

INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT

Minutes of the 4th Meeting of the 2019 Interim

September 12, 2019

Call to Order and Roll Call

The fourth meeting of the Interim Joint Committee on Local Government was held on Thursday, September 12, 2019, at 8:00 AM, in Room 171 of the Capitol Annex. Representative Michael Meredith, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Michael Meredith, Co-Chair; Senators Denise Harper Angel, Christian McDaniel, Morgan McGarvey, Robby Mills, Albert Robinson, Damon Thayer, and Johnny Ray Turner; Representatives Danny Bentley, Jeffery Donohue, Larry Elkins, Deanna Frazier, Joe Graviss, Cluster Howard, Regina Huff, Kim King, Jerry T. Miller, Rob Rothenburger, and John Sims Jr.

Guests: Secretary John Tilley, Kirstie Willard, Deputy Commissioner Hilarye Dailey, and Cyndi Heddleston, Justice and Public Safety Cabinet; Christian County Jailer Brad Boyd, and Oldham County Jailer Mike Simpson, Kentucky Jailer's Association; Campbell County Judge/Executive Steve Pendery; Shellie Hampton, Kentucky Association of Counties; Prentice Harvey, Government Strategies, LLC; and Ron Wolf, Associated General Contractors of Kentucky.

LRC Staff: Mark Mitchell, John Ryan, Joe Pinczewski-Lee, and Cheryl Walters.

Approval of Minutes

Upon the motion of Representative Sims, seconded by Senator Mills, the minutes from the August 22, 2019 meeting were approved.

Discussion of State and Local Fiscal Impact of Housing State Prisoners in Jails

Secretary John Tilley stated that the true crisis of the state is over-incarceration. The state and counties are trying to work together on this issue. State law passed in the 1990's requires the state to place Class D inmates in county jails. This represents about 12,000 inmates and is just under half the overall state inmate population. Kentucky is tenth in the nation in prison population.

In 1970, the state incarcerated around 3,000 people at a cost of five million dollars. Today the state incarcerates 24,000 persons and will spend 650 million dollars in correction costs. Kentucky is lucky as a state that something has not occurred relative to the prisons and jails which has not drawn national headlines.

Jails have limited resources. Only 21 jails of the 76 have substance abuse programs. The state pays an extra nine dollars for housing inmates in those jails. Around 50 jails have one-off classes, such as a weekly parenting class. This is less than what is provided to state inmates in prisons.

Jails were not built for long stays but for pretrial stays. In 2016, there were 37,000 pretrial inmates that were housed for 109 days at a cost of 100 million dollars. Kentucky's pretrial incarceration rate is too high, despite Kentucky having the gold standard in pretrial services. The issue of pretrial stays can be solved with common sense bail reform. The question for pretrial incarceration should be whether or not the accused is dangerous or a flight risk. It should not be based on whether or not the individual can pay the bail.

Overcrowding in jails is an issue. Although programs within the jails do help, the lack of space makes it difficult to implement. Recidivism rates in Kentucky's state prisons are lower than that of jails because of programming. Kentucky's reentry program is nationally recognized.

Performance-based jail funding would be helpful, but it is unfeasible at the present time. Per diems have not been increased in 11 years. The cabinet would advocate for an increase, but would also advocate for the incentivization of better practices to go along with an increase in the per diem to a particular jail. The issue of modernizing the monetary degree associated with felony level convictions, which is presently 500 dollars should also be examined. Thirty-eight states have increased their felony threshold levels: Texas is at 2,500 dollars and Georgia and South Carolina have set theirs at 2,000 dollars. The cabinet is willing to work with counties to develop a cost sharing model to avoid shifting the costs entirely to jails were the felony conviction monetary levels changed upward.

Kentucky needs to address its rising female incarceration rates. It is second in the country in per capita female incarceration. Kentucky has more women in prison than in the entire state of New York. The female incarceration growth rate is five times that of the male incarceration growth rate. Over 80 percent of the state female incarcerated are serving their time in county jails with little or no programming services.

In response to a question from Representative Meredith, Secretary Tilley replied that the rankings in the country for the male and female incarceration growth rate is per capita.

Senator McDaniel commented that the number one issue in Kentucky is a fully funded pension system. Most of the general public is not concerned with the overcrowding of prisoners. It is important, but not the main concern of the committee. There is a lack of uniformity and quality in jails. There needs to be a coherent and affordable plan.

Representative Meredith commented that the over-crowding of prisoners is an issue for three committees: Appropriations and Revenue, Judiciary, and Local Government Committees.

Secretary Tilley agreed with Senator McDaniel regarding the pension issue. He also agreed that jails are not uniform, and the only options the cabinet has when conditions warrant, is to remove state prisoners, which they have done, or shut jails down completely which then requires finding places for that jail's prisoners.

In response to a question from Representative Frazier, Secretary Tilley said that it is mandated to place state inmates in county jails and that taking on state prisoners with the idea that the per diem may help them with other costs may not work out. Ms. Kirstie Willard, Director of Local Facilities with the Justice and Public Safety Cabinet said that unfortunately, the overwhelming majority of Madison County's inmates are county inmates. The cabinet has no authority to require another county to take them inmates from another county.

In response to a question from Senator Thayer, Secretary Tilley replied that the drug epidemic issue, especially opioids, is the main reason for the marked increase in female incarceration.

In response to another question from Senator Thayer, Secretary Tilley stated that Kentucky's trafficking laws are as tough as those in any other state that comes to mind, but studies do not support the thought that tougher trafficking laws eliminate drug abuse.

In response to a question from Representative Miller, Secretary Tilley replied that there has been overwhelming support for common sense bail reform. People just need to look at the 2016 figures which included 37,000 low-to-moderate risk offenders who served an average number of 109 days in jail, to see what the impact would be if common sense bail reform was instituted. That amounts to 120 million dollars and represents a significant amount of bed days, also.

In response to a question from Representative Rothenburger, Secretary Tilley said that the issue of inmates losing their Medicaid benefits while awaiting trial stems from the federal government and is a huge issue for the cabinet. Representative Rothenburger asked Secretary Tilley to get back with him on the specifics of the Medicaid issue.

Representative Rothenburger commented that “citing and releasing” is not working out because people are failing to appear and follow court orders, causing the issuance of a warrant. Secretary Tilley said in Utah, misdemeanors were reduced to violations, as well as in Kentucky. In Kentucky’s case, the failure to appear rate did not change.

In response to a question from Representative Meredith, Secretary Tilley said all 76 full service jails in Kentucky house state inmates.

In response to another question from Representative Meredith, Ms. Willard said all 76 jails are over populated.

Representative Meredith said that the counties are subsidizing the state in regards to housing prisoners.

Senator McDaniel requested Secretary Tilley to estimate what it would cost to remove the state prisoners from county jails and house them in state facilities on an initial and ongoing basis.

Discussion of Issues relating to the Incarceration of Prisoners in Jails

Christian County Jailer and President of the Kentucky Jails Association (KJA) Brad Boyd, told the Committee that Kentucky has 76 full service jails, four regional jails, four life safety jails, and 40 jails that have been closed. Kentucky’s jails house county inmates, state inmates, and federal inmates and ICE detainees.

In regard to county jail populations, jailers do not arrest, set bail or bond, prosecute, sentence, or classify the inmates located in the facilities. Jailers are charged with housing and caring for inmates’ health. Many jails offer programming to inmates with little additional funding from the state. The jail population is often in very poor health, suffering from drug addiction, mental illness, dental decay, need for dialysis, heart conditions, and other conditions. The state’s classification system dictates which inmates can be housed in what facilities.

Regarding county jail budgets, funding comes from state appropriations which includes the jail bed allotment, daily per diem, Local Corrections Assistance Fund, county general fund dollars; and restricted funds which would be, for example, the commissary. While county jails have continuously been asked to do more with less, county jails want to continue working with the state to keep Kentucky safe and institute smart programs to reduce recidivism.

Solutions include raising the county jail per diem and comprehensive penal code reform. County inmate populations, including pre-trial and sentence misdemeanants should be considered in any reforms moving forward. Bail reform is something the association has been supportive of in the past. Raising the threshold for felonies is something the

association would be happy to discuss, but it is not known if that is the solution. Expansion of substance abuse programs within jails is desirable, but the policy of segregation of those inmates from the other jail population is problematic for some jails space-wise. For years, the KJA has fully supported uniform training for all deputy jailers. The KJA plans to work with members of the legislature to ensure such training, but funding is an issue. If any jail officers or staff are engaging in inappropriate behaviors, the KJA does not condone that behavior. In fact, the KJA's leadership went as far as to request the resignation of a particular jailer before news of inappropriate behavior was reported.

Oldham County Jailer and Vice President of the KJA Mike Simpson told the Committee that even though 40 county jails have closed, it does not mean that counties are out of the jail business. Oldham County's contractual per diem with other counties to house their inmates exceeds the state's per diem rate. Televisions might be able to assist with allowing inmates to participate in drug rehabilitation programs.

Senator Thayer commented that beyond inmates receiving a bed, meals, and not being mistreated, the public is ambivalent at best regarding inmates. Jailer Simpson agreed, but the public needs to be educated so they will care since they are directly affected.

Jailer Boyd stated that he did not agree with "cite and release" for a person caught with heroin or cocaine, and that it was not the answer for drug addiction—at least not without treatment.

In response to a question from Representative Meredith, Jailer Boyd replied that Christian County outsources with Trigg County. In response to another question from Representative Meredith, Jailer Boyd said the lowest cost per day to house other county's inmates with them is \$25 per day, with the highest being \$35 per day. Trigg County does not pay what it actually costs Christian County to house them.

Senator McGarvey commented that people do not know the difference between jails and prisons. While awaiting trial, it is estimated that in Kentucky 20 percent of prisoners are in jail, because they cannot afford bail to be released before their trial. Jailer Simpson agreed and said that methods to instill hope are needed.

In response to a question from Representative Rothenburger, Jailer Simpson said county jails are not mandated to have medication programs for prisoners with drug addictions. Jailer Boyd said that Kenton County operates a program and that Christian County ensures that prisoners on a medication program receive their medication.

Senator McDaniel commented that jail is the place that saves people's lives. Inmates receive medical and dental care, and are eating better than before they went in.

Senator Thayer stated that it was time to have a serious discussion about bail reform.

Discussion of Costs Associated with the Incarceration of Prisoners in Jails

Campbell County Judge/Executive Steve Pendery agreed that the public does not care about inmates and should be more engaged. One way to get the public's attention is to educate them on how much of their tax money is used to pay for the incarceration of inmates. Jails are the biggest business for Campbell County—half of the county's employees work for the jail. Counties spend the most money on jails.

From an economic standpoint, the taxpayers save nothing if the state cuts a cost only to pass it on to counties. If this practice results in inefficiency, then the taxpayers actually pay more.

The per diem is \$31.34 per state inmate, per day, but it actually costs Campbell County \$50 per inmate, per day. That per diem paid to counties is roughly half what it costs the state to house a prisoner per day.

Just under two dollars per day is allowed for medical costs for each state prisoner. Campbell County has applied to get money from the state's catastrophic medical fund to be reimbursed for medical expenditures but cannot collect from it. The entire state's catastrophic medical fund could be absorbed by Campbell County's costs alone.

Counties should be able to take a sick prisoner across the state line, which is a mile away in the case of Campbell County, for medical treatment, rather than paying for costs to take them to Louisville or elsewhere. Counties should also be allowed to receive prisoners from other states to reduce costs.

In response to a question from Representative Meredith, Judge Pendery stated that Campbell County's jail costs are higher than the current pension contribution. In response to another question from Representative Meredith, Judge Pendery agreed that pension and jail costs are county's most expensive services.

In response to other questions from Representative Meredith, Jailer Simpson said that while per diems from the federal government vary, his jail receives 57 dollars a day to house prisoners and that medical and transportation costs are covered by the federal government. Ms. Willard said that there is one private prison still in operation, and she would get the figure for the per diem it receives for the chairman.

Representative Frazier noted county limitations in raising general fund dollars to offset jail costs.

The next meeting of the Committee will be held October 3, 2019. There being no further business, the meeting was adjourned at 10:10 a.m.