

JAIL AND CORRECTIONS REFORM TASK FORCE

Minutes of the 2nd Meeting of the 2020 Interim

August 21, 2020

Call to Order and Roll Call

The 2nd meeting of the Jail and Corrections Reform Task Force was held on Friday, August 21, 2020, at 10:00 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: Senator Whitney Westerfield, Co-Chair; Representative Michael Meredith, Co-Chair; Senators Michael J. Nemes and John Schickel; Representatives Jason Petrie and Ashley Tackett Laferty; Commissioner Cookie Crews, Secretary Mary C. Noble, and Steve Shannon.

Guests: Ray Weis, President/CEO, Dismas Charities; Jan Kempf, Executive Vice President and COO, Dismas Charities; Jennifer Hancock, President and CEO, Volunteers of America; Tiffany Cole Hall, COO, Volunteers of America; Tony Higgins, President/CEO, Opportunity for Work and Learning; Dawn Hanzel, Center Director, Opportunity for Work and Learning; Kirstie R. Willard, Director, Division of Local Facilities, Department of Corrections; Wendy Morris, Commissioner, Behavioral Health, Developmental and Intellectual Disabilities; Dr. Allen Brenzel, Medical Director, Behavioral Health, Developmental and Intellectual Disabilities; KOLEEN SLUSHER, Division Director, Behavioral Health, Developmental and Intellectual Disabilities.

LRC Staff: Katie Comstock and Yvonne Beghtol.

Approval of Minutes

Senator Nemes made a motion to approve the July 31, 2020 minutes, seconded by Senator Westerfield, and passed by voice vote.

Reentry Services

Ray Weis, President and CEO of Dismas Charities, and Jan Kempf, Executive Vice President and COO of Dismas Charities, gave an overview of Dismas Charities' 56 year partnership with the Kentucky Department of Corrections (DOC) and their goal of creating successful long-term outcomes for offenders and cost savings for the Commonwealth. Dismas Charities operates 31 Bureau of Prisons re-entry programs in 13 states. In Kentucky, Dismas Charities operates 7 state facilities for the Department of Corrections (DOC), 3 licensed substance abuse programs, and a 45 bed federal re-entry facility in

Manchester. Of the 110,000 federal and state residents served by Dismas Charities since 2005, 24,454 were from the Commonwealth. Dismas Charities has developed a data driven system referred to as the FreshStart System, to track their residents. Substance abuse residents stay approximately 112 days. Probation and parole residents stay about 57 days. Mr. Weis stated that Dismas Charities developed a Biometric Resident Accountability Module (RAM) to track every transaction that occurs with a resident and staff via fingerprinting, in lieu of paperwork. Since 2005, residents working on a community release program have accumulated over 11,000,000 hours of community service. Residents have collected over 100,000 basic adult education and General Educational Development (GED) hours, as well as 108,396 hours of secondary education, and 215,000 cognitive and life skills and support group hours. Dismas Charities currently has a 71 percent successful completion rate. In 2009, Dismas Charities partnered with the DOC to track, for two years, those that completed the program to see if they recidivated. The recidivism rates ranged from 9.7 percent to 14.5 percent between 2009 and 2014. Mr. Weis stated that Dismas Charities works with offenders to prevent further victimization. He also highlighted the ongoing issue of having empty beds in a reentry program that could be in use. Dismas Charities has been accommodating to whatever the current needs are, such as changing from an all male facility to all female, and offering a specialized sex offender program.

Jennifer Hancock, President and CEO of Volunteers of America (VOA), began by stating that VOA offers evidence based services, serving approximately 25,000 people per year through public health services, veterans services, services for individuals experiencing homelessness or are at risk of homelessness, and provide support for individuals dealing with a substance use disorder. VOA is accredited by the Council of Accreditation (COA). Results are measured and VOA is accountable for outcomes, making sure there is a real return for the investments made. VOA is the only provider in Kentucky to be certified by the American Society of Addiction Medicine. VOA partners with research institutions to acquire an evaluation of their work. VOA also focuses on the family system when looking at the work they are doing. VOA has partnered with the Justice and Public Safety Cabinet to offer a Restorative Justice Program. Youthful offenders who have committed crimes that do not include sex or violent crimes are kept in the community, helping them safely make amends and restoring a victim's sense of safety and wholeness. Ms. Hancock stated that because VOA also offers housing, other behavioral health services, public health services, and case management and follow up services, VOA is able to engage individuals in the most holistic way and support them reuniting with family, which is essential before reentering the community.

Tiffany Cole Hall, COO of Volunteers of America, gave an overview of the Halfway Back Men's Program, a partnership with DOC. The program is a 50 bed unit in Louisville, Kentucky, staffed by clinical, licensed, and peer-support specialists. Being able to go virtual has allowed the program to maintain its 35 hour weekly schedule during COVID-19. The VOA has an Individualized Outpatient Program (IOP), based on individual needs and clinical progress. The client is assessed during the first 72 hours and reassessed weekly

to determine their placement in either the 45, 60, or 90 day program, which currently shows a 65 percent completion rate. Ms. Hall also highlighted the Freedom House Program, which offers assistance to pregnant and parenting women to help overcome substance use disorder and to keep families together. The four to six month program currently serves almost 70 families. Ms. Hall mentioned that the VOA programs are collaborative with all referral sources in an effort to reaching client success.

Ms. Hancock stated that VOA has been very aggressive in implementing all of the Center for Disease Control (CDC) guidelines as it relates to COVID-19 and have had zero positive tests from clients or staff at the Shelby Men's Campus.

Ms. Hancock shared the testimony of a man who came to the VOA 12 years ago who had been incarcerated for five years, had a substance use disorder, and was charged with drug trafficking and possession. He is now a successful entrepreneur, business owner, married with two children, and received a pardon from former Governor Beshear, which allowed him to test to become a real estate agent.

Tony Higgins, President and CEO of Opportunity for Work and Learning (OWL), stated that the goal for OWL is to help individuals with barriers to acquire and retain employment by partnering with different businesses within the community. In 1961, OWL opened the Lexington Manufacturing Center (LMC) as a sheltered workshop where people with disabilities could work with no interaction with the community. LMC is now a for-profit manufacturing company that allows integrated and competitive work for anyone who wishes to participate. All profits go to support the mission of OWL. The OWL center offers programs to help prepare participants for work, identify jobs that may be suitable for them, help to obtain jobs, and offer support to help maintain employment. Participants may be tracked for 90 days up to several years. OWL offers Advancing Capabilities Enhancing Skills as a Medicaid waiver program to assist those with developmental and intellectual disabilities. Mr. Higgins also stated that LMC is an ISO 9001 certified integrated and competitive workplace offering employment to those with a felony conviction of a non-violent or sexual nature.

Dawn Hanzel, Center Director of OWL, stated that the Office of Vocational Rehabilitation (OVR), Workforce Reentry, and Supplemental Nutrition Assistance Program Employment and Training (SNAP) are the three major programs collaborating with OWL. Clients can have a wide range of disabilities which includes substance use disorder and reentry. The Workforce Reentry program was not funded this fiscal year, but it is believed it will be funded next year, and has been the last three years. OWL assesses the needs of business and industry, then the needs of clients, and develops the skills of clients to meet the needs of the business and industry, serving most of the Bluegrass Area Development District. Ms. Hanzel gave a link to share the success story of a previous client: <https://youtu.be/DGnxWFNOcQY>. She then reviewed the programs and assistance offered through OWL. OWL partners with approximately 50 agencies within the

community to assess the employment skills and needs of the individuals and match them with businesses who work with OWL in finding jobs for these participants.

In response to Chairman Meredith, Ms. Hancock agreed that the number of empty beds increased due to the COVID pandemic. Ms. Hancock replied that VOA has been working with the Justice and Public Safety Cabinet to resolve this issue. Due to the pandemic, VOA can now bill Intensive Outpatient Program for Medicaid eligible services, which helps offset the lost revenue. Mr. Weis agreed that the referral process needs to allow maximizing the reentry programs during times of crisis. Secretary Noble recently met with Dismas Charities and VOA. Now that there are many programs available, even prior to the COVID pandemic, centers were not at full capacity. In response to Chairman Meredith, Mr. Weis stated that the success rate refers to those who have completed the program and the recidivism rate refers to those who have completed the program and have not re-offended with a new crime within two years. The recidivism rate has lowered over the years due to the programs provided by the DOC. The biggest reason for failure to complete the program is due to re-involvement with drugs and alcohol. If an individual stays past 72 hours, their chance of success doubles.

Kentucky Local Correctional Facilities Construction Authority

Kirstie R. Willard, Division Director of Local Facilities for DOC, began by reviewing the changes made by the passing of HB 463 in 2011. Prior to HB 463, it was a county's decision to build or expand, and the county was responsible for the funding. However, HB 463 required approval by the Kentucky Local Correctional Facilities Construction Authority (LCFCA) for construction of a new jail or expansion of a jail to increase square footage by adding prisoner bed space. Any expansion to a current jail must result in a minimum of 150 prisoner beds. The LCFCA continues to review those plans and blueprints to ensure they meet the requirements of Kentucky Jail Standards. The 2018-2020 biennial budget, and the 2021 budget prohibits reimbursement for any new approved construction.

Counties submit the application/request to the Division of Local Facilities for review. The Division of Local Facilities notifies the LCFCA to ensure that all of the information required by statute are met, and the LCFCA determines whether to approve or deny. The statutory requirements for consideration include whether or not the construction is necessary, proposed number of beds, and sufficient funding. Determining whether there is a sufficient source of revenue to pay for the operation and maintenance, and whether the county can afford to maintain the facility is a major factor.

Director Willard showed a list of the approved projects since the enactment of HB 463. There are four new facilities and 18 additions. Two of the counties have decided not to continue with their approved projects, but there is no provision in the statute to take away the approval. At this point, the LCFCA has not denied any construction requests. The

construction approvals from 2014 to 2017 brings the total of secured beds to 2,512 and restricted custody beds to 89.

In response to Chairman Meredith, Director Willard confirmed that any construction project requires that, upon completion, the facility has to total 150 prisoner beds. In response as to why DOC has not denied any construction request, Director Willard stated that although the DOC pays for the architectural plans and engineering services, it is up to the county to determine if they want to take on the financial responsibility to pay the loan amount, maintain the facility, and find a revenue source to cover those costs. In response to the reimbursement language used in the past three years of budget bills, Director Willard stated that DOC strongly supports moving this language from the budget bill to statute.

Intensive Inpatient Mental Health Treatment

Wendy Morris, Commissioner of Behavioral Health, Developmental and Intellectual Disabilities (BHDID), began by stating that the mission for BHDID is to provide leadership to prevent disability, build resilience in individuals and their communities, and facilitate recovery for people whose lives have been affected by mental illness, substance abuse, or intellectual and developmental disabilities.

Commissioner Morris stated that 50 percent of those who develop mental health disorders show symptoms by the age of 14, and 75 percent develop mental health conditions by the age of 24. Early intervention can make a difference. Ms. Morris showed a map of the Kentucky public behavioral health systems of care facilities to include hospitals, long-term care facilities, intermediate care facilities, specialty clinics, personal care homes, community-based residential substance abuse programs, and community mental health centers (CMHC). The BHDID offers a limited amount of forensic psychiatric services. Competency evaluations are performed for the courts for those with felony and misdemeanor charges. The evaluations can be done inpatient, at the jails, or at a community based location. Currently, there is a waiting list for this service. There is also a very limited amount of competency restoration. The Kentucky Correctional Psychiatric Center (KCPC) is the one facility that offers forensic psychiatric services. Due to the COVID pandemic, the KCPC is not getting as many referrals, and are not accepting referrals from any jail that has an active outbreak. The wait list has dropped from an average of 132 to 60, and the average wait time of six to eight weeks to approximately two weeks.

Competency evaluation falls under KRS 504.020 to determine if an individual is responsible for criminal conduct based on mental illness or intellectual disability and the lack of capacity to be able to either appreciate the criminality of their conduct or to conform to the requirements of the law. The term “mental illness or intellectual disability” does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct. It does require a diagnosis by a physician. If a defendant is found incompetent to stand trial and there is no substantial probability they will attain competency in the

foreseeable future, there will be a court proceeding under KRS Chapter 202A or 202B. This moves the case from a criminal court to a civil court, which can create issues.

Competency restoration is not a funded service and is only attempted at the KCPC. Not all conditions improve with treatment and some are progressive. Once criminal charges are dismissed, an individual can be evaluated under the civil commitment proceedings.

The state psychiatric hospitals offer an in-depth, three day psychosocial assessment, treatment plans, education, and discharge plans. Admission into and treatment from a psychiatric hospital is regulated by KRS Chapter 202A. No one can be involuntarily committed unless they are diagnosed with a mental illness. Some of the limitations to inpatient treatment include the restriction of using punitive measures such as seclusion or restraints, the patient has the right to refuse treatment, the facilities are designed for short-term admission, patients are encouraged to mingle in common areas outside of their rooms, rooms are double occupancy, and most are not forensically secure with fencing, armed guards, or metal detectors.

Intermediate Care Facilities (ICF) serve individuals with intellectual and developmental disabilities. The ICFs provide active treatment, training, and community integration. The Supreme Court made a decision in 1999 regarding the American Disability Act stating that individuals cannot be compelled to live in a setting such as an ICF or state hospital long-term. The admission criteria is set by KRS Chapter 202B which consists of having an intellectual disability diagnosis, and presenting a danger or threat of danger to themselves or others. The limitations of ICFs include being under the regulations of the Center for Medicare and Medicaid Services, resident rights, restriction on the use of certain interventions, and forensically unsecure due to unlocked buildings, common spaces, and having open grounds in urban or suburban settings.

The increase of capacity to provide mental health promotion, prevention, and early intervention continues to be a priority for BHDID by improving access to safe and affordable housing, integrating behavioral health and physical healthcare, specialty courts, and exploring new strategies for certified community behavioral health centers and the serious mental illness waiver.

In response to Chairman Meredith, Commissioner Morris stated that the BHDID has spoken with other states and explored options to increase KCPC capacity to be able to offer services to those individuals who do not meet the criteria of KRS Chapter 202A. Dr. Allen Brenzel, Medical Director of BHDID, agrees that there is a small subset of individuals who are found incompetent, not restorable, and who continue to have severe behavioral challenges. The most beneficial option is to work toward intervening early, to avoid situations where these individuals enter the justice system. Chairman Meredith requested that any updates to this process as well as the cost estimates for expansion of KCPC be submitted to this committee.

There being no further business, the meeting adjourned at 12:04 PM.