

LEGISLATIVE OVERSIGHT & INVESTIGATIONS COMMITTEE

Minutes

October 12, 2023

Call to Order and Roll Call

The 5th meeting of the Legislative Oversight & Investigations Committee was held on October 12, 2023, at 1:00 PM in Room 131 of the Capitol Annex. Senator Brandon J. Storm, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Brandon J. Storm, Co-Chair; Representative Adam Bowling, Co-Chair; Senator Jason Howell, Vice Chair; Senators Julie Rague Adams, Danny Carroll, Donald Douglas, Gerald A. Neal, and Reginald Thomas; Representatives Lindsey Burke, Ken Fleming, Matt Lockett, Steve Riley, Scott Sharp, and Pamela Stevenson.

Guests: Kerry B. Harvey, Secretary, Kentucky Justice and Public Safety Cabinet; Vicki Reed, Commissioner, Department of Juvenile Justice; James B. Sweatt II, Executive Director, Office of Detention, Department of Juvenile Justice; Larry Chandler, Deputy Director, Office of Detention, Department of Juvenile Justice; Ed Jewell, Special Investigative Manager, Internal Investigations Branch, Kentucky Justice and Public Safety Cabinet; Steve Potts, Special Investigative Agent, Internal Investigative Agent, Kentucky Justice and Public Safety Cabinet; Brian Scott West, Deputy Public Advocate, Department of Public Advocacy; and Lauren Bieger Hunter, Directing Attorney, Glasgow Office, Department of Public Advocacy.

LRC Staff: William Spears, Committee Staff Administrator; Committee Analysts McKenzie Ballard, Jacob Blevins, Ryan Brown, Christopher Hall, Taylor Johnston, Jeremy Skinner, Shane Stevens, and Joel Thomas; and Ashley Taylor, Committee Assistant.

Approve Minutes from September 14th, 2023

Upon a motion by Representative Sharp and second by Representative Lockett the minutes for the September 14, 2023, meeting were approved without objection.

Department of Juvenile Justice Update on Oleoresin Capsicum Spray, Allegation Investigations, and Use of Isolation

Secretary Harvey began by noting that the Department of Juvenile Justice (DJJ) Compliance Division is tasked with investigating events that occurred at the Adair Regional Juvenile Detention Center last November, but the division did not exist at the time of those events. The division was created during a reorganization with passage of SB 162 during the 2023 Regular Session. Commissioner Reed added that the investigation is on-going, but near completion, and that DJJ would share the finished report with the committee. She noted that Kentucky State Police also have an on-going investigation into the events.

Senator Storm asked for an update on the American Civil Liberties Union's request for the Department of Justice to open an investigation into the Adair Regional Juvenile Detention Center events. Secretary Harvey clarified that the request was made of the U.S. Department of Justice, and that he did not know the status of its investigation.

Regarding the use of oleoresin capsicum (OC) spray, commonly referred to as "pepper spray," Secretary Harvey explained that two relevant changes occurred as a result of SB 162. DJJ created an Office of Detention and DJJ was required to ensure appropriate staff have controlled access to OC spray and are properly trained in the use of OC spray. Six months prior to DJJ's deployment of OC spray, there were 29 instances of youth assaulting staff in their juvenile detention facilities. Only eight assaults were reported since deployment of OC spray.

Mr. Chandler noted that prior to enactment of SB 162, DJJ began procuring OC spray and developing policies and training. Early on, there were instances where disciplinary action had to be taken against staff who misused the spray. In response to Senator Storm's request to explain OC spray training, Mr. Chandler stated that the training is provided at the Jefferson County academy and consists of exposure to the chemical and a review of the policies regarding its use at juvenile detention centers. DJJ policies focus on its use as a defense tactic, not as a punitive tool. Senator Carroll asked for the specific wording of DJJ's policy regarding when it is appropriate to use OC spray. Mr. Chandler replied that the policy states DJJ staff should use the least amount of force possible to prevent major property damage and assaults on staff. His office and the Internal Investigations Branch (IIB) review every instance where OC spray has been used and that detention center staff involved in those instances are debriefed.

Senator Carroll noted there will be apprehension about safety given recent events at juvenile detention centers and there will be instances where OC spray is improperly used. He cautioned against overreacting until DJJ can standardize policy across all facilities based on the documentation and review of instances where OC spray was deployed.

In response to Senator Carroll's request for examples of where OC spray had been improperly deployed, Mr. Chandler recalled a case at the Adair Regional Juvenile Detention Center where a staff member was terminated. Another instance in Campbell County involved a captain who misused OC spray and resigned before disciplinary action could take place. In response to Senator Carroll's request for more detail, Mr. Sweatt explained the captain deployed OC spray after being frustrated with a youth. He also noted that they record every deployment of OC spray, which serves as an investigative tool and an important training tool to show staff proper and improper use of OC spray. Mr. Sweatt added that it is important to understand that these facilities have staffing issues to the extent that almost all detention center staff are new hires and they have recently completed training. It will take time to bring everybody up to speed on the policies and procedures for the proper use of OC spray.

Senator Douglas noted that the language of Senate Bill 162 mandated that OC spray can be used, it did not mandate its use.

In response to Senator Storm's questions about how DJJ documents OC spray use in areas where there is no video coverage, Mr. Sweatt stated that management would still know the incident had occurred because each can of OC spray is weighed at check-out and check-in. Deployment also requires clean-up afterwards. A report is generated after any instance and shared with the department and IIB. Responding to Representative Bowling's question about the chain of command and timeline for such reporting, Mr. Sweatt stated that he and IIB are immediately contacted following an OC spray incident. Representative Bowling explained that his question stemmed from Campbell County reports of staff sexually assaulting a youth that were not immediately reported to DJJ. Mr. Sweatt noted that facility staff were not following DJJ

reporting procedures and that, as soon as his office was aware of the situation, they took disciplinary action to rectify the problem. No one involved in that instance still works for DJJ.

Mr. Sweatt answered affirmatively to Senator Storm's question regarding whether records track when staff call the agency's internal hotline to report incidents. Mr. Sweatt understood that the hotline had received no calls about the incidences at the Campbell County facility.

Secretary Harvey discussed sexual misconduct by staff on youth and stated that 55 incidents have been reported since 2015, of which six were substantiated.

Senator Thomas asked what harm comes to those youth who have been pepper sprayed. Mr. Harvey replied that DJJ policy requires that youth receive proper medical attention, but noted that he is not aware of any case where a youth had a serious reaction or required hospitalization.

In response to a question from Senator Douglas about how often youth sexually assault staff, Commissioner Reed stated DJJ is required to keep records of such instances under the Prison Rape Elimination Act (PREA). Commissioner Reed said she would send that information to the committee. Commissioner Reed then discussed how DJJ meets PREA training requirements, detailing the components of each session.

Senator Storm asked for an update on the Campbell Regional Juvenile Detention Center, including whether both males and females are accepted. Secretary Harvey noted that female juveniles had been moved to Boyle County, where the staff are more experienced and the youths' situation has improved. Since then, staffing has grown at the Campbell County facility. They are scheduled to start housing lower-level male juveniles in the Campbell County facility by mid-November.

Mr. Jewell provided a brief overview of IIB and the cases it reviews. Responding to a question from Representative Lockett, Mr. Jewell explained how claims of sexual misconduct are reported to his office and then explained the process used to investigate cases.

In response to Representative Lockett's question about substantiating a claim, Mr. Potts noted their standard of proof is a preponderance of evidence. He explained the four types of conclusions for investigations, with "substantiated" being one. He agreed to provide the committee data showing the results of IIB's investigation.

In response to Senator Carroll's questions, Mr. Potts stated that there are currently eight IIB employees. All IIB employees are former law enforcement, but not sworn officers. He also outlined the training his staff receive. Mr. Jewell explained that the investigator makes the final call on whether to substantiate a claim, but the investigator's report is approved by superiors. Senator Carroll asked whether there have ever been elected official or political appointees involved in the investigation process. Both Mr. Jewell and Mr. Potts replied there had not been.

In response to a question from Senator Thomas, Mr. Potts clarified that his office only investigates allegations of adult staff abusing a youth. Senator Thomas asked how many staff and offenders have been at the juvenile detention centers since 2015, but Mr. Jewell noted that DJJ would have that data instead of IIB.

In response to questions from Representative Bowling, Mr. Jewell stated IIB received its first report of the Campbell County incident on May 31 and IIB would have reported it to the Office of Legal Services that same day. Mr. Potts clarified for Senator Storm that prior to May 31, neither IIB or the DJJ hotline monitored by IIB received reports of sexual misconduct at the Campbell County facility.

In response to a question from Representative Fleming, Mr. Jewell stated that his office reviews all deployments of OC spray. Mr. Potts added that most investigations have concluded that OC spray was properly used.

Conditions of Youth at Juvenile Detention Centers

Mr. West and Ms. Hunter, both from the Department of Public Advocacy (DPA), presented their investigation on the use of isolation at the Adair County Regional Juvenile Detention Center. They also discussed DPA's statutory authority, a review of the legal aspects of confining youth, and examples of problems they identified. Their full presentation is available on the Legislative Oversight and Investigations Committee webpage.

In response to a question from Senator Neal, Mr. West stated they have not sued nor are they threatening to do so. Senator Neal asked how DPA informed DJJ of the problems it identified. Mr. West replied that prior to a couple months ago, he would have informed DJJ at their monthly meetings, but DPA no longer attends them.

In response to a question from Representative Burke, Mr. West stated that DPA had not looked at any other youth detention centers. Representative Burke asked Ms. Hunter if she had noticed any structural differences between the Adair facility and others she visited, to which Ms. Hunter replied they were structurally similar. Representative Burke cited statistics related to the negative effects of youth confinement and requested that the Department of Juvenile Justice Workgroup take up this issue.

In response, Secretary Harvey stated this was the first time he had seen DPA's report or heard of the allegations. He could not comment until he could review it. He welcomed the chance to meet with DPA to discuss the issues they identified and to find a solution. Commissioner Reed provided examples of when confinement may be used to show the complexity of the issue.

In response to a question from Representative Lockett, Commissioner Reed stated that no youth are currently placed in isolation longer than what is allowed in policy. Youth were kept in their cells for long periods in the past, but it resulted from staffing issues and questions of safety; youth were not isolated for extended periods punitively. In response to Representative Lockett's question regarding whether there is a hearing for every instance of isolation, Commissioner Reed said that there was not. Most of the youth who go into isolation are out in four hours, adding that most are in isolation long enough to regain self-control.

Senator Carroll noted that problems with isolation came up several times in the Department of Juvenile Justice Workgroup. He also mentioned that there is another external group looking into DJJ's use of isolations. In response to questions from Senator Carroll, Commissioner Reed explained DJJ updates its policies with new statutes or regulations and policies on isolation have not changed because policies still meet recognized standards. She and Secretary Harvey provided examples of when policies were broken. Senator Carroll recommended they amend policies to add valid exception to standing policy.

Senator Carroll inquired about the changes made at the Campbell County facility to ensure safety now that males and females will be housed together. Mr. Sweatt clarified that only male youth will be housed at that facility.

Testimony on Confined Animal Feeding Operations in Western Kentucky

Mr. Donald Peters, a resident of Owensboro, requested to speak about problems with the construction of a 780,000-gallon hog-waste lagoon by the largest privately-owned hog operation in the state. He argued that a large portion of problems with the lagoon stem from the classification of confined animal feeding operations (CAFOs). In this case, state classification prevents the facility from having to conform to federal regulations and permitting. He also expressed concern that the Kentucky Division of Water is not fulfilling its obligations to monitor CAFOs. He argued that the lack of oversight resulted in a 67 percent decrease in local property values and caused many health concerns. He requested that the committee investigate these issues.

Adjournment