procure goods and services is that the detailed purchase information in the Commonwealth of Kentucky's accounting system, eMARS, is limited.

**Recommendation:** We recommend DOCJT's contracts with ECU be examined by the Justice and Public Safety Cabinet and the Finance and Administration Cabinet to determine if they are necessary and reasonable and conform with the Model Procurement Code and other requirements for state agencies.

**Finding 3: A Hiring Arrangement With Eastern Kentucky University Allowed DOCJT To Circumvent State Hiring Procedures, Led To Excessive Spending, And Created Potential Salary And Benefit Inequities Among DOCJT Staff**

Auditors analyzed an unusual contractual arrangement with ECU in which DOCJT staff were hired as ECU employees, rather than merit

system employees or state-approved contract employees, and paid via a \$1.6 million annual contract with ECU. The contract itself stated that "exigent circumstances" called for additional personnel needs. However, the positions created through this contract were ordinary and normal in the course of DOCJT operations.

**Recommendation:** DOCJT's personnel contract with ECU should be discontinued. The Justice and Public Safety Cabinet should work with DOCJT management to determine what positions are necessary to achieve the statutory mission of DOCJT and incorporate those into the merit system.

**Finding 4: Funding Arrangements Created Uncertainty Regarding Ownership Of The DOCJT-Occupied Buildings And Confusion Regarding The Responsible Party For Building Maintenance**

DOCJT is housed in several buildings on ECU's campus. There has been confusion over whether ECU or the Commonwealth actually owns the DOCJT-occupied buildings. Discrepancies exist between language in the state budget and bond documents related to the funding of these building projects. Because KLEFPF funds were used to pay debt service on bonds issued for what appeared to be ECU buildings, confusion exists as to who has responsibility for maintenance, repairs, and other facility needs, and no functional lease agreement exists between the two parties. As a result of the ownership confusion, an inefficient, inconsistent, and costly process has been established to address any issues related to DOCJT facilities.

**Recommendation:** Based on the ownership determination, the Justice and Public Safety Cabinet should ensure appropriate legal agreements are executed with ECU to address the responsibilities of both parties related to maintenance, grounds keeping, liability, and any other potential matters related to the buildings.

**Finding 5: Certain KLEFPF Expenditures Did Not Appear To Be Necessary Or Reasonable, Particularly Given The Restricted Nature Of The Fund**

Due to allegations received, a risk identified early in the examination was the potential for unnecessary or excessive spending at DOCJT. Because taxpayers fund KLEFPF directly through a surcharge on property and casualty insurance premiums and the funds are restricted by law, DOCJT spending should be highly scrutinized by management for appropriateness and adherence to the statutory restrictions on the use of the funds. Testing identified several expenditures charged to KLEFPF which did not appear to be necessary or reasonable for carrying out the statutory mission of KLEFPF.

**Recommendation:** DOCJT should create a new operating policy manual that complies with state laws, regulations, the Executive Branch Ethics Code, and the Finance and Administration Cabinet policies. These policies should specifically address spending practices at the agency.

**Finding 6: DOCJT Utilized Travel Vouchers For Expenditures Which Should Have Been Procured Through Other Means, And Instances Of Excessive Travel Were Identified**

DOCJT misused travel reimbursement forms by allowing employees to utilize these forms to seek reimbursement for non-travel related charges that should have been procured through other means, and at times these purchases were not even related to the employee. DOCJT also reimbursed employees for excessive travel.

**Recommendation:** Employees should only be reimbursed for travel expenses related to trips with an operational purpose supporting the intent of KLEFPF. Travel reimbursement forms should not be used for purchases of goods, services, or any expenditures on behalf of another individual.

**Finding 7: DOCJT Publishes A Quarterly Magazine For Which Costs Are Excessive**

Concerns were expressed to the auditors about the reasonableness of costs associated with the publication of the *Kentucky Law Enforcement* magazine, especially regarding the high quality and wide circulation of the magazine. Based on an analysis of salaries and benefits of staff dedicated entirely or primarily to the magazine, along with printing and shipping costs billed by the external printing vendor, the production of the magazine costs KLEFPF over \$500,000 per year.

**Recommendation:** The Justice and Public Safety Cabinet should thoroughly review the production and distribution elements of the *Kentucky Law Enforcement* magazine and other DOCJT outreach programs for opportunities to reduce costs.

**Finding 8: DOCJT Hiring And Contracting Practices Led To Potential Conflicts Of Interest**

During the examination, auditors were made aware of multiple family relationships between employees that involve various branches within DOCJT. These relationships include spouses, in-laws, cousins, siblings, sons or daughters, and parents all working within the department. Although it is not unusual to see related state employees working in the same departments, the number of instances noted at DOCJT is high, especially considering the size of the agency. DOCJT staff indicated at least one instance of an employee having direct supervision of a family member – the former Commissioner supervised his cousin who held the position of editor for the *Kentucky Law Enforcement* magazine. Additionally, DOCJT contracts with the spouse of a high-ranking DOCJT employee were identified.

**Recommendation:** The Justice and Public Safety Cabinet should perform a full review of all DOCJT existing and proposed contracts for any potential conflicts of interest.

**Finding 9: DOCJT’s Level Of Influence In Kentucky Law Enforcement Council Activities Creates An Inherent Conflict**

The auditors received concerns regarding DOCJT having disproportionate influence on KLEC in relation to other law enforcement stakeholders in the Commonwealth. DOCJT leading the “Job Task Analysis” procurement and review lends credence to these concerns because that analysis is relied on in evaluating training requirements. The level of involvement by DOCJT in KLEC operations also gives the appearance that the agency’s involvement and influence goes beyond administrative activities. This relationship creates an inherent conflict because DOCJT acts as the training organization for officers and would have a vested interest in seeing the training program expand.

**Recommendation:** The Justice and Public Safety Cabinet should advise KLEC to review the length, structure, and curriculum of the current training requirements and seek opportunities to reduce costs while maintaining adequate training for law enforcement officers. Any further studies procured to aid the assessment of basic training should be procured by the Justice and Public Safety Cabinet to avoid concerns of disproportionate influence.

**Finding 10: Statutes Governing KLEFPF Are Outdated Or Are Not Being Followed**

During our examination, Kentucky Revised Statutes relating to the Justice and Public Safety Cabinet, DOCJT, and KLEFPF were reviewed and several examples were identified of outdated statutes and current practices not corresponding to statutes.

**Recommendation:** The General Assembly should clarify current statutes and enact new legislation to address these issues. This should include legislation to clearly distinguish the extent to which KLEFPF is to be utilized for DOCJT operations, including new capital projects, and other law enforcement related initiatives.

**Conclusion**

Our examination revealed DOCJT was using contractual arrangements with ECU to circumvent state law and regulations on both procurement and hiring. We identified hiring and contracting practices that led to potential conflicts of interest. Our findings indicate an environment within DOCJT which promoted unnecessary and excessive spending. In addition, our examination found a lack of analysis to support the rate of the insurance surcharge that funds KLEFPF and detailed several statutes relating to KLEFPF that are outdated and should be revised.

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## Background

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### *Impetus and Objectives of the Examination*

On April 26, 2016, the Auditor of Public Accounts (APA) notified the Department of Criminal Justice Training (DOCJT) that the APA would be auditing the financial statements of the Kentucky Law Enforcement Foundation Program Fund (KLEFPF) and the related notes to the financial statements as of and for the year ended June 30, 2015. This notification followed several requests to perform an audit of KLEFPF, including an April 20, 2016 letter from the Secretary of the Justice and Public Safety Cabinet specifically requesting an audit of DOCJT that was inclusive of KLEFPF and the Kentucky Law Enforcement Council (KLEC). After reviewing preliminary information and considering allegations of waste, fraud and abuse, the APA determined that a special examination of DOCJT would be a more appropriate engagement to address the areas of concern and allegations received.

### *Scope and Methodology*

The purpose of the APA examination was to determine if DOCJT has administered KLEFPF funds in a manner to ensure KLEFPF objectives are met and accountability and transparency exist. We have also presented financial schedules in Appendix A and Appendix B, which provide information on receipts and expenditures of KLEFPF, as well as DOCJT as a whole; however, the objective of our examination was not to provide an audit opinion on the financial statements of DOCJT. The APA reviewed DOCJT financial transactions for the time period of July 1, 2006 through June 30, 2016.

### *DOCJT Structure and Mission*

DOCJT is an agency of the Justice and Public Safety Cabinet. DOCJT is comprised of the Commissioner's Office and three divisions: Training Operations, Administrative, and Training Support. DOCJT's mission is to provide quality criminal justice training and other services that will enhance the ability of the state's law enforcement personnel to reduce crime and its costs and create a safe, secure environment for Kentucky.

DOCJT has been charged with establishing, supervising, and coordinating training programs for law enforcement personnel, studying law enforcement training standards, and conducting continuing research on criminal law and criminal justice subjects related to law enforcement training. DOCJT began on the grounds of Eastern Kentucky University (EKU) in 1966, when EKU received a federal grant to research and develop a training program for law enforcement officials.

EKU provided facilities and office space to DOCJT until 1993, when construction of a new DOCJT facility, the Funderburk Building, was completed. The McKinney Skills Complex, containing a firing range and driving course, was also constructed in 1993. In 2002,

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## Background

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construction was completed on the Bizzack Law Enforcement Training Complex, named for the DOCJT Commissioner at the time. The complex contains classrooms and a dormitory, as well as fitness training facilities and a model police station. In 2003, a multipurpose training facility was added to the complex.

### *Kentucky Law Enforcement Foundation Program Fund*

As noted above, DOCJT administers KLEFPF, which was created by the General Assembly in 1972 and codified in KRS 15.410, et seq., for the purpose of providing a yearly training incentive payment to law enforcement officers who met certain requirements and upgrading the educational and training standards of law enforcement officers.

KLEFPF is funded by a surcharge placed on property and casualty insurance premiums paid by Kentucky citizens. This surcharge rate was increased from 1.5% to 1.8% in 2010. Of the funds collected by insurers based outside of the Commonwealth, 72% is reserved for KLEFPF and the remaining 28% is reserved for the Kentucky Firefighters Foundation Program Fund (KFFPF). KRS 136.192 dictates that the Department of Revenue is to calculate the surcharge rate, and the secretaries of the Public Protection Cabinet and Justice and Public Safety Cabinet are to provide estimated budgets for KFFPF and KLEFPF, respectively, in determining possible adjustments to the rate.

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## Findings and Recommendations

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**Finding 1: Inadequate Analysis Of The Surcharge Rate Led To Surpluses Which Were Swept To The Commonwealth's General Fund And Therefore Not Expended For Law Enforcement Objectives**

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KLEFPF was created by statute in 1972 with the stated intention to “assure that the criminal laws of the Commonwealth are enforced fairly, uniformly and effectively throughout the state by strengthening and upgrading local law enforcement; to attract competent, highly qualified young people to the field of law enforcement and to retain qualified and experienced officers for the purpose of providing maximum protection and safety to the citizens of, and the visitors to, this Commonwealth; and to offer a state monetary supplement for local law enforcement officers while upgrading the educational and training standards of such officers.” The provision of a monetary supplement to officers has therefore been a core part of the program since its inception.

By the late 1990s, law enforcement officers who met the training requirements received a \$2,500 supplement to their regular pay. The payment was increased to \$3,100 in 2001 and remained at that level until 2016, when the supplement was increased to \$4,000. KLEFPF funds are also used to pay the additional employer pension contribution for law enforcement agencies employing the eligible officers. This salary supplement is typically referred to as the “incentive payment.” In addition to funding the incentive payments, KLEFPF also serves as the operating fund for DOCJT.

In fiscal year (FY) 2016, DOCJT received \$67.6 million in KLEFPF funds, which amounted to 98% of the agency’s total receipts. These funds are generated through a 1.8% surcharge placed on property and casualty insurance premiums paid by Kentucky citizens. Of the funds collected by insurers based outside of the state, 72% is reserved for KLEFPF, and the remaining 28% is reserved for the Kentucky Firefighters Foundation Program Fund (KFFPF). Per KRS 42.190, this split is to be determined by the Finance and Administration Cabinet. KRS 136.392 states the Commissioner of the Department of Revenue (DOR) shall adjust the surcharge rate and is to rely on the secretaries of the Public Protection Cabinet and Justice and Public Safety Cabinet to provide estimated budgets for KFFPF and KLEFPF, respectively, in determining possible adjustments to the rate. This is one of several outdated or unclear statutes governing the surcharge as discussed further in Finding 10.

Through inquiry with DOR officials, we were unable to identify evidence indicating the Justice and Public Safety Cabinet had historically provided any information to the Commissioner of Revenue to support the surcharge rate. In addition, we could not find any evidence that the surcharge was historically analyzed to determine the adequacy of the rate. The surcharge rate appears to have been considered only on a short term, budget cycle basis.

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## Findings and Recommendations

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Discussions with DOR officials indicated in practice the surcharge rate is determined by the Office of the State Budget Director (OSBD) despite it having no statutory role in the rate-setting process. Although it is reasonable for state agencies to utilize OSBD for assistance in the budget process, abdicating the rate-setting authority to OSBD, especially without input or analysis from the Justice and Public Safety Cabinet, appears to subject this process to state budgetary considerations beyond the KLEFPF purposes the surcharge was intended to fund. This concern is further discussed in the analysis related to the use of the funds below.

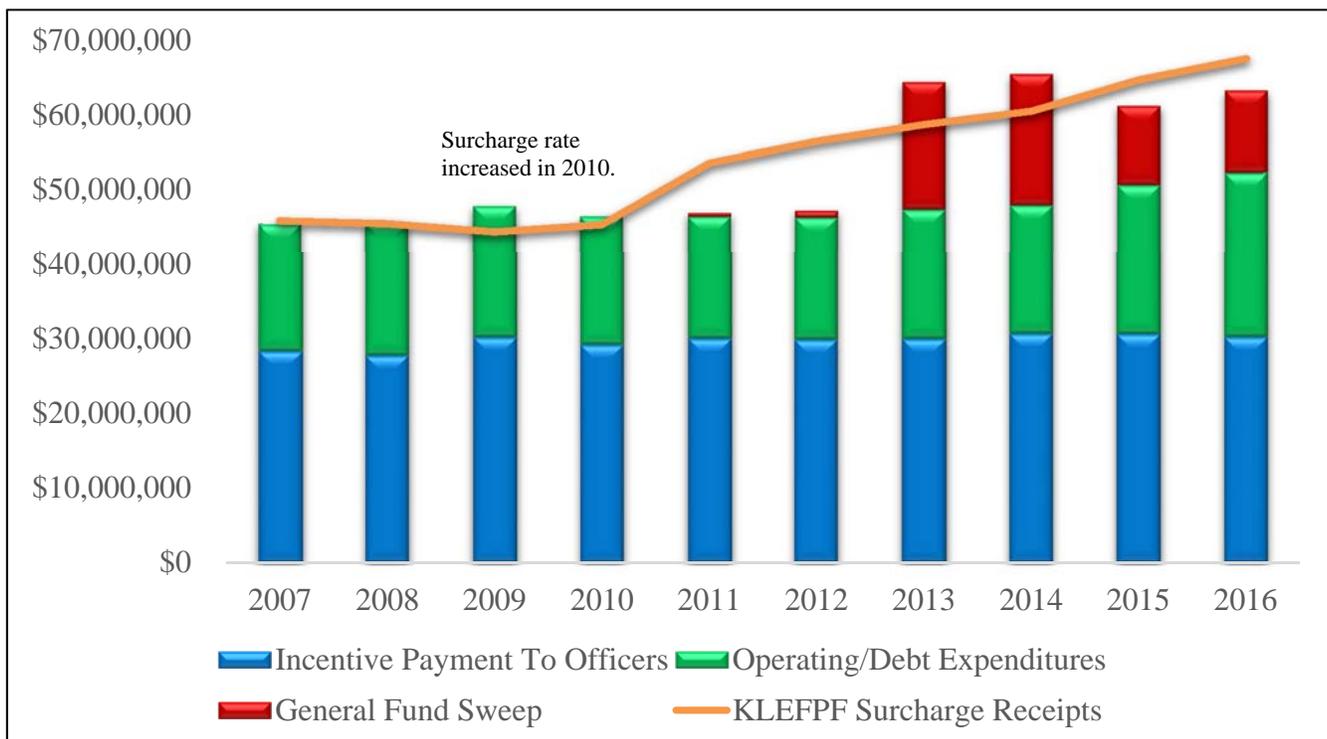
An analysis of KLEFPF receipts and expenditures from FY 2007 to FY 2016 is presented in Chart 1. A significant increase in surcharge receipts can be seen when the surcharge rate increased from 1.5% to 1.8% in 2010. Based on inquiry with the various agencies involved in the surcharge rate-setting process, the fund finished in a deficit for fiscal years 2008-2009, and a deficit was projected in 2009-2010. This deficit was partly due to the routine sweeping, or transferring, of millions from the fund throughout its existence, so no buffer existed to withstand reduced receipts during the recession. Therefore, the rate increase was ostensibly to meet the proposed budget for the fiscal years 2011 and 2012. Language related to the insurance surcharge rate in the 2010-2012 biennial budget states, “the insurance surcharge rate shall be calculated at a rate to provide sufficient funds in the 2010-2012 fiscal biennium for the Firefighters Foundation Program Fund and the Kentucky Law Enforcement Foundation Program Fund.” Budget language indicates that this calculation should also take into account any previous restricted funds carried forward from prior budget periods, although due to the previous fund sweeps and the projected 2009-2010 deficit, no carryforward would exist. Also, as noted above, a documented analysis of the projected deficits, projected revenues, and other factors used to determine the level of the rate increase could not be identified.

As Chart 1 indicates, the increase in surcharge receipts did not impact the incentive payment at that time. Expenditures related to incentive payments remained reasonably constant even after the surcharge rate increased as no additional law enforcement officers were deemed eligible and the amount of the incentive payment was not increased in conjunction with raising the surcharge rate.

## Findings and Recommendations

After the surcharge rate was raised in 2010, KLEFPF experienced significantly higher increases in receipts than it did in either incentive payments or operating costs and debt service payments, leading to large surpluses as can be seen in Table 1. Between FY 2010 and FY 2016, KLEFPF receipts increased by 49%. Because an analysis of KLEFPF was not well-documented prior to implementing the surcharge rate increase, auditors could not determine whether the surplus was anticipated. There also did not appear to be an operational plan for utilizing the surplus to strengthen the fund itself. Additionally, DOCJT's operating expenditures increased over this period. These operational expenses were compounded by debt service and building maintenance costs discussed in Finding 4. Rather than preserving the surplus receipts, increasing incentive payments to law enforcement officers, or reducing the surcharge rate when actual receipts significantly exceeded KLEFPF's needs, the surplus funds were swept into the Commonwealth's General Fund through the state's budgeting process in fiscal years 2011 through 2016.

**Chart 1 - KLEFPF Analysis By Fiscal Year**



Source: Commonwealth of Kentucky Accounting System, eMARS

## Findings and Recommendations

**Table 1 - KLEFPF Surpluses, General Fund Sweeps, and Ending Balances**

	For The Year Ended June 30,			
	2013	2014	2015	2016
KLEFPF Receipts	\$ 58,814,618	\$ 60,591,706	\$ 64,772,706	\$ 67,648,376
Operating/Debt Expenditures <sup>1</sup>	17,339,127	17,235,291	20,077,928	22,046,840
Incentive Payments To Officers	30,084,225	30,781,573	30,648,968	30,289,213
Surplus	11,391,266	12,574,842	14,045,810	15,312,323
General Fund Sweeps	17,041,100	17,488,800	10,530,000	11,000,000
Ending Balance	<u>\$ 11,740,798</u> <sup>2</sup>	<u>\$ 6,090,964</u>	<u>\$ 4,692,816</u>	<u>\$ 9,005,139</u>

<sup>1</sup> In FY 15 and FY 16, Operating/Debt Expenditures includes transfers for the HVAC replacement discussed in Finding 4.

<sup>2</sup> This amount is the ending KLEFPF balance for FY 2012.

Source: Commonwealth of Kentucky Accounting System, eMARS

Pursuant to KRS 15.430 through KRS 15.515, specifically KRS 15.470, the use of KLEFPF funds is restricted to providing a salary supplement to law enforcement officers, the resulting incremental employer costs for pension contributions, and certain administrative costs defined in KRS 15.450. The sweeping of KLEFPF surpluses was technically legal due to enacted “notwithstanding” language in the state budget bills, which meant the surplus funds could be used for General Fund purposes despite other statutory restrictions to the contrary. However, as noted above, OSBD’s directive was to set the surcharge rate to meet the appropriated needs of the fund, and it is unknown why the rate was not adjusted down for future years when actual results led to large surpluses. It is known that the surpluses were then swept into the General Fund to supplement the Commonwealth’s budget from 2010 to 2016. DOCJT documentation revealed that KLEFPF surpluses were also swept as part of the budget process prior to the period covered by Chart 1, during the earliest years in the life of the fund. Considering the amounts swept from the fund since its inception, the surcharge rate has historically been out of step with the actual needs of the fund. Additional analysis can be found in Appendix D, Appendix E, Appendix F and Appendix G.

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## Findings and Recommendations

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As a result of the sweeps and other appropriations from the fund, millions in KLEFPF funds have been appropriated for projects that are not necessarily within the mission of KLEFPF, indicating that the surcharge rate was too high to cover the needs of the fund during the timeframe under review. In addition, the necessity and excessiveness of DOCJT expenditures are discussed in several other findings included in this report. Prudent financial stewardship is vitally important to the health of KLEFPF so that the Commonwealth can avoid future surcharge rate increases being unnecessarily passed along to taxpayers.

### *Recommendations*

We recommend:

- Because KLEFPF funds are generated through a surcharge on property and casualty insurance premiums, KLEFPF should only be used for the restricted purposes specified in the statutes. If the surcharge rate is sufficient to meet KLEFPF objectives and a substantial surplus consistently remains at the end of the fiscal year, consideration should be given to whether the surcharge rate could be reduced. Alternatively, benefits to law enforcement officers could be increased or additional law enforcement objectives pursued.
- The Justice and Public Safety Cabinet should work with DOR to refine the process of analyzing the adequacy of the surcharge rate. The analysis used to justify surcharge rate increases should be documented and maintained. Also, the Justice and Public Safety Cabinet should work with DOCJT staff to continuously monitor the performance of the fund. Both cost and revenue projections should be monitored monthly to ensure the surcharge revenue is sufficient to cover the anticipated incentive payments to law enforcement officers and necessary operational costs of DOCJT. The General Assembly should evaluate whether a statutory change or clarification of the rate-setting process is needed.

### **Finding 2: DOCJT Utilized A Contract With Eastern Kentucky University To Circumvent State Procurement Laws And Regulations**

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*Eastern Kentucky University Contract*

Procurement practices at DOCJT, as an executive branch department within the Justice and Public Safety Cabinet, are governed by the Kentucky Model Procurement Code, codified in KRS Chapter 45A, and the Finance and Administration Cabinet Manual of Policies and Procedures (FAP). Testing identified a contract with ECU for goods and services which allowed DOCJT to circumvent state procurement laws and policies.

DOCJT is physically located on the campus of ECU. The university provides limited grounds maintenance, building maintenance, janitorial services, and information technology support. ECU does not charge DOCJT for utilities such as water, electricity, and internet

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## Findings and Recommendations

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service. Auditors requested but were unable to obtain lease documents to determine any contractual responsibilities of either party, as addressed in Finding 4. Perhaps as a result of this lack of documentation, interviews with DOCJT and ECU staff members provided no concrete explanation of the arrangement between the two entities.

The goods and services contract discussed in this finding is an annual contract between ECU and DOCJT for providing “miscellaneous services and supplies to DOCJT” when due to “exigent circumstances.” This contract, which totaled \$3.4 million in FY 2016, has been used to cover a wide range of items, including the debt service on DOCJT-occupied buildings paid with KLEFPF funds, meal cards from ECU’s food service company for the cadets, telephone service, postage fees, fuel for DOCJT fleet vehicles, and renovations of an ECU auditorium as discussed in Finding 4. At DOCJT’s discretion, the contract is also used to pay for supplies, grounds and building maintenance, and the miscellaneous procurement of other goods for operational purposes.

Typically, exigent circumstances include emergency situations that demand unusual or immediate action. Testing of the miscellaneous expenditures paid under this contract identified few, if any, that could be considered exigent purchases. The use of this contract circumvents procurement requirements for state agencies, such as DOCJT’s small purchase limit of \$1,000, as well as state procedures for emergency purchases. As a state agency, DOCJT expenditures in excess of its small purchase limit require approval from the Finance and Administration Cabinet and could result in the need to obtain quotes or bids for goods and services in accordance with state statutes and policies.

Another effect of using the ECU contract to procure goods and services is that the detailed purchase information in the Commonwealth of Kentucky’s accounting system, eMARS, is limited. For purchases following the required state procedures, finance and budget staff at the Justice and Public Safety Cabinet can identify the vendor, date, and amount of the individual transaction, and also help analyze whether the procurement methodology is appropriate. Under the current structure used by DOCJT, eMARS only reflects the activity as an amount paid to ECU, and these payments are made intermittently based on invoices from ECU which summarize multiple individual transactions. As a result, what appears to be a single payment to ECU in eMARS could actually be for a group of unrelated purchases. Appendix C summarizes the amounts paid to ECU as classified by DOCJT in eMARS. Appendix C, which also includes expenditures from the personnel contract discussed in

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## Findings and Recommendations

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Finding 3, illustrates the routine use of the EKU contract for various expenditure types.

Another unusual element of this contract was that DOCJT staff had access to EKU's procurement system and could create purchase orders. By having this ability, DOCJT was injected into the EKU procurement process, and the purchases made under this contract were conducted according to EKU's small purchase and bidding requirements instead of those of the Commonwealth. Although EKU adheres to the Kentucky Model Procurement Code, its small purchase authority limit is substantially higher than DOCJT's, which permitted DOCJT to avoid its own small purchase authority limitation.

According to EKU staff, the university has a small purchase limit of \$5,000 and requires only one quote up to that amount. In contrast, DOCJT's small purchase limit was \$1,000 and requires one quote up to that limit. By using the EKU procurement system, DOCJT became procedurally governed by EKU's five-times-higher small purchase limit and thereby reduced the oversight on many of its small purchases. This meant that for purchases between \$1,000 and \$5,000, DOCJT could procure goods by obtaining just one price quote rather than elevating the request to the Finance and Administration Cabinet for approval as would be required by its small purchase limit.

DOCJT had a department number assigned to it in EKU's procurement system. A review of DOCJT expenditures purchased through EKU's system included classroom supplies, restaurant meals, equipment, and other supplies. This process created risks for both DOCJT and EKU. It is highly unusual for an agency to have direct access to the purchasing mechanism of another agency. Also, although EKU indicated the DOCJT purchases received the same scrutiny and procedural checks as other EKU transactions, it had no responsibility to review the DOCJT expenditures for statutory compliance or state spending limitations.

It is important to note that although examples of procurement noncompliances were identified, auditors were unable to determine the entire population of these noncompliances due to the lack of detail in eMARS as described above. Additional examples of purchases made through the EKU procurement system that appear to circumvent state procurement requirements are discussed in greater detail below.

### *Laser Training System*

In FY 2015, DOCJT purchased a laser training system costing \$88,218 through the EKU goods and services contract. When asked why the EKU contract was used rather than normal state procurement procedures, DOCJT staff stated that the laser training system related

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## Findings and Recommendations

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to the buildings, and therefore, they had to use the EKU contract. Such language, however, is not included in the EKU contract.

DOCJT received quotes from four companies that supply laser ranges, and three DOCJT employees even traveled to Georgia to observe one of the systems in action at a total cost of \$1,416. Auditors found no evidence of a solicitation for bid or request for proposals with specifications obtained in the process. There was no reasonable justification for using the EKU contract and as such, Commonwealth procurement processes, rather than the EKU procurement processes, should have been utilized for this purchase.

### *Leadership Training Program*

Another purchase utilizing the EKU contract was a leadership training program, which included books, films, and other materials from a single vendor. A total of \$407,319 has been expended since 2005 on this program. Inquiry with DOCJT staff indicated this was for law enforcement officer leadership in-service training. Under the Commonwealth's procurement requirements, the need for spending this amount on post-basic training courses would require justification, and likely require the agency to follow a solicitation process to obtain and evaluate proposals since the amount spent far eclipsed small purchase limits. Available documentation relating to this purchase included a letter from the vendor declaring itself a sole source provider, which is a determination required to be supported by the purchasing agency under state procurement policies (see FAP 111-10-00). The agency determination supporting the vendor's sole source justification was not included in the documentation provided to the auditors. It is unlikely the agency would have been able to obtain sole source vendor approval following state procedures since DOCJT staff expressed in interviews that similar training programs are available from multiple vendors.

### *Food and Restaurant Purchases*

As discussed previously, the Finance and Administration Cabinet provides state agencies with a small purchase authority limit as part of the Kentucky Model Procurement Code. A risk of noncompliance is that agencies will structure payments in a way that keeps single expenditures under the small purchase limit when, in total, the amount charged for the goods or services actually exceeds the limit. This practice is commonly referred to as a "split purchase," and it enables an agency to avoid the regulations or scrutiny that comes with larger purchases.

In a review of procurement card transactions, auditors found at least three instances in which DOCJT used procurement cards to purchase over \$1,000 in goods from a vendor by splitting the purchase into two or more separate transactions that each fell under the \$1,000 small

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purchase limit. For one transaction in 2015, DOCJT purchased meals for cadets attending DOCJT classes for \$1,106. The purchase was split into two separate transactions, totaling \$553 each. Records indicate DOCJT split meal purchases twice more that week. According to FAP 111-55-00, "Procurement requirements shall not be parceled, split, divided, or scheduled over a period of time in order to subvert the intent of the small purchase procedures."

This practice may have been more common if not for the EKU contract providing another method through which DOCJT's small purchase authority could be bypassed. In the case of the instances noted above, the EKU contract could not be used because the purchases were made with state procurement cards. Thus, DOCJT made a split purchase to avoid the \$1,000 limit.

While DOCJT properly obtained a state-approved purchase waiver to cover food purchases for cadets, breathalyzer program participants, and other agency functions, it exceeded the amount of that waiver in each of the last three fiscal years. For example, in FY 2015, when the purchase waiver was \$4,500, DOCJT spent almost \$15,000 on restaurant and other food purchases. Additional years are analyzed in Table 2.

DOCJT provides meal cards to cadets while they are attending training. These meal cards have a limit of \$85 per week and can be used at EKU's cafeterias. DOCJT also purchases and delivers meals for cadets, and often instructors according to supporting documentation, who train at the firing range in Boonesborough, Kentucky. According to DOCJT staff, the justification for this is that cadets will not return to DOCJT until after the cafeterias are closed. According to 503 KAR 3:030 regarding training charges at DOCJT, "purchases in excess of eighty-five (85) dollars per week, or those incurred at a food service provider which is not approved and designated by the department, shall be paid by the person." Staff indicated these bulk food purchases from restaurants are not being factored into the cadets' weekly limit since the meal cards are not being used.

DOCJT employees also used KLEFPF funds to pay for numerous meals at a country club in Richmond, Kentucky, totaling \$11,638 since FY 2003. These charges are not captured in the "Meeting Meals" category of Table 2 because the purchases were made through the EKU contract. The charges to the country club ceased in 2012, the year in which the club closed its dining service. Most of these expenses could not be further analyzed for necessity and reasonableness because the records are no longer available due to the

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agency's record retention period. However, purchasing meals for state employees when those employees are not in travel status is a questionable practice. Those employees in travel status typically receive a per diem for meal expenses; however, the per diem should not be paid for any meal period when a meal is provided.

**Table 2 - Meal Expenditures in Relation to Approved Waiver Amounts**

	FY 2013	FY 2014	FY 2015
Waiver	\$ 4,500	\$ 4,500	\$ 4,500
DUI and Cadet Meals	7,333	7,453	12,416
Meeting Meals	3,759	2,400	2,410
Amount Overspent	\$ 6,592	\$ 5,353	\$ 10,326

Source: Commonwealth Accounting System, eMARS

### *Additional Purchases*

Based on a review of EKU financial reports, other purchases paid for using the EKU contract include a teleprompter, floor sweeper, tablets, airfare, stationery, printing costs, purchases from firearm supply companies, fitness equipment, music supply companies, photography equipment, and various software related to running an information technology help desk, procurement services (despite eMARS serving as the Commonwealth's procurement system), screen capturing, security surveillance, and photo editing. These types of purchases should have been procured through appropriate state channels rather than the EKU contract.

DOCJT has another annual contract with EKU for \$1.6 million which enables DOCJT to hire personnel, also purportedly under exigent circumstances. Issues related to this contract are discussed in Finding 3.

### *Recommendations*

We recommend:

- DOCJT's goods and services contract with EKU should be examined by the Justice and Public Safety Cabinet and the Finance and Administration Cabinet to determine if it is necessary and reasonable and conforms with the Model Procurement Code for state agencies. If the contract is necessary, its terms should be carefully revised to provide specificity regarding allowable purchases and ensure compliance with state law.
- Purchases made by DOCJT should have adequate detail in eMARS to provide oversight officials the necessary information to analyze all transactions. DOCJT employees should be retrained on procurement policies and procedures,

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including the strict prohibition against splitting purchases to avoid procedures required for larger purchases.

- Food cost allowances for cadets established by regulations should be followed. If the weekly allowance is not reasonable, the Justice and Public Safety Cabinet may consider formally increasing the allowance.
- Meals should not be provided for public employees in the normal course of their work, unless exceptions are permitted by statute or otherwise authorized.

### Finding 3: A Hiring Arrangement With Eastern Kentucky University Allowed DOCJT To Circumvent State Hiring Procedures, Led To Excessive Spending, and Created Potential Salary And Benefit Inequities Among DOCJT Staff

The majority of employment positions in the executive branch of Kentucky state government are within the classified service or "merit system." The merit system is administered by the Personnel Cabinet under Kentucky Revised Statutes Chapter 18A. DOCJT relies on a mix of merit system employees, non-merit employees in executive management roles which serve at the pleasure of the Governor, and contract employees to meet agency obligations. While reviewing contracts, auditors found numerous agreements with lawyers, drug screening companies, contractors who monitor law enforcement instructors for the Kentucky Law Enforcement Council, and EKU professors. DOCJT used these state-approved personal service contracts to procure specialized services for educational and training purposes.

In addition to these personal service contracts, the auditors analyzed an unusual contractual arrangement with EKU in which DOCJT staff were hired as EKU employees rather than merit system employees or state-approved contract employees, and paid via a \$1.6 million annual contract with EKU. The contract itself stated that "exigent circumstances" called for additional personnel needs. However, the positions created through this contract were ordinary and normal in the course of DOCJT operations. Many salaried employees paid through this contract had been working at DOCJT for several years.

In order to post and advertise these positions, DOCJT staff had access to EKU's employment website, but EKU was not involved in the interview or vetting process. Because DOCJT staff could post, advertise, interview, and hire for these positions, the EKU personnel contract created a mechanism by which DOCJT could avoid state hiring laws and the merit system.

Avoiding the merit system allowed employees hired under this contract to be paid a higher salary than their state employee counterparts. This contract also allowed DOCJT to hire personnel without state approval and to choose individuals for positions without the controls or protections established by state law. Interviews and

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documentation reviewed by the auditors indicated one instance of an employee switching from the state merit system to the EKU contract and receiving a 7% raise as a result.

Another result of using the EKU contract to hire employees is that these employees would not be subject to the Executive Branch Code of Ethics. These ethical standards govern the conduct of executive branch employees. These hires also avoided individual review by the legislature's Government Contract Review Committee (GCRC). GCRC would have reviewed the EKU contract, but without knowing the individual employees, the services provided, or the compensation for those services.

Since some of these EKU employees were in senior level positions at DOCJT, EKU employees were in many cases directly supervising merit system employees. This situation could create an environment or perception in which merit system employees with more seniority, knowledge, and skills are unfairly excluded from promotional opportunities unless they leave the merit system. Also, EKU employees acting as supervisors may not be trained in regards to state time and attendance requirements, ethics laws, state employee evaluation or grievance procedures, Equal Employment Opportunities, and other employment policies and regulations impacting their staff. This increases the risk of inappropriate conduct by supervisors.

Despite multiple interviews with both EKU and DOCJT staff, no explanation could be provided to justify the personnel contract in its current form. Based on inquiry, this contractual arrangement has been in existence for several years and has been utilized to varying degrees during DOCJT's existence. As of January 2016, 19 full-time and three part-time EKU employees worked for DOCJT in various branches under the \$1.6 million contract.

These employees, despite being merit system employees in practice, received the benefit of the EKU vacation schedule, inclement weather closings and access to EKU employee reduced tuition for themselves and their dependents. As EKU employees, however, they were not allowed to accrue compensatory time for overtime hours unlike DOCJT's merit system employees. DOCJT worked around this by keeping an unofficial compensatory time tracking sheet which allowed the EKU employees to accrue and use compensatory time off-the-books. Documentation reviewed indicated as of March 2016, just under 1,700 compensatory hours were available for use by the EKU employees working for DOCJT.

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It is unclear whether EKU was aware of the accrual or use of this time since EKU does not allow the accrual of such time. Given the advantages of being an EKU employee in this situation, many employees expressed concerns with the equity of this structure. Additionally, the off-the-books accrual of compensatory time could present a risk of legal disputes with staff for the pay-out of those hours upon separation from DOCJT. The accrual of compensatory time also enabled the employees to take leave unapproved by EKU.

### *Recommendations*

We recommend:

- The Justice and Public Safety Cabinet should work with DOCJT management to determine exactly what positions are necessary to achieve the statutory mission of DOCJT.
- DOCJT's personnel contract with EKU should be discontinued. Positions that are essential to supporting the statutory mission of DOCJT should be incorporated into the state's merit system, with the corresponding pay and benefit schedules. If specialized contract positions are necessary to carry out appropriate DOCJT functions, the agency should ensure it follows the state's personal service contracting process.

### Finding 4: Funding Arrangements Created Uncertainty Regarding Ownership Of The DOCJT-Occupied Buildings And Confusion Regarding The Responsible Party For Building Maintenance

DOCJT is housed in several buildings on EKU's campus. There has been confusion over whether EKU or the Commonwealth actually owns the DOCJT-occupied buildings. Discrepancies exist between language in the state budget and bond documents related to the funding of these building projects. This confusion led to inconsistent treatment of building repairs and maintenance costs as the actual responsible party was unclear.

Based on documents related to the construction of the Funderburk building, EKU issued bonds in 1991 that would be repaid by the Justice and Public Safety Cabinet. Documentation indicated that KLEFPF funds were used to pay the debt service on these bonds.

The Bizzack Law Enforcement Training Complex (Training Complex) was constructed in two phases and completed in 2003. This project was funded through bonds issued by the State Property and Buildings Commission (SPBC) totaling \$27 million. Based on bond issue documents for the Training Complex the funding was intended to be satisfied through a budget appropriation to EKU from the Commonwealth. EKU would then make lease payments to SPBC using this appropriation and own the buildings when the debt service was fulfilled. However, state budget documents reviewed for fiscal years 1997 through 2000 indicated these appropriations would be derived from KLEFPF funds. A review of the October 1999 EKU

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Board of Regents meeting minutes regarding this arrangement indicated an understanding that the Justice and Public Safety Cabinet would provide ECU the funds to pay the debt service.

The goods and services contract described in Finding 2, intended for “exigent circumstances,” included provisions for these debt service payments from KLEFPF funds to ECU. These construction projects and the contractual arrangement created a major financial obligation for KLEFPF. Records indicate that for the fiscal years 2007 through 2016, DOCJT paid ECU just under \$26.1 million in principal and interest for debt service using KLEFPF funds. DOCJT records indicate an additional \$16.3 million was paid during fiscal years 2000 through 2006, bringing the total debt service paid during this period to \$42.4 million.

Because KLEFPF funds were used to pay debt service on a bond issued for what appeared to be ECU buildings, no one in either organization was sure who had responsibility for the maintenance, janitorial, construction, information technology, or other facility needs, and no functional lease agreement exists between the two parties. More surprising, opinions differed on which party should own the buildings after the debt was paid in full. ECU has classified the buildings as assets, and classified those buildings that still have outstanding debt as capital leases. Also, ECU recognizes the KLEFPF transfers for debt service as “state reimbursement of capital lease payments.” Based on these classifications, ECU is asserting ownership of the buildings.

As a result of the ownership confusion, an inefficient, inconsistent, and costly process has been established to address any issues related to DOCJT facilities. The majority of stakeholders interviewed from both organizations indicated they were operating under the assumption that ECU owns the buildings. Therefore, whenever DOCJT determined a need existed for renovations or even simple maintenance, DOCJT sought approval and consultation from ECU.

ECU prioritized the maintenance of its other facilities over DOCJT buildings, which led to DOCJT maintenance needs not always being met timely. Some examples of this included snow removal, lawn care, and other landscaping service. When DOCJT management needed services faster than ECU was able to provide them, they contracted with an outside company for these services. However, DOCJT used ECU to procure these services rather than bidding the contract out themselves. Because DOCJT had no lease agreement with ECU that addressed these issues, there was no leverage or justification for

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requesting its facilities be given sufficient attention by EKU to avoid additional contracts for these basic services.

This issue was especially problematic during times when EKU closed due to adverse weather. Non-EKU employees on DOCJT's staff were still required to report to work regardless of whether EKU was closed. Understandably, EKU's priority was to ensure dorms, academic, and other campus buildings were safe enough for EKU to reopen. This forced DOCJT to enter into a contract through EKU with a contractor for snow removal so that the facilities were safe for DOCJT employees.

The standard operating procedure at DOCJT was that if a need existed and related to the property in any way, the request had to go through EKU. This was the rationale for using EKU to not only procure landscaping services but also services from other companies on contract with EKU. Other examples included electrical and some janitorial services that EKU then billed to DOCJT. However, which entity would actually provide the labor, parts, or pay for the maintenance, renovation, or improvement needs was determined seemingly at random. The building ownership confusion led to more unusual procurement practices that bypassed state procurement procedures. As discussed previously, the confusion was compounded by older buildings housing DOCJT staff having already been paid off with KLEFPF funds while the newer training complex was funded through bonds issued in EKU's name with the debt service actively being paid with KLEFPF funds.

Over the last several years, DOCJT staff indicated there had been substantial issues with the HVAC systems in both the Funderburk and Bizzack buildings. DOCJT staff have been performing limited maintenance work themselves but also paying an outside vendor on a master contract with EKU to maintain the older system. During FY 2015, it was determined that the HVAC system would need to be replaced. Actual expenses as of August 2016 for the HVAC replacement funded through transfers from KLEFPF are \$2,701,054. The ownership debate and lack of written agreements led to this significant outlay of KLEFPF funds without knowing which entity actually holds the responsibility for this type of capital improvement. Given that DOCJT abdicated other ownership responsibilities and decisions to EKU, this outlay appears questionable.

Another example of a questionable KLEFPF expenditure related to building improvements involved the FY 2016 renovation of the Posey Auditorium located in the Stratton Building of EKU's College of Justice and Safety. This auditorium is not located in a building

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occupied by DOCJT, yet DOCJT agreed to pay half of the total renovation costs without a written agreement with ECU. DOCJT's share amounted to \$100,780 and the justification was to have an area for cadet graduations. However, paying half of the total renovation cost for the use of a cadet graduation venue seems disproportionate. Also, the procurement of these services was handled entirely by ECU. This is another example that demonstrates when state funds are handled outside of the state procurement system, the risks of procurement violations, inappropriate spending, and excessive spending increase.

In recent years, proposals have been submitted to the Commonwealth Capital Planning Advisory Board (CPAB) for additional projects related to DOCJT to be funded through ECU bonds. For the 2012-2018 cycle, a \$19.8 million addition was proposed to CPAB, but it was reduced to a \$9.9 million proposal in subsequent requests. Given that additional construction projects have been requested, the resolution of these issues is imperative.

### *Recommendations*

We recommend:

- The Justice and Public Safety Cabinet, with input from the Finance and Administration Cabinet, should actively work with ECU to establish which entity owns the DOCJT-occupied buildings.
- Based on the ownership determination, the Justice and Public Safety Cabinet should ensure appropriate legal agreements are executed with ECU to address the responsibilities of both parties related to maintenance, grounds keeping, liability, and any other potential matters related to the buildings.
- The most cost-effective means should be sought to address snow removal, landscaping, and any other services which are currently being procured through ECU master agreements.
- If construction projects are necessary to support the KLEFPF mission, projects should be properly procured in accordance with state laws and regulations.

### **Finding 5: Certain KLEFPF Expenditures Did Not Appear To Be Necessary Or Reasonable, Particularly Given the Restricted Nature Of The Fund**

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Due to allegations received, a risk identified early in the examination was the potential for unnecessary or excessive spending at DOCJT. This risk was especially relevant given that DOCJT's operating budget is almost entirely funded by KLEFPF, which is restricted for incentive payments to law enforcement officers and ensuring those officers remain well trained. Because taxpayers fund KLEFPF directly through a surcharge on property and casualty insurance premiums and the funds are restricted by law, DOCJT spending should be highly scrutinized by management for appropriateness and

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adherence to the statutory restrictions on the use of the funds. Auditors used a combination of inquiry with DOCJT staff, financial analysis, and testing to examine expenditures. As a result, several instances of excessive or unnecessary spending were identified.

### *Retirement Parties*

DOCJT has traditionally provided employees with retirement gifts, and some employees have had retirement receptions in their honor paid for with KLEFPF funds. Examples of these retirement gifts include custom engraved sterling silver mint julep cups, custom engraved DOCJT wrist watches, bracelets, and engraved charms. As recently as April 2016, DOCJT used KLEFPF funds to purchase two wrist watches at a cost of \$235 each and a sterling silver bracelet for \$160 as retirement gifts. Since 2008, the earliest year for which documentation was available, \$11,907 has been spent on retirement gifts for employees.

For the retirement receptions, expenditures included catered food and beverages, facility rental, and the aforementioned gifts. Receptions like this were rare; however, smaller scale retirement events including refreshments were more common. According to FAP 120-23-00(1), "Expenditures of public funds shall only be allowed for carrying out the statutory responsibilities of the agency. Expenditures shall be reasonable in amount, beneficial to the public and not personal in nature." Sections (3)(d) and (3)(e) specifically prohibit the use of public funds for employee parties, retirement receptions, and employee recognition/retirement gifts.

### *Fleet Expenses*

DOCJT owns a fleet of 96 vehicles for employee travel and cadet driver training. See Table 3 for fleet expenses. On July 1, 2009, DOCJT enacted a policy wherein the "non-merit executive staff shall utilize their personally owned vehicle for official state travel rather than use assigned state vehicles." The rationale was that, based on the results of a DOCJT cost study, the department would save money upon implementing this policy. This directive was not extended to other employees, despite the memorandum indicating cost savings could be achieved. Currently, employees are permitted to use either the fleet or their personal vehicles for necessary travel.

The Training Support and Training Operations divisions utilize the fleet more frequently than others while auditing local law enforcement departments, traveling to provide training, and conducting other agency business. There are 103 employees in these two divisions. With 96 vehicles, the ratio of fleet vehicles to employees in the two divisions that would reasonably be expected to utilize the fleet most often is high. This is especially true given the policy permitting employees to drive their own vehicles. This leads

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to DOCJT both reimbursing employee mileage and paying vehicle purchase and maintenance costs. According to DOCJT's fixed asset report, 44 of these fleet vehicles are at least 13 years old. Given the age of the vehicles, an opportunity may exist to reduce the fleet size through attrition and consequentially reduce maintenance costs and new vehicle purchases. Since DOCJT maintains an agency-owned fleet, it is required to submit an annual report to the Secretary of the Finance and Administration Cabinet providing information relating to the cost effectiveness and status of the fleet. However, DOCJT has not submitted these reports.

**Table 3 - Department of Criminal Justice Training Fleet Expenditures**

Fiscal Year	Maintenance	Fuel	Vehicles	Total By Year
2007	\$ 62,939	\$ 83,180	\$ 245,769	\$ 391,888
2008	55,071	91,905	331,278	478,254
2009	64,291	92,664		156,955
2010	47,506	80,290		127,796
2011	65,627	96,841	64,704	227,172
2012	67,008	91,304	25,053	183,365
2013	61,850	112,554	197,967	372,371
2014	54,909	97,519		152,428
2015	57,644	79,492	307,016	444,152
2016	69,028	58,825		127,853
Total	<u>\$ 605,873</u>	<u>\$ 884,574</u>	<u>\$ 1,171,787</u>	<u>\$ 2,662,234</u>

Source: Commonwealth of Kentucky Accounting System, eMARS

DOCJT currently provides electronic, distance learning training for officers in subjects such as DUI certification, legal requirements, ethics, professionalism, and others. These trainings are much more cost-effective for both DOCJT and local governments, and they reduce the demand for fleet vehicles and personal mileage reimbursements.

### *Conference Expenses*

DOCJT hosted a regional conference in Richmond, Kentucky in October 2015 for a law enforcement association which is not administered by DOCJT. DOCJT used more than \$2,500 in KLEFPF funds to pay expenditures associated with this conference, some for non-DOCJT employees. These charges included over \$700 for hotel rooms for five visitors. During the conference, DOCJT also held a dinner at the local country club for 40 attendees, which included charges for the venue rental, meal, and a bartender, totaling almost \$1,500. According to DOCJT, no alcohol was paid for with KLEFPF funds. There was, however, a \$75 fee charged for the bartender. The

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next afternoon, the attendees were provided lunch, at a charge of over \$300 to KLEFPF, and given gifts as discussed in Finding 6.

### *Supporting Outside Entities*

DOCJT incurred \$3,335 in labor and supply costs in FY 2016 for services that were provided but not billed to outside entities. A review of DOCJT expenditures revealed that \$5,380 has been spent on sponsoring conference meetings for an outside organization since 2007. These activities do not appear to support the statutorily defined mission of KLEFPF and could lead to allegations of favoritism or a lack of independence on the part of DOCJT.

DOCJT also provides office space, clerical support, and fundraising support without recompense to a non-profit law enforcement organization without a memorandum of understanding or other legal agreements that separate the business of the organization from the activities of DOCJT. Employees indicated that any work performed for this organization is on a volunteer basis and that they go off-the-clock if work is performed during their state work schedule. However, there is no policy regarding this practice, nor sufficient documentation to support time taken off during the day to perform the administrative functions for the separate organization.

### *Other Expenses*

Testing also identified several other miscellaneous expenditures charged to KLEFPF which did not appear to be necessary or reasonable for carrying out the statutory mission of KLEFPF. These are described below:

- DOCJT purchased a sporran attachment for a kilt for \$426. The supporting documentation stated the request was necessary to “outfit an agency uniform which will be used during ceremonial events.” A DOCJT employee performs during law enforcement memorial ceremonies, not as part of the employee’s official duties at DOCJT, but as a member of a bagpipe organization.
- Auditors also questioned the purchase of a \$950 manual hard drive crusher for the agency when established protocols are in place, at no cost to the agency, for state agencies which need to dispose of surplus computer equipment by utilizing the Commonwealth Office of Technology.
- In order to retain its accreditation, DOCJT must pay an annual continuation fee of \$3,070 to the accreditation organization. This includes the estimated cost of the next on-site assessment, which occurs every three years, including the assessors’ airfare, lodging, and meals. If the assessors’ costs are above the estimated fee, DOCJT is invoiced for the difference. In addition to the continuation fee and any overages on the actual travel expenses, gift baskets, snacks, and stationery materials were purchased for

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the assessors. These purchases for the assessors were made by DOCJT employees by adding the purchases to travel reimbursement requests, an issue discussed in Finding 6.

- Numerous purchases of shoes, rain coats, and hats for DOCJT employees were also reviewed. DOCJT does not have a uniform policy in place, and justification for these purchases is not adequate. Based on the documentation reviewed, the employees simply provide a reason, and the items are purchased without additional scrutiny.
- DOCJT used KLEFPF funds to pay for lunches during staff meetings as well as food and kitchen products at DOCJT. Also, in one instance, an invoice was reviewed for a grocery order with no explanation for the purchase. DOCJT spent \$573 for meals for a “Job Task Analysis Overview” meeting in May 2013, and \$428 for a “Job Task Analysis Stakeholders Meeting” in October 2013.
- DOCJT maintained a supply of coffee and snacks for employees, which is not allowable per FAP 120-23-00.
- DOCJT also purchases trophies, plaques, and other recognition awards for employees and members of the Kentucky Law Enforcement Council.
- The auditors also questioned KLEFPF expenditures to enter DOCJT’s television commercial into a video production competition. The total cost for the entrance fee, acceptance fee, and two award statuettes was \$395.
- In April 2016, DOCJT spent \$575 on water-sealed flash drives with aircraft grade aluminum housing for DOCJT’s supply and for the transfer of files for the outgoing Commissioner. The model and quality of the flash drives appear excessive, as only nine were purchased at an average cost of \$64 per drive.
- DOCJT also funded a picnic for the employees costing over \$1,200 in 2009, which is not allowable per FAP 120-23-00.

### *Recommendations*

We recommend:

- DOCJT should create a new operating policy manual that complies with state laws, regulations, the Executive Branch Ethics Code, and the Finance and Administration Cabinet policies. These policies should specifically address spending practices at the agency.
- DOCJT, where possible, should consider expanding distance learning training opportunities for officers utilizing readily available technology. This could generate substantial savings for DOCJT and local governments.
- A new fleet analysis should be performed to determine the cost-effectiveness of maintaining the fleet at its current level given previous DOCJT studies documenting the advantages of

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personal vehicle use and the existence of a regional field office in Louisville, Kentucky. If a fleet is more cost effective for instructors traveling around the state but not for administrative staff with infrequent travel demands, the fleet size could be reduced to lower the financial burden on KLEFPF.

- DOCJT should submit annual fleet reports as required by the Finance and Administration Cabinet.
- DOCJT should cease the practice of providing retirement gifts, receptions, and any other gifts to employees. DOCJT should also evaluate the reasonableness and necessity of paying for lunches provided at meetings.
- DOCJT should establish equipment and apparel needs for instructors based on their job duties. Once established, DOCJT can pursue lower cost options to acquire the needed apparel and avoid potentially unnecessary purchases.
- If DOCJT provides personnel, printing, or other resources to outside entities, DOCJT should ensure the request directly supports the statutory mission of KLEFPF and invoice the outside entities for any costs incurred.
- The Justice and Public Safety Cabinet should give explicit direction to DOCJT regarding the use of DOCJT employee time for duties outside the scope of their employment or in support of outside entities. Legal counsel at the Justice and Public Safety Cabinet should ensure an appropriate legal agreement is in place with any outside entities using DOCJT facilities or other resources.

### **Finding 6: DOCJT Utilized Travel Vouchers For Expenditures Which Should Have Been Procured Through Other Means, And Instances Of Excessive Travel Were Identified**

#### *Misuse of Travel Reimbursement Forms*

DOCJT misused travel reimbursement forms by allowing employees to utilize these forms to seek reimbursement for non-travel related charges that should have been procured through other means, and at times these purchases were not even related to the employee. Also, testing identified several instances of excessive travel costs.

While reviewing travel documents, auditors found instances of travel reimbursement forms being used to receive reimbursement for non-travel related expenditures. These payments were made without following established Commonwealth purchasing procedures. Travel documents indicating reimbursements for gift baskets, cleaning supplies, desk chairs, coffee, lamp shades, e-books, software, retirement party snacks, flowers, special printing costs for contests, prints, and other DOCJT projects were reviewed. For example, one travel payment document revealed DOCJT spent \$110 on bourbon balls to give to attendees at a conference hosted by DOCJT. KLEFPF funds were used to reimburse employees for these expenditures.

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Acquiring such items through the travel reimbursement process limits the transparency of the purchases since the payment in the accounting system looks no different than an ordinary mileage, parking, or other actual travel-related expenditure. 200 KAR 2:006 Section 10(5) states that a travel payment document “shall be used to claim reimbursement for travel expenses.” The variety of purchases reimbursed through travel vouchers indicates abuse of the travel reimbursement process.

### *Excessive Travel Costs*

During the examination, auditors identified that DOCJT reimbursed an employee \$637 for personal vehicle mileage, hotel, and per diem expenses for an out-of-state memorial service. The auditors also noted a reimbursement to an employee for personal vehicle mileage to a funeral visitation. Although these are well-intentioned acts by the agency, it is unclear how these expenditures relate to the administration of KLEFPF.

Testing also revealed that a DOCJT employee had driven a fleet car to a one day accreditation workshop in Ontario, Canada. The workshop attended was offered in both Atlanta and Washington, D.C. the month before, and Minnesota and New York earlier that year. Since this training was not an emergency, the agency could have chosen to send the employee to one of the closer workshops. The total cost of this training was \$1,108.

DOCJT has a training policy that requires administrative employees, some of which did not have a role in the cadet training program, to “seek hours above mandatory job-related or professional development opportunities.” Further, employees were considered to have failed to meet their job expectations if professional development was not sought. This is reviewed and incorporated into each employee’s evaluation. As a result, employees attended trainings, conferences, and seminars across the country. This arbitrary policy, especially for administrative staff not associated with training, increased the risk that training was sought that did not add value to the KLEFPF mission or was not cost-effective.

Also, auditors examined documents related to one employee’s three-week training class in Illinois. This employee attended training for a 120-hour management course at a cost of \$4,842, which included a DOCJT fleet car, lodging, food and other expenses charged to KLEFPF, but does not include the employee’s salary during the time spent at training. It is not clear how this training met the intent of KLEFPF.

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## Findings and Recommendations

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### *Recommendations*

We recommend:

- Employees should only be reimbursed for travel expenses related to trips with an operational purpose supporting the intent of KLEFPF. Travel reimbursement forms should not be used for purchases of goods, services, or any expenditures on behalf of another individual.
- DOCJT should consider whether there are more cost-effective avenues for staff training. At the time requests are made for out-of-state travel, the agency should consider whether comparable training is available in-state or via online training options.
- Training requests should be closely reviewed to determine if the training is necessary and directly related to the employee's specific job duties.
- DOCJT should thoroughly review travel reimbursement requests to ensure the travel charges are appropriate and properly supported. The agency should not reimburse employees for excessive or unallowable travel charges.

### Finding 7: DOCJT Publishes A Quarterly Magazine For Which Costs Are Excessive

DOCJT publishes a quarterly magazine, *Kentucky Law Enforcement*, and a monthly e-newsletter, "Dispatches." *Kentucky Law Enforcement* began as an internal agency newsletter for DOCJT staff in the late 1990s. Starting in 2001, its scope broadened to become a magazine published for and disseminated to the public. According to DOCJT's website, the magazine serves as a tool for educating the law enforcement community, promoting events, and highlighting the accomplishments of law enforcement agencies across the Commonwealth. Based on documentation reviewed, 5,000 copies of the magazine are printed each quarter. "Dispatches" is sent to Kentucky law enforcement and dispatch personnel via email.

When the magazine began in 2001, the articles were written by instructors, administrators, and outside law enforcement contributors. Since then, DOCJT has created a separate Communications branch within the agency that consists of staff journalists and an editor. About half the staff are DOCJT employees, and the rest are ECU employees hired via the contract discussed in Finding 3.

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## Findings and Recommendations

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The mailing list includes nationwide state agencies, federal agencies, city governments, county governments, judges, police departments, military bases, advocacy organizations, private businesses, and individuals. Some recipients receive multiple copies and several hundred issues are kept for display in the Louisville DOCJT field office, the Corbin ECU satellite campus, ECU's College of Justice and Safety, and the main DOCJT office. No subscription fees for the magazine are charged, and no paid advertising is offered.

Concerns were expressed to the auditors about the reasonableness of costs associated with the publication of the *Kentucky Law Enforcement* magazine, especially regarding the high quality and wide circulation. Concerns included that a printing shop was already in place at DOCJT, yet the printing of the magazine was outsourced. Based on an analysis of salaries and benefits of staff dedicated entirely or primarily to the magazine as of June 30, 2015, along with printing and shipping costs billed by the external printing vendor, the production of the magazine costs KLEFPF over \$500,000 per year. Not included in this analysis are travel costs, photography equipment, software related to the development of the magazine, the postage for the roughly 1,600 copies not mailed out by the printing vendor, and other incidental costs.

Additionally, interviews with DOCJT staff indicated the former editor of the magazine is a cousin of the former Commissioner (see Finding 8). The hiring of this individual raised concerns regarding whether the expansion of the publication staff was in the interest of the agency and a proper use of KLEFPF funds.

### ***Recommendations***

We recommend:

- Because outreach programs like the *Kentucky Law Enforcement* magazine and other such DOCJT operations are only indirectly related to the incentive payments to law enforcement officers and the provision for their training, the necessity and goals of these operations should be reviewed and analyzed in the context of the statutory language governing KLEFPF.
- The Justice and Public Safety Cabinet should thoroughly review the production and distribution elements of the *Kentucky Law Enforcement* magazine and other DOCJT outreach programs for opportunities to reduce costs. The magazine is currently being published both in print and electronically, the latter of which could be an avenue to reduce or eliminate the current distribution list.

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## Findings and Recommendations

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- DOCJT should also consider offering opportunities for advertising, within the bounds of state administrative and ethics rules, which could provide immediate reductions in the net cost of the magazine production.

### Finding 8: DOCJT Hiring And Contracting Practices Led To Potential Conflicts Of Interest

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During the examination, auditors were made aware of multiple family relationships between employees that involve various branches within DOCJT. These relationships include spouses, in-laws, cousins, siblings, sons or daughters, and parents all working within the department. Although it is not unusual to see related state employees working in the same departments, the number of instances noted at DOCJT is high, especially considering the size of the agency. Some of these family relations are either ECU employees working on contract for DOCJT or have personal service contracts through the Commonwealth of Kentucky. In those instances when family members were hired through ECU, the Commonwealth of Kentucky personnel hiring or contracting process was not utilized, which includes controls designed to prevent pre-selective hiring decisions. These hires also avoided review by the legislature's Government Contract Review Committee, and they were not subject to the Executive Branch Ethics Code. Considering the number of family relations at DOCJT and the alternate hiring methods used, the risk of an employee using influence to gain employment or advantages for a family member is heightened. This risk is increased given that the ECU personnel contract provided the opportunity for DOCJT to pay higher salaries to employees hired under the contract.

Another concern is the potential for workplace conflict involving family members. With family members involved, it would be more difficult to make objective decisions that put DOCJT's interests first. There is also the potential for family members approving each other's travel reimbursements, timesheets, or other requests. During the examination, auditors tested for such occurrences and identified one instance in which a family member approved another's mileage reimbursement request.

Inquiry with DOCJT staff also identified one example of an employee having direct supervision of a family member. The former Commissioner's cousin held the position of editor of the *Kentucky Law Enforcement* magazine, a quarterly magazine produced by DOCJT. The editor was an ECU employee providing services exclusively to DOCJT. Therefore, neither the editor's salary nor benefit structure were governed by state personnel requirements. ECU paid the annual salary, \$93,727, and benefits, \$65,234, for the editor, after which it invoiced DOCJT requesting reimbursement. Although the definition of "family" in the Executive Branch Ethics

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## Findings and Recommendations

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Code does not include a cousin, the relationship gives the appearance of impropriety due to the perception of favoring a family member in an employment decision.

Also, while reviewing DOCJT personal service contracts, auditors identified a \$50,000 FY 2015 contract with the spouse of a high-ranking DOCJT employee. The contract was for monitoring instructors providing law enforcement training around the state. In March 2016, the \$50,000 contract was extended for two years.

The same spouse was also paid for work via two contracts between DOCJT and an outside entity. The amount of the FY 2012 contract was \$20,500, and the FY 2013 contract was \$42,700. Inquiry with DOCJT staff indicated the DOCJT employee was not involved in the contracting process, but this arrangement gives the appearance of a conflict of interest since the employee would personally benefit from the spouse's contract. Also, the employee was in a position to have broad influence over the operations of the department, increasing the risk of ethical concerns.

### *Recommendations*

We recommend:

- The Justice and Public Safety Cabinet should transition ECU employees working for DOCJT into the Commonwealth of Kentucky's merit system if those positions are needed. Eliminating the ECU personnel contract would reduce the risk of inappropriate hiring.
- Alternatively, if specialized contract positions are needed, DOCJT should follow established personal service contract procedures.
- The Justice and Public Safety Cabinet should perform a full review of all existing and proposed DOCJT contracts for any potential conflicts of interest.

### **Finding 9: DOCJT's Level Of Influence In Kentucky Law Enforcement Council Activities Creates An Inherent Conflict**

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The Kentucky Law Enforcement Council (KLEC) is an independent organization responsible for establishing training requirements for Kentucky law enforcement officers and certifying law enforcement training schools, facilities, faculty, and curriculum for law enforcement officers. KLEC has traditionally relied on various studies of law enforcement officer duties (referred to as the "Job Task Analysis") procured and reviewed by DOCJT to determine if any potential changes to the basic training curriculum are required. The conclusions drawn from these studies have consistently resulted in increases to required basic training hours, and therefore, an increase in demand for instructors, facility utilization, etc. The auditors received concerns regarding DOCJT having disproportionate

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## Findings and Recommendations

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influence on KLEC in relation to other law enforcement stakeholders in the Commonwealth. DOCJT leading the “Job Task Analysis” procurement and review lends credence to these concerns.

The evolution of basic training for law enforcement officers has led to continually increasing operational costs for DOCJT, as well as local governments. The basic training regimen for cadets has increased from three weeks in the late 1960s, ten weeks in the mid-1980s, and 16 weeks in the early 2000s, to the current 23 weeks for basic training with 40 hours in required annual proficiency training. According to DOCJT documentation, as of January 2015, Kentucky requires more training, when considering both basic and annual proficiency hours, than any other state in the country. The increased training requirements not only increase operational costs for DOCJT, but also lead to higher training costs that are paid by local governments throughout the Commonwealth in order to maintain certified law enforcement forces at the city and county level. The training of officers is a critical practice, and it is important to ensure the training is effective. The Auditor of Public Accounts acknowledges that decisions regarding the effectiveness of officer training should be left to professionals in the law enforcement field. However, concerns expressed indicate that it is also important not to lose sight of the cost burden to local governments and to ensure the balance between training time and work responsibilities is reasonable for law enforcement at the city and county level.

### *KLEC Expenses*

DOCJT is required, by KRS 15.325, to reimburse KLEC members for their “reasonable and necessary expenses actually incurred in the performance of their functions.” The auditors noted one instance in which the reimbursement request was excessive. One KLEC member was reimbursed for a \$61 dinner. Additionally, interviews indicated that in past years, DOCJT employees were not permitted by management to verify the mileage submitted by KLEC members and were instructed to pay the reimbursement requests with or without an itemized receipt.

KLEC holds quarterly meetings each year to discuss issues that affect law enforcement across the state. For most two-day quarterly meetings, KLEC uses a hotel in Louisville, Kentucky rather than DOCJT facilities, and the KLEC members are reimbursed for their travel and meals at actual cost. The auditors examined DOCJT support detailing travel payments for six fiscal years. DOCJT spent \$166,381 for KLEC’s meetings, including member travel, meals, hotel stays, and conference room rentals. In addition to the quarterly meetings, \$65,970 was spent on out-of-state conferences for KLEC-related activities. DOCJT employees who are not members of KLEC

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## Findings and Recommendations

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also attend the meetings and conferences. One example was a meeting in Owensboro, Kentucky which was attended by 22 DOCJT employees. Auditors learned that some of these employees were members of DOCJT's KLEC branch, a branch within DOCJT which consists of DOCJT staff working on KLEC-related initiatives. This branch reports to the Commissioner of DOCJT. The proximity, structure, and hierarchy of this arrangement is an indication of DOCJT's close association with KLEC and further supports the perception of a lack of independence between KLEC and DOCJT.

The level of involvement by DOCJT in KLEC operations gives the appearance that the agency's involvement and influence goes beyond administrative activities. The relationship creates an inherent conflict because DOCJT acts as the training organization for officers and would have a vested interest in seeing the training program expand. Although DOCJT also has an objective of having well-trained officers in the Commonwealth, it is not in a position to objectively evaluate whether training requirements also have a proper cost-benefit ratio to cadets and local governments.

### *Recommendations*

We recommend:

- The Justice and Public Safety Cabinet should advise KLEC to review the length, structure, and curriculum of the current training requirements and seek opportunities to reduce costs while maintaining adequate training for law enforcement officers. Any further studies procured to aid the assessment of basic training should be procured by the Justice and Public Safety Cabinet to avoid concerns of disproportionate influence.
- Because effective training is critical, KLEC's training curriculum decisions should be made without an undue level of influence from an agency that will benefit from maximizing operational demands, and by extension increasing the cost burden on KLEFPF.
- DOCJT should also review its organizational structure and overall operations with the goal of maintaining high standards of training but in the most cost-effective manner possible.
- KLEC member reimbursements should be made in accordance with applicable statutes and regulations.
- The Justice and Public Safety Cabinet should explore opportunities for reductions in the cost of administering KLEC.

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## Findings and Recommendations

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### Finding 10: Statutes Governing KLEFPF Are Outdated Or Are Not Being Followed

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During our examination, Kentucky Revised Statutes (KRS) relating to the Justice and Public Safety Cabinet, DOCJT, and KLEFPF were reviewed. Several examples were identified of current practices not corresponding to statutes.

One example is the insurance surcharge statute, KRS 136.392, which dictates the split between KLEFPF and the Kentucky Firefighter Foundation Program Fund (KFFPF) should be determined based on the number of local government units eligible for participation in the funds. Based on inquiry, this methodology was not employed in determining the split, but instead the methodology used was based on the trends of the total number of participating law enforcement officers and firefighters. In addition, using “number of local government units” would be a difficult comparison given the difference in the nature and organization of fire and police departments. A significant portion of KFFPF is dedicated to volunteer fire departments for which there is no law enforcement equivalent. Another difference is that the current academy structure of law enforcement training is centralized, resulting in higher administration costs for KLEFPF, whereas fire training is more decentralized.

KRS 136.392 references the Public Protection Cabinet as the entity responsible for certifying the KFFPF budget to the Commissioner of Revenue. The Commission on Fire Protection Personnel Standards and Education (Fire Commission), which administers KFFPF was previously attached administratively to the Office of the State Fire Marshal, which is within the Public Protection Cabinet. In 2000, KRS 95A.020 was amended to administratively attach the Fire Commission to the Kentucky Community and Technical College System (KCTCS). The reference to the Public Protection Cabinet is therefore outdated, and the legislature should update the statute to establish what entity is responsible for oversight and budget certification requirements related to the surcharge.

Also, statutes do not designate KLEFPF as the operating budget for DOCJT, yet this has been the case since at least 2000. Statutory language in KRS 15.450 identifies the secretary of the Justice and Public Safety Cabinet as the administrator of KLEFPF. The statute permits the Justice and Public Safety Cabinet to be reimbursed for up to 5% of KLEFPF receipts per year for salaries and other costs of administering the fund, including, but not limited to, KLEC operations and expenses. Table 4 illustrates KLEFPF receipts by fiscal year and the corresponding maximum allowable reimbursement for administration costs. Table 4 indicates the 5% limit on administration costs has been consistently exceeded. Statutory language does not appear to contemplate that the fund would be responsible for the full operating costs of DOCJT. Therefore, it

## Findings and Recommendations

appears actual usage of KLEFPF funds may exceed the original intent of the program, and statutes have not been modified to reflect any expansion of the legislative intent.

**Table 4 - KLEFPF Administrative Personnel Costs In Relation To The Maximum Statutory Limit**

	For The Fiscal Year Ended June 30,			
	2013	2014	2015	2016
Surcharge Receipts	\$ 58,787,545	\$ 60,582,084	\$ 64,762,011	\$ 67,614,992
Statutory Limit for Administration Costs	\$ 2,939,377	\$ 3,029,104	\$ 3,238,101	\$ 3,380,750
Administration Personnel Costs <sup>1</sup>	3,818,271	3,875,325	4,134,733	4,243,401
Costs in Excess of Statutory Limit	\$ 878,894	\$ 846,221	\$ 896,632	\$ 862,651

Source: Commonwealth of Kentucky Accounting System, eMARS

<sup>1</sup> This amount was determined by allocating the personnel costs between two groups: administrative employees (executive management, financial, compliance, information technology, magazine production, KLEC support roles) and those roles directly related to training. This allocation was based on the number of employees in each group. Based on this methodology, 33% of the DOCJT employees funded by KLEFPF are in administrative roles. Any additional administrative costs related to goods and services have not been considered as it would be difficult to distinguish which expenditures are directly related to training. Because goods and services related to administering KLEFPF are not included, administrative costs in excess of the maximum allowable amount are likely higher than calculated herein.

KLEFPF also provides funding for the operations of the Criminal Justice Council (CJC). Since 2007, \$2,568,800 in KLEFPF funds have been transferred for CJC activities. As defined in KRS 15A.075, CJC “shall undertake such research and other activities as may be authorized or directed by: (a) The secretary of the Justice and Public Safety Cabinet; or (b) The General Assembly.” Its membership consists of various government officials. Recent state budgets do not provide for funding through KLEFPF, nor is there statutory authorization for funding of CJC.

KLEC was established as an independent administrative body by KRS 15.315, and its core mission is prescribing standards for the approval of schools at which law enforcement training courses are conducted. KLEC is also tasked with monitoring KLEFPF. Although intended to be a separate entity, KRS 15A.080 attached KLEC to DOCJT for administrative purposes. This relationship between KLEC and DOCJT has led to an oversight body being attached to one of the entities it is tasked with monitoring. In addition, both DOCJT and KLEC derive their funding from KLEFPF. As a result, neither DOCJT nor KLEC are in an appropriate position to fairly monitor KLEFPF activity. Additionally, because of the administrative attachment, KLEC is not in a position to monitor DOCJT.

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## Findings and Recommendations

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Current statutes related to the setting and monitoring of the surcharge rate, as discussed in Finding 1, are not conducive to transparent public debate on a surcharge ultimately paid by the citizens of Kentucky. Specifically, current monitoring requirements included in the statutes are not being followed. KRS 42.190 requires that quarterly reports be submitted by the administrators of KLEFPF that include cost projections to the Finance and Administration Cabinet (FAC). FAC is then intended to rely on these projections to determine the appropriateness of the allocation of non-domestic insurance surcharge receipts transferred to KFFPF and KLEFPF. These reports are not being provided, and the process described is not followed. The allocation between KFFPF and KLEFPF is assessed annually, more so by OSBD than by FAC, and has not been changed since 2000, per inquiry with FAC, despite significant recent increases in appropriations from KLEFPF.

Finally, KRS 15.500 provides that funds unexpended by the Justice and Public Safety Cabinet shall not lapse, but shall be carried forward into the following fiscal year and used solely for the purposes specified for KLEFPF in other applicable statutes. Although the General Assembly has executed General Fund sweeps of KLEFPF through the use of “notwithstanding” language in budget bills, this is a practice that was obviously not intended for the fund. More emphasis should be placed on accurately setting the surcharge rate to match receipts to budgeted expenditures. This would reduce the burden on the citizens of the Commonwealth while achieving the intended objectives of KLEFPF.

### *Recommendations*

We recommend:

- The General Assembly should clarify current statutes and enact new legislation to clearly distinguish the extent to which KLEFPF is to be utilized for DOCJT operations, including new capital projects, and other law enforcement related initiatives.
- The monitoring and reporting requirements required for KLEFPF should be the responsibility of the Justice and Public Safety Cabinet rather than DOCJT or KLEC.
- The surcharge rate process should be evaluated to determine that it is functioning within the intent of the statutes, and that analysis is performed to ensure appropriate factors are considered related to KLEFPF and KFFPF.
- Consideration should be given to implementing administrative separation between DOCJT and KLEC to strengthen oversight and monitoring roles.

## **Findings and Recommendations**

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- The Justice and Public Safety Cabinet should thoroughly review DOCJT expenditures to determine if administration costs are within the maximum allowable amount. This review should include transfers from KLEFPF for other administrative initiatives. Any excessive or unnecessary administrative costs should be eliminated so that more of the fund is available for law enforcement officers as intended by statute.

## **APPENDICES**



## Appendices

### Appendix A - Schedule Of Receipts And Expenditures Kentucky Law Enforcement Foundation Program Fund (KLEFPF)

	For The Year Ended June 30,			
	2013	2014	2015	2016
<b>Receipts</b>				
Surcharge	\$ 58,787,545	\$ 60,582,084	\$ 64,762,011	\$ 67,614,992
Interest Income	22,194	8,615	5,126	26,242
Other	4,879	1,007	5,569	7,142
<b>Total Receipts</b>	<u>58,814,618</u>	<u>60,591,706</u>	<u>64,772,706</u>	<u>67,648,376</u>
<b>Expenditures</b>				
Incentive Payments	30,084,225	30,781,573	30,648,968	30,289,213
Salaries and Benefits	10,392,630	10,620,714	11,371,334	11,689,347
Debt Service	2,167,824	2,135,906	2,136,876	2,140,450
Professional Services/Contract Employees	1,430,317	1,390,658	1,346,898	1,384,285
Information Technology	590,084	657,164	1,044,576	809,857
Supplies	572,396	360,414	1,056,679	633,180
Peace Officer Professional Standards	673,400	599,465	530,012	673,784
Cadet Meals	459,178	403,616	353,284	390,578
Fleet	255,613	133,594	294,917	114,544
Travel	188,708	171,156	190,205	198,392
Criminal Justice Council	172,500	271,900	306,600	205,900
Building and Equipment	147,822	208,733	425,076	454,132
Utilities	121,930	123,712	103,674	112,153
Postage/Shipping	51,618	50,759	43,078	32,624
Printing	47,998	56,103	65,868	67,616
Training Fees	30,949	34,271	55,575	60,128
Other	36,160	17,126	26,941	35,505
<b>Total Expenditures</b>	<u>47,423,352</u>	<u>48,016,864</u>	<u>50,000,561</u>	<u>49,291,688</u>
<b>Transfers</b>				
Transfers Out Interfund <sup>1</sup>			(726,335)	(3,044,365)
Transfers Out General Fund	(17,041,100)	(17,488,800)	(10,530,000)	(11,000,000)
<b>Total Transfers</b>	<u>(17,041,100)</u>	<u>(17,488,800)</u>	<u>(11,256,335)</u>	<u>(14,044,365)</u>
<b>Fund Balance</b>				
Beginning Balance	11,740,798	6,090,964	1,177,006	4,692,816
Ending Balance	<u>\$ 6,090,964</u>	<u>\$ 1,177,006</u>	<u>\$ 4,692,816</u>	<u>\$ 9,005,139</u>

<sup>1</sup> Transfers are from KLEFPF to other funds created by DOCJT for HVAC repair, replacement, and other construction projects.

Source: Commonwealth of Kentucky Accounting System, eMARS

## Appendices

### Appendix B - Schedule Of Receipts And Expenditures Department Of Criminal Justice Training (DOCJT)

	For The Year Ended June 30,			
	2013	2014	2015	2016
<b>Receipts</b>				
Surcharge	\$ 58,787,545	\$ 60,582,084	\$ 64,762,011	\$ 67,614,992
Concealed Carry of Deadly Weapons	1,683,875	852,100	856,225	1,347,275
Federal	122,370	109,863	138,358	87,977
Interest Income	22,194	8,615	5,126	26,242
Other	64,165	51,613	41,889	28,907
<b>Total Receipts</b>	<b>\$ 60,680,149</b>	<b>\$ 61,604,275</b>	<b>\$ 65,803,609</b>	<b>\$ 69,105,393</b>
<b>Expenditures</b>				
Incentive Payments	\$ 30,084,225	\$ 30,781,573	\$ 30,648,968	\$ 30,289,213
Salaries and Benefits	11,071,182	11,215,542	11,990,804	12,336,434
Debt	2,167,824	2,135,906	2,136,876	2,140,450
Professional Services/Contract Employees	1,633,800	1,612,652	1,704,668	1,747,913
Information Technology	688,010	746,901	1,095,113	1,148,867
Supplies	647,397	419,834	1,099,737	671,642
Cadet Meals	459,220	403,616	353,284	390,578
Fleet	372,371	152,428	444,274	127,852
Travel	319,631	224,134	256,095	272,501
Criminal Justice Council	172,500	271,900	306,600	205,900
Building and Equipment	147,822	214,153	440,422	2,109,354
Utilities	121,930	123,712	114,160	105,757
Postage/Shipping	112,608	79,359	77,289	109,115
Printing	48,392	57,025	65,868	67,616
Training Fees	33,694	37,426	60,105	65,501
Other	45,180	8,775	19,287	27,563
<b>Total Expenditures</b>	<b>\$ 48,125,786</b>	<b>\$ 48,484,936</b>	<b>\$ 50,813,550</b>	<b>\$ 51,816,256</b>
<b>Transfers</b>				
Transfers Out General Fund	\$ (17,041,100)	\$ (17,488,800)	\$ (13,530,000) <sup>1</sup>	\$ (11,000,000)
<b>Total Transfers</b>	<b>\$ (17,041,100)</b>	<b>\$ (17,488,800)</b>	<b>\$ (13,530,000)</b>	<b>\$ (11,000,000)</b>

<sup>1</sup> \$3,000,000 was swept from the Concealed Carry Deadly Weapons fund to the General Fund in fiscal year 2015.

Source: Commonwealth of Kentucky Accounting System, eMARS

## Appendices

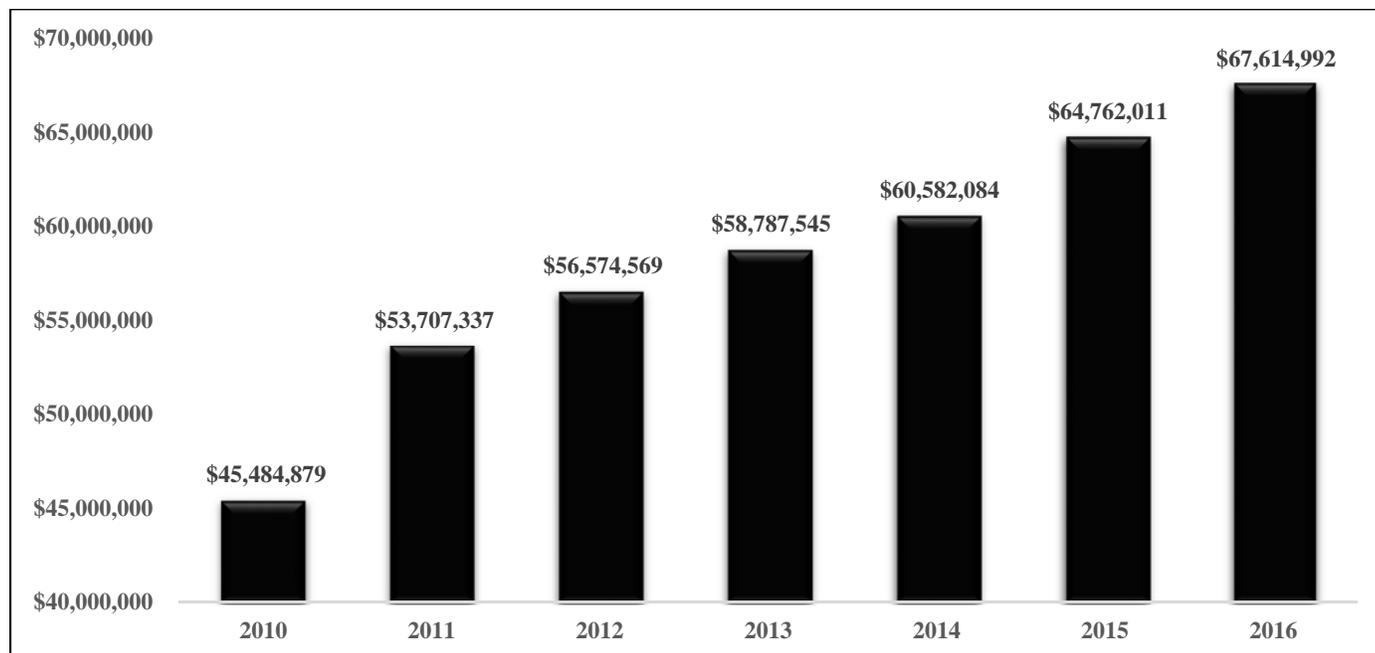
### Appendix C - KLEFPF Non-Incentive Payments To EKU Discussed In Finding 2, Finding 3, And Finding 4

Classification	For The Fiscal Year Ended June 30,				
	2013	2014	2015	2016	Total
Principal	\$ 1,490,000	\$ 1,555,000	\$ 1,625,000	\$ 1,695,000	\$ 6,365,000
Other Professional Services-1099 Rept	1,177,888	1,122,695	1,158,161	1,169,445	4,628,189
Interest Paid On Debt-1099 Rep	677,824	580,906	511,876	445,450	2,216,056
Meals for Employees/Students	450,152	394,688	339,852	380,166	1,564,858
Classroom Supplies	41,100	37,761	144,701	100,723	324,285
Maint Of Blds & Grnds-1099 Rep	31,470	58,704	136,680	76,066	302,920
Telephone Charges - Other	91,187	93,304	59,219	45,701	289,411
Networking Hardware > \$5,000		230,965	23,749	23,232	277,946
Buildings/Fixed Equipment		250	88,218	119,580	208,048
Postage And Postage Meters	70,592	47,209	38,687	28,327	184,815
Motor Fuels And Lubricants	53,187	37,425	30,549	20,876	142,037
Office Supplies	63,474	34,152	5,539	3,252	106,417
Cable Services			17,952	17,952	35,904
Other Capital Outlay			32,661		32,661
Networking Hardware < \$5,000	6,213	18,736			24,949
Building Materials & Supplies	6,087	11,616	735	4,754	23,192
Networking Hardware Maintenance			2,092	20,002	22,094
Office Software	4,745		3,740	8,396	16,881
Laundry & Cleaning-1099 Rept	6,397	5,470	800		12,667
Consulting Services-1099 Rept			1,990	8,515	10,505
Personal Computer Hardware < \$5,000				10,104	10,104
Janitorial & Mainten Supplies	6,285	1,312	312	507	8,416
Rec/Ath/Theat/Musical Supplies				8,000	8,000
Business Applications Software Maintenance	3,919		4,045		7,964
Employee Training-St Emp Only	87	5,325	1,250	250	6,912
Furn/Fixt/Off Eqp Under \$5,000	2,455			4,283	6,738
Networking/Infrastructure Software	6,200				6,200
Data Storage Hardware < \$5,000	5,814				5,814
Server Hardware < \$5,000	5,210				5,210
Networking/Infrastructure Software Maintenance	5,153				5,153
Office Software Maintenance				4,098	4,098
Database Software Maintenance		3,989			3,989
Serv N/Othwise Class-1099 Rept			365	3,605	3,970
Rental-Non-St Own Bld&Lnd-1099			1,050	875	1,925
Rentals N/Otherwise Class-1099		1,695			1,695
Other IT Software Maintenance	1,572				1,572
Other IT Hardware < \$5,000	1,506				1,506
Insts & Apparatus Under \$5,000	1,054				1,054
Janitorial Serv-N/Emp-1099 Rpt				750	750
Maint Of Equipment-1099 Rept			425		425
Printers & I/O Hardware < \$5,000	395				395
Freight			290		290
Printing Paid To St Agency		223			223
Telephone Charges - Wireless/Cell		96	98		194
Repairs N/Othwise Class-1099		175			175
Household And Kitchen Supplies		137			137
Business Applications Software	108				108
Maint Of Vehicles-1099 Rept				(5,075)	(5,075)
<b>Total</b>	<b>\$ 4,210,074</b>	<b>\$ 4,241,833</b>	<b>\$ 4,230,036</b>	<b>\$ 4,194,834</b>	<b>\$ 16,876,777</b>

Source: Commonwealth of Kentucky Accounting System, eMARS

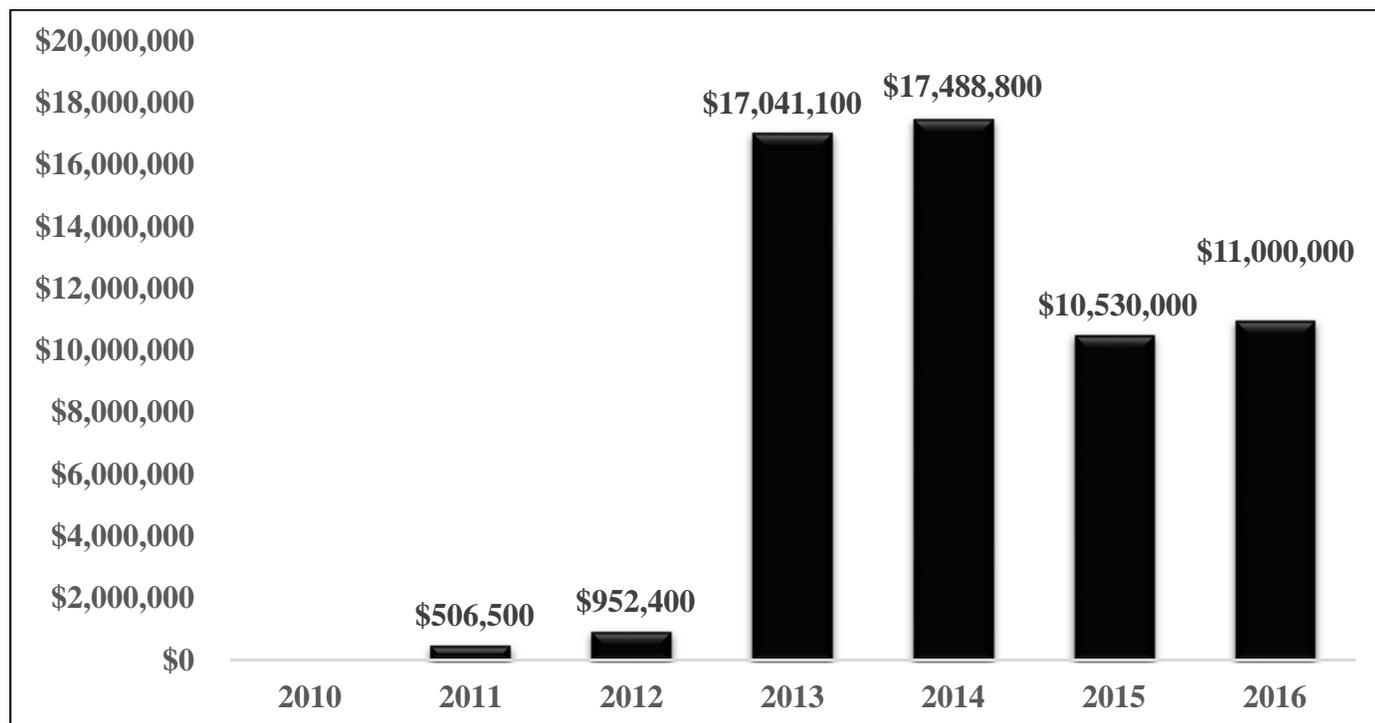
## Appendices

### Appendix D - KLEFPF Receipts By Fiscal Year



Source: Commonwealth of Kentucky Accounting System, eMARS

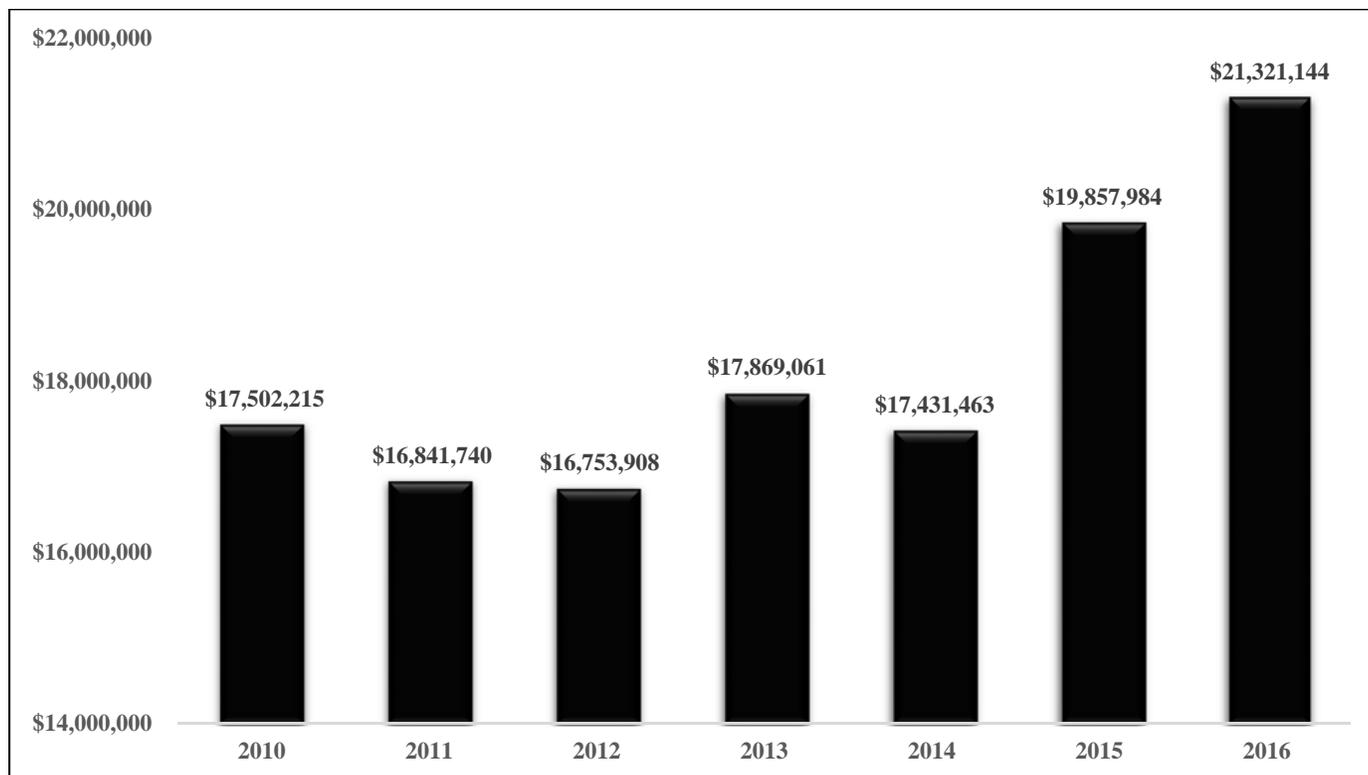
### Appendix E - General Fund Sweeps From KLEFPF By Fiscal Year



Source: Commonwealth of Kentucky Accounting System, eMARS

## Appendices

### Appendix F - DOCJT Operating Expenditures<sup>1</sup>

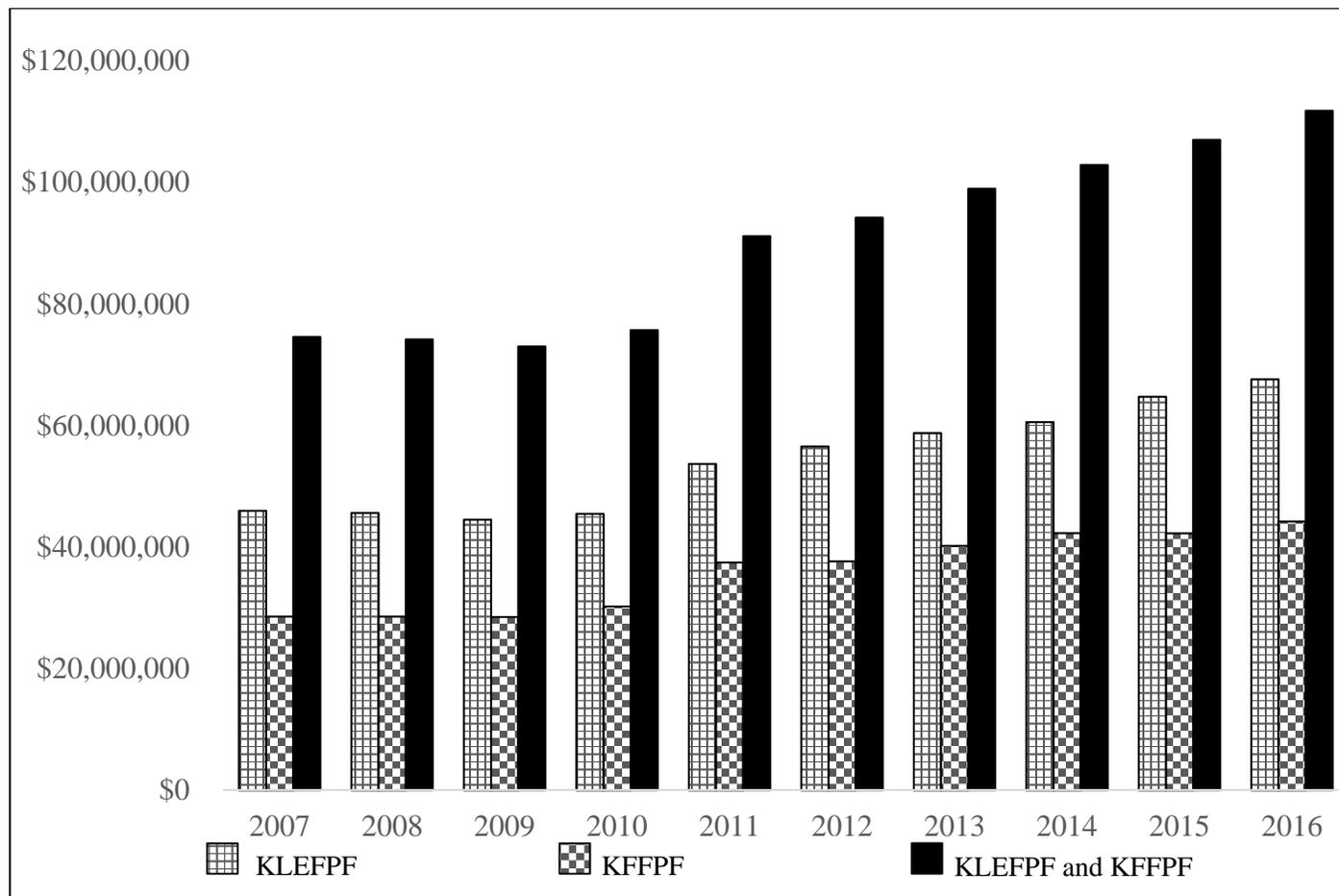


<sup>1</sup> Operating Expenditures in this chart include Salaries and Benefits, Debt Service, Building and Equipment, Fleet, and Other Operating Costs but do not include Incentive Payments to Officers.

Source: Commonwealth of Kentucky Accounting System, eMARS

## Appendices

### Appendix G - Kentucky Law Enforcement Foundation Program Fund (KLEFPF) And Kentucky Firefighters Foundation Program Fund (KFFPF) Receipts By Fiscal Year



Source: Commonwealth of Kentucky Accounting System, eMARS

**JUSTICE AND PUBLIC SAFETY CABINET'S  
MANAGEMENT RESPONSE**





**JUSTICE AND PUBLIC SAFETY CABINET**

**Matthew G. Bevin**  
Governor

**John C. Tilley**  
Secretary

125 Holmes Street  
Frankfort, Kentucky 40601  
(502) 564-7554  
(502) 564-4840 (fax)

Sept. 23, 2016

Honorable Mike Harmon  
Auditor of Public Accounts  
209 St. Clair Street  
Frankfort, Ky. 40601

RE: Preliminary Response to Management Performance Audit

Dear Mr. Harmon:

Over the past nine months, the Justice and Public Safety Cabinet has undergone a pivotal transformation in our leadership, our values and our commitment to the public interest. Chief among these values is our emphasis on transparency and accountability throughout our entire operation.

Unfortunately, the prior administration did not instill these principles at the Department of Criminal Justice Training (DOCJT), where our recent transition has uncovered a culture of poor management and misconduct. For many years, DOCJT has remained an opaque and arcane agency, operating just along the periphery of public accountability. That approach is not only unfair to taxpayers and our law enforcement agencies, it is decidedly incompatible with that values and standards of our new administration.

Our new leadership team at DOCJT, in conjunction with our team at the cabinet, has worked aggressively to identify and eliminate any abuse of public resources and protect funds raised for the benefit of law enforcement. However, we requested this audit in April to ensure that – under our watch – DOCJT operates with the highest degree of accountability and transparency possible.

While we are disappointed that your review has confirmed many of our concerns about DOCJT's prior leadership, we want to extend our gratitude for your thorough and invaluable work. We are pleased that you share our commitment to the dedicated peace officers who serve our communities and rely on these resources for support.

We can also report that corrective action is already underway to address most of the findings in this review, and we want to thank DOCJT's new leadership team for their nimble and proactive approach to the lingering problems of the prior administration.

While we will continue to review your audit report in detail, we also would like to highlight some of the progress occurring at DOCJT under our new team.

- In May, Mark Filburn was appointed as the new DOCJT commissioner, bringing more than 30 years of experience in community policing, criminal investigations and law enforcement training. Commissioner Filburn has worked tirelessly in aligning the department's policies, personnel and resources with its statutory mission.
- Thanks to Gov. Matt Bevin's commitment to using the Kentucky Law Enforcement Foundation Program Fund for the needs of law enforcement, certified peace officers across the state are receiving their first training incentive raise in 15 years. The move affects nearly 7,300 Kentucky officers who are served by DOCJT. Unlike previous years, all additional fund transfers in the current budget were allocated for the benefit of law enforcement.
- DOCJT is preparing to work with Eastern Kentucky University (EKU) to rewrite and clarify its contract terms for the procurement of goods and services. Leadership has also worked with staff to oversee and clarify the appropriate use of this contract.
- The hiring agreement with EKU is under review, and the department has begun the process of moving EKU contract employees into the state merit system. Several high-paid contract positions have been eliminated, and DOCJT has overhauled the hiring process to ensure integrity and transparency.
- The department has discontinued the previous administration's use of state resources for retirement parties and has ceased using travel vouchers for inappropriate expenditures. When meals are needed at the firearms range to prevent interruptions in training, the department has obtained authorization from the state Office of the Controller. DOCJT is also obtaining preapproval from the controller for any meal costs related to working lunches.
- The Office of Legal Services in the Justice and Public Safety Cabinet has reached out to the Finance and Administration Cabinet and will work with EKU to conduct a legal review and determine which entity owns the DOCJT-occupied facilities.
- DOCJT has substantially reduced the personnel and publishing costs of its quarterly magazine, including elimination of a high-salaried editor position. The department continues to seek efficiencies involving the use of digital content and online distribution, and leadership has reiterated the magazine's mission as an informational resource for officers in the field.

- Our new leadership team unequivocally supports the independence of the Kentucky Law Enforcement Council, separate and apart from DOCJT, and is undertaking a reorganization to ensure separation of powers.

Again, we thank your office for this invaluable audit – and for your expertise in helping resolve these concerns. In addition to this letter, we intend to provide a point-by-point response within 60 days of receiving the final audit report and will continue to implement reforms to the department in the meantime.

We also want to commend DOCJT's front-line staff, who have greeted this audit with professionalism and dedication. Their first-hand knowledge of operations has been essential in identifying abuses, and they have demonstrated a high degree of commitment under our new leadership team.

Sincerely,

A handwritten signature in blue ink, appearing to read "John C. Tilley". The signature is fluid and cursive, with the first and last names being clearly legible.

John C. Tilley  
Justice and Public Safety Cabinet Secretary

