INTERIM JOINT COMMITTEE ON JUDICIARY

Minutes of the 3rd Meeting of the 2023 Interim

August 3, 2023

Call to Order and Roll Call

The third meeting of the Interim Joint Committee on Judiciary was held on Thursday, August 3, 2023, at 11:00 a.m. in Room 149 of the Capitol Annex. Representative Daniel Elliott, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Daniel Elliott, Co-Chair; Senators Karen Berg, Matthew Deneen, Johnnie Turner, and Phillip Wheeler; Representatives Kim Banta, John Blanton, Kevin D. Bratcher, Josh Bray, Lindsey Burke, Jennifer Decker, Stephanie Dietz, Patrick Flannery, Keturah Herron, Nima Kulkarni, Derek Lewis, Savannah Maddox, Kimberly Poore Moser, Jason Nemes, Jason Petrie, Steve Rawlings, and Scott Sharp.

Guests: Damon Preston, Public Advocate, Department of Public Advocacy; B. Scott West, Deputy Public Advocate, Department of Public Advocacy; April Hester APRN, CRNA; Representative Daniel Grossberg, House District 30; Representative John Hodgson, House District 36.

LRC Staff: Roberta Kiser, Matt Trebelhorn, Randall Roof, Josh Shelepak, Elizabeth Hardy, and Robert Wright.

A motion was made by Rep. Blanton and seconded by Senator Deneen to approve the minutes of the July 20, 2023 meeting. Minutes were approved by voice vote without objection.

Immunity from Criminal Liability for Health Care Providers

Representative Nemes presented on protection of healthcare providers from criminal prosecution when a mistake resulting in a fatality is made during the administration of the provider's duties, unless the provider has engaged in gross negligence, or wanton and willful, malicious, or intentional misconduct.

April Hester stated that hospitals employ security fail safes to avoid incidents of intentional or accidental misconduct, but holes in these systems can lead to situations where healthcare providers can make mistakes. Ms. Hester stated that legislation like House Bill 252 from the 2023 Session is needed to protect healthcare providers from criminal liability when accidents occur in security blind spots.

In response to a question from Representative Elliot, Representative Nemes confirmed there have been no cases like the Tennessee case in Kentucky, but House Bill 252 would put the protection in statute.

In response to a question from Representative Rawlings, Representative Nemes confirmed that House Bill 252 does not provide immunity for healthcare providers from criminal liability if they have committed an intentional violation of the law when providing medical treatment.

In response to a question from Representative Moser, Ms. Hester confirmed the impetus for House Bill 252 was a related incident in Tennessee.

In response to a question from Senator Berg, Ms. Hester stated this legislation was brought forth in response to an incident in Tennessee where a health care provider is facing criminal charges for unintentionally administering an incorrect medication which led to the death of a patient.

In response to a question from Representative Flannery, Representative Nemes stated that assault and battery charges arising from intentional conduct would not be protected under House Bill 252.

Representative Petrie questioned if House Bill 252 could be interpreted as extending immunity in a service sector that other professions might seek.

In response to a question from Representative Burke, Representative Nemes clarified House Bill 252 would not protect healthcare providers in cases of gross misconduct.

In response to a question from Representative Blanton, Representative Nemes confirmed that House Bill 252 does not prevent a criminal investigation. This bill codifies the common law for a provider to be charged with a criminal act.

In response to a question from Representative Kulkarni, Representative Nemes stated he would review whether reckless conduct should be added.

Department of Public Advocacy (DPA) Update

Damon Preston and B. Scott West discussed the Department of Public Advocacy's (DPA) current staffing issues regarding staff attorneys versus contract attorneys, the upcoming merger between the Louisville-Jefferson County Public Defender Corporation with the state's Department of Public Advocacy set forth by House Bill 568, challenges facing the DPA regarding the transition and continuation of services after the merger, and DPA's legislative priorities for 2024.

In response to a question from Representative Nemes, Mr. Preston stated that the merger between the Louisville-Jefferson County Public Defender Corporation with the state's Department of Public Advocacy will occur by the deadline of July 1, 2024, set by House Bill 568 with no disturbances in service.

In response to questions from Representative Elliot, Mr. West stated that DPA does promote the federally run Public Service Loan Forgiveness program to attract young attorneys to DPA, but the average tenure of a public defender is under five years.

In response to questions from Representative Bratcher, Mr. Preston stated that it is the position of the Department of Public Advocacy that incarcerated clients should not be required to attend virtual court hearings.

Mr. Preston further stated that 56 percent of DPA's attorneys are from Kentucky.

In response to a question from Representative Flannery, Mr. Preston explained how the allotted $435 funding per new trial case is determined.

In response to a question from Representative Moser, Mr. Preston stated that underserved locations are episodic and not geographical.

In response to a question from Senator Turner, Mr. Preston stated the most efficient system is one comprised of full-time public defenders compared to contracting out to private attorneys.

In response to a question from Representative Flannery, Mr. Preston recommended that members of the General Assembly speak to their local judges to prevent DPA from being assigned cases without proper review.

Privacy Protection

Representative Hodgson, Representative Blanton, and Representative Grossberg presented on protection of Kentuckians from electronic surveillance, the sale of license plate data from license plate reader cameras, the use of AI to create deepfakes, and the mandated microchipping of individuals.

In response to a question from Representative Bratcher, Representative Hodgson stated that the bill would have four separate parts focusing on AI, deepfakes, license plate reader data, and microchipping.

In response to a question from Representative Elliot, Representative Grossberg stated that the bill does not contemplate restrictions on government-mandated microchipping of individuals. Representative Grossberg, Representative Blanton, and Representative Hodgson stated they would be amenable to include a provision that Kentucky state employees could not be mandated to be microchipped.

Adjournment

There being no further business, the meeting adjourned at 12:25 p.m.