

INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT

Minutes of the 3rd Meeting of the 2019 Interim

August 22, 2019

Call to Order and Roll Call

The third meeting of the Interim Joint Committee on Local Government was held on Thursday, August 22, 2019, at 10:30 AM, in Room SWC 101 of the Kentucky Fair and Exposition Center in Louisville, Kentucky. Representative Michael Meredith, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Wil Schroder, Co-Chair; Representative Michael Meredith, Co-Chair; Senators Christian McDaniel, Morgan McGarvey, Robby Mills, Dan "Malano" Seum, Damon Thayer, and Johnny Ray Turner; Representatives Danny Bentley, George Brown Jr, Larry Elkins, Deanna Frazier, Joe Graviss, Kim King, Russ A. Meyer, Jerry T. Miller, Rob Rothenburger, John Sims Jr, and Ashley Tackett Laferty.

Guests: Representative Jason Petrie; 16th House District; Mayor Greg Fischer, Louisville Metro Government; Jasmine Heiss, Vera Institute of Justice; Josh Crawford and John Wright, Pegasus Institute; Shellie Hampton, Kentucky Association of Counties; Ron Wolf, Associated General Contractors of Kentucky; Dustin Miller and Prentice Harvey, Government Strategies, LLC; Bryanna Carroll, Kentucky League of Cities; and Pam Thomas, Mountain Association for Community Economic Development.

LRC Staff: Mark Mitchell, John Ryan, and Cheryl Walters.

Upon the motion of Senator McDaniel, seconded by Senator Schroder, the minutes from the June 6 and July 19, 2019 meetings were approved.

Welcome Remarks

Mayor Greg Fischer, Louisville Metro Government, welcomed the Committee to Louisville. Mayor Fischer told members that Louisville has had good economic momentum. Eighty thousand jobs have been created and 2,700 new businesses have opened. There have been closures and cuts, mostly in public safety, which is 55 percent of Louisville's budget.

Regarding revenue, one-third of Louisville's revenue comes from tourism. Twenty new hotels have been built for bourbon and food tourism.

Metro Corrections has had tremendous success with its “Enough is Enough Program” where people with drug abuse are given medication and rehabilitation instead of incarceration.

Discussion of County Jail Populations and Trends in Incarceration

Ms. Jasmine Heiss, with the Vera Institute of Justice, presented statistics on jail incarceration in Kentucky. The Vera Institute has three core priorities: transforming the conditions of our nation’s jails and prisons; promoting safety and trust in a diverse America; and closing mass incarceration’s front door by reducing the overuse and misuse of jails. It is the jail over-incarceration crises that is the focus of this discussion.

Kentucky continues to increase incarceration when the national trend is toward decreasing incarceration. In 2018, Kentucky had the eighth highest rate of pretrial detention in the U.S., the second highest rate of jail admissions, and the highest rate of prison admissions. While the U.S. overall prison population decreased by 15 percent between 2008 and 2018, Kentucky’s incarceration rate rose 5.9 percent.

Small counties have been driving mass incarceration in jails and prisons at the highest rate since 2006. This is true nationally with rural communities bearing the highest rates of mass incarceration even as cities move to reduce their use of jails.

Historically jails were only used to detain people before trial who posed a flight risk or who were too dangerous to be in the community. As recently as the 1990s, less than 33 percent of people facing felony charges were assessed a financial bail amount before trial. It is only since 1998 that most people have been assessed a financial bail amount before trial. Administrative Office of the Courts data showed that only 40 percent of cases in Kentucky resulted in release on non-financial bond in 2018.

In a small handful of states, jails have become a place where people serve out their sentences. Nationally, using jails to house a small amount of prison populations is not uncommon. Thirty-four states use jails to hold around 82,000 state prisoners or 6% of the total prison population. Kentucky’s use of local jails to house state prisoners is very unusual with Louisiana being the only state to rely more heavily on jails to house state prisoners.

The Kentucky Department of Corrections has twelve prisons that house more than 12,000 people, but nearly half of the total prison population is held in 76 local jail facilities. In 35 jails, state prisoners make up the majority of the persons held. In 13 counties, state prisoners equal 70 percent or more of the jail population.

Holding state prisoners was often only assumed to be a revenue boon for counties. Using county jails to house state prisoners invites two major risks: when jails are expanded to accommodate new people, the increase in beds often leads to an increase in pretrial

detention; and local taxpayers are responsible for paying for the building costs if the state or federal government no longer sends people to be housed in the facility.

The practice of holding state prisoners in jails has inflated jail populations and in many counties has tied the financial viability of those jails to the status quo of criminal justice policy and practice. The state system, to avoid overcrowding, holds half its population in county jails where overcrowding is pervasive. If the jails reduced the number of state prisoners to alleviate overcrowding, the state would need to add 4,300 beds or reduce the population by that number. The loss of the per diem of these state prisoners being held in jails would equal \$50 million in lost revenues to counties, annually. Studies indicate there is no correlation between prison development and long-term economic growth. It is urgent for Kentucky to think about other paths for economic resilience for struggling communities.

Yearly, there are 11 million admissions to local jails. This is 18 times the number of admissions to state and federal prisons. The construction of newer and bigger jails has been the response to overcrowding, as has been the case in some Kentucky counties. In 2011, the Department of Justice estimated that \$22.2 billion has been spent on jails.

When a jail confronts overcrowding, often the county commissions a jail population projection. Such projections necessitate future decisions about justice decision making including arrests, prosecutions, pretrial release, sentencing, and crime rates themselves. These conditions are variable and, absent jurisdictions where these factors may be particularly stable, render most projections invalid when making projections beyond two years into the future. Bigger jails necessitate bigger expenditures. The link between incarceration and a reduction in crime is weak. Increased employment, graduation rates, increased consumer confidence, and changes in policing strategies, such as more community focused policing, show stronger associations with crime reduction.

An increase in reliance on incarceration may cause an increase in crime and cause harm. Being in jail before trial increases a person's likelihood of future arrest, particularly if that person has a limited criminal history. Recent peer-reviewed research shows a correlation between incarceration and drug related deaths. Counties and regions with high incarceration rates are associated with a 50 percent increase in drug related deaths compared to areas with low incarceration rates. This research shows that incarceration may fuel an overdose epidemic. Incarceration rates are a bigger factor in drug related mortality than the prescription rates of opioids.

Incarceration is shaped by state policy, but is a local issue, too. Reinvesting state and local dollars in community based responses and true crime prevention strategies, and shifting from incarceration based economic survival in some Kentucky counties, will shape a more vibrant future for Kentucky.

In response to a question from Senator McDaniel, Ms. Heiss stated that the institute was closely following news reports that the Grant County jail was closing and that it was struggling, but she was glad to hear from Senator McDaniel that the jail was not closing.

In response to a question from Representative Bentley, Ms. Heiss replied that the Vera Institute gets the data from jail reports that are submitted by Kentucky's counties to the Department of Corrections and Bureau of Justice Statistics.

Representative Meredith commented that counties are at the mercy of the state policies and are funding jails at levels that they feel they have to. The state needs to begin to understand the situation and move forward in a comprehensive way.

Mr. Josh Crawford, Director of Criminal Justice Policy with the Pegasus Institute, told the Committee that there are three take-aways from his testimony: Kentucky county jails are overcrowded, and that's a problem; Kentucky's county jail crowding is a uniquely Kentucky problem; and if Kentucky legislators do not fix it, a federal judge likely will.

In Kentucky, 72 percent of jails are at or over 100 percent capacity, and just under nine percent are at or over 200 percent capacity. It is a result of a structural problem that has developed over time in the Commonwealth and not the fault of local governments or jailers.

A 2012 Government Accountability Office report found that overcrowded conditions contribute to increased inmate misconduct, more competition for prison services such as educational or vocational training programs, and a lack of meaningful work opportunities for prisoners during their incarcerations. It can also contribute to faster spread of disease inside the jail. This jeopardizes both staff and inmate health and, ultimately, public safety, as jail crowding is associated with higher risks of recidivism. A recent study found that inmates coming out of severely overcrowded facilities were 2.5 times more likely to recidivate than inmates in non-severely crowded facilities.

Contributing factors to overcrowding include increased pre-trial populations, convicted misdemeanants, and state prisoners serving their sentences in a county jail.

California's prisons were grossly overcrowded, and a federal judge mandated that the prisons reduce their populations to no more than 137.5 percent of design capacity. Their experience has produced mixed results, and Kentucky would be well-served to avoid federal intervention.

Solutions for jails overcrowding would be pretrial reform, probation reform, and the creation of additional state prison space.

Pretrial reform has been an ongoing conversation for some time. Discussions have been productive with judges and others in the criminal justice system to ensure that the measures are reasonable, measured, and achieve the desired goals. There is a large number of individuals in Kentucky being detained on bonds of less than a thousand dollars because they cannot afford to pay the bond. These inmates are non-violent, non-sexual offenders with minimal criminal histories. They could be released on non-financial bonds, with bonds that they could afford, or under other forms of supervision by taking into account the individual's means during the pretrial process.

Probation and parole should be reformed to make them more meaningful alternatives to incarceration. As inmate populations increase, parolee and probation populations increase even more as probation and parole staff have not been adjusted accordingly. By using swift and certain sanctions, hiring additional probation officers and clinical staff, probation and parole can be made more viable for a subset of the population such as those having committed crimes associated with substance addiction.

The state must increase its state prison capacity to ameliorate such a large portion of state inmates in county jails. Just under half the state population of prisoners reside in county jails.

Dr. John Wright, Senior Fellow for the Pegasus Institute and Professor of Criminology at the University of Cincinnati, said the major growth in prisoners has occurred largely because the population in the Commonwealth has continued to increase, and just as more schools need to be built more schools and roads to accommodate population increases, so prison capacity needs to be increased. Prison capacity is a matter of state infrastructure, just like roads and schools.

In 2005, there were a total of around 286,000 arrests in Kentucky. Last year there were 520,000. In 2005, there were 46,000 drug arrests, and last year there were almost 68,000. In 2005, there were 115,000 violent crime arrests, and last year there were 276,000.

In comparison with other similar states, Kentucky prisons are about 4,500 beds short. There are ways other than building new prisons to alleviate overcrowding. In addition, prisoners can be transferred from older facilities that cost more to operate in order to save money. It is an infrastructure problem, but it would be best to look at the options now, including the recommendations both the Vera Institute and the Pegasus Institute have recommended, before possible court intervention.

In response to a question from Representative Tackett Lafferty, Dr. Wright stated that every option should be looked at including considering facilities that are not currently in use, but also facilities that might be in service and suitable for expansion.

In response to a question from Representative Petrie, Ms. Heiss replied that a report is coming from the Kentucky Administrative Office of the Courts (AOC) that has a breakdown of pretrial and Class D misdemeanor population. Representative Petrie commented that without that data, it is not known where the overcrowding exists. Dr. Wright stated that Pegasus is also expecting AOC data.

In response to a question from Representative Meredith, Ms. Heiss and Dr. Wright stated that reports will be sent to the Committee when received.

In response to a question from Senator McDaniel, Mr. Crawford said he would not recommend using private jails to help with overcrowding.

Senator McDaniel suggested that the public may not be supportive of increasing taxes to finance incarceration costs and inquired what solutions there may be. Mr. Crawford said that while he did not have the numbers at hand, in examining some of the operational costs of existing facilities, the numbers suggest that new facilities may be more cost effective.

Ms. Heiss noted that, relating to offsetting costs, that oftentimes that prisoners cannot pay when charged with the costs of their incarceration time, and collection costs can exceed the actual amounts of revenue owed.

Senator McDaniel commented that inmates incarcerated with a drug related crime leave in better shape than when they arrived because they received better medical care than they have in the years prior to their incarceration.

Senator Mills commented that some county jails are housing state and federal inmates and making those jails profitable.

In response to a question from Representative Meredith, Ms. Heiss stated that like Kentucky and Louisiana, most jails throughout the country are administered by the counties.

Representative Meredith commented that he believed that some of the pre-trial detentions were spurred by families trying to interrupt family members' substance abuse.

Ms. Heiss stated that substance abuse treatment as a condition of pretrial release can be equally effective, and that people who are released from jail are up to 120 times more likely to die from an overdose if they are not immediately connected to community based care.

Representative Meredith commented that he was aware of some creative approaches by counties to try and help persons with substance abuse issues.

In response to a question from Representative Meredith, Ms. Heiss said state-based pretrial services already exists and can help route people to treatment programs. The Vera Institutes is working with AOC to get an idea where there is extra capacity in treatment centers in the Commonwealth.

In response to a final question from Representative Meredith, Mr. Crawford said that regionalization of jails gets bi-partisan support, but the devil is in the details, as it ends up being a question of revenue sharing, resource sharing, and ensuring that there is adequate space and resources in those facilities, but from a 30,000 foot perspective it is a step in the right direction. Ms. Heiss stated that the question to regionalize would be considered on a county by county basis, but an advantages can be gained by sharing costs when costs take too much of county budgets.

There being no further business, the meeting was adjourned at 11:40 a.m.