

JAIL AND CORRECTIONS REFORM TASK FORCE

Minutes of the 3rd Meeting of the 2020 Interim

September 18, 2020

Call to Order and Roll Call

The 3rd meeting of the Jail and Corrections Reform Task Force was held on Friday, September 18, 2020, at 10:00 AM, in Room 171 of the Capitol Annex. Senator Whitney Westerfield, 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, John Schickel, and Robin L. Webb; Representatives Jason Petrie and Ashley Tackett Laferty; Cookie Crews, Mary C. Noble, and Steve Shannon.

Guests: Barry Brady, Marion County Jailer; Kirstie R. Willard, Director, Division of Local Facilities, Department of Corrections; Hilarye Dailey, Deputy Commissioner, Office of Support Services, Department of Corrections; Russell Roberts, Chief Growth Officer, Securus Technologies, Inc.; Emily Utz, Account Manager, Securus Technologies, Inc.; Kevin Sharkey, Staff Attorney, Protection and Advocacy.

LRC Staff: Katie Comstock and Yvonne Beghtol.

Approval of Minutes

Representative Petrie made a motion to approve the August 21, 2020 minutes, seconded by Senator Nemes, and passed by voice vote.

Performance Based Funding for Jails

Barry Brady, the Marion County Jailer, highlighted the increase in housing costs for Kentucky prisons. At the Marion County Detention Center, housing costs rose from \$32.76 per day in 2011 to \$51.96 per day in 2020, with a potential 21.67 percent increase from 2013 to 2021. Mr. Brady stated that there has been no increase in the per diem received from the state for the past 15 years for housing state inmates. The increased costs are attributed to inmate medical costs, deputy wages, and staff benefits. The Marion County Detention Center staff pay went from \$9.50 per hour in 2013 to \$12.25 per hour in 2020. State retirement contributions increased from 18.89 percent in 2013 to 26.95 percent in 2020.

Mr. Brady provided an overview of the programs offered and completed at his facility in 2019. When a prisoner completes a program they are issued good time, which reduces the minimum expiration date of felony offenders. This shortens their supervision period, thereby reducing the budgetary liability to the state. Calculating the good time hours issued in 2019, using the \$31.34 rate for general housing, equals a savings of \$1.55 million dollars. The contribution of jail programming is evident and necessary. In spite of the cost increases, county jails are the largest incarceration industry in the state of Kentucky. Pre-Covid, there were 24,000 prisoners housed in county jails. There are currently 18,446 inmates housed in county jails. Class D felons are required to be housed in county jails. Mr. Brady encouraged the funding of programs to help offenders rehabilitate and return home. In 2005, grant money was used to provide more programs and treatment beds. The majority of staff at the Marion County Detention Center have been working at the facility for less than five years, with the average salary being \$13.58 per hour. Counseling staff received an adjustment last year, with a starting salary of \$17.00 per hour.

Senator Schickel commented that the jail dollar is the most efficient dollar citizens pay for corrections in Kentucky. The cost of jails and corrections is a government responsibility and only receives five percent of the total state budget. Senator Schickel agrees that it is frustrating that inmates are currently not able to participate in jail programs due to Covid.

In response to Senator Nemes, Mr. Brady stated that the Bullitt County Detention Center is housing all levels of defendants awaiting to be adjudicated. Therefore, the new body scanner, extra security, and other tools have been helpful with operations. Some of the changes made due to Covid have been beneficial but adds to the cost.

In response to Chairman Meredith, Mr. Brady stated that the increase in inmate medical costs is driven by offenders' physical and mental health, increased drug use, and the cocktail of drugs being used today.

Kirstie R. Willard, Division Director of Local Facilities for the Department of Corrections (DOC), stated that the passing of HB 463 was the catalyst for evidence-based programming. Initial implementation of evidence-based programming has proven to be a cost effective means to reduce recidivism. The program provides nonviolent, low risk offenders the tools to reduce their sentencing time and helps them become successful participants in society. Offenders who complete evidence-based programs are given sentencing credits to reduce their time of incarceration which results in cost savings. Ms. Willard stated that jails and prisons are not receiving funding for the evidence-based programs. DOC submitted a budget request to provide funding for additional programs, but it was not approved. However, the current State/Executive Branch Budget has a provision for county jails to offer evidence-based programs and requires the DOC to issue guidance to county jails no later than July 1, 2020. Ms. Willard stated that, due to no funding being appropriated, the

guidance was very minimal. If future funding is approved, the DOC will be happy to expand guidance on implementing the programming.

In response to Senator Nemes, Mr. Brady is not sure if the savings from not having to transport prisoners can be transferred to jails to offset Covid costs.

Jailer Phone Service Vendors

Chairman Westerfield announced that Combined Public Communications, a provider for Kentucky jails, responded that no one from their business was available to present for today's meeting. Chairman Westerfield notified Combined Public Communications that they may be subpoenaed to present.

Russell Roberts, Chief Growth Officer for Securus Technologies, Inc., stated that Securus is responsible for ensuring that the products and services they provide are tailored to each facility's request. Securus has a history in providing traditional calling services and the related investigative services. Securus also provides video visitation and tablets for media education. Securus provides service to 22 counties in Kentucky, with an estimated 10,760 average daily population (ADP), pre-Covid. Securus Technologies also serves an additional 13,700 ADP through the DOC. The same level of technology offered to the DOC and larger counties is offered to smaller counties due to Securus hosting the data on a centralized platform. Mr. Roberts stated that Securus partnered with Kentucky counties to provide 317,386 free calls, 5,602,073 free minutes, and 17,739 free video connect sessions to enable communication during the pandemic. Since 2017, Securus has invested over \$1,400,000 in hardware, infrastructure, and network to provide video connect and tablet media education services in Kentucky.

In response to Chairman Westerfield, Mr. Roberts stated that a higher volume from a facility allows the provider to spread their cost over a larger base of minutes. Smaller agencies have a lower volume, making cost recovery on a per unit basis more difficult. Mr. Roberts stated that Securus tries to ensure that contracts with each county guarantees recovery of their capital investment with that county. The updating of hardware and infrastructure happens on a regular basis as hardware breaks down and technology partners change, requiring new infrastructure every three years. When media services require updating, Securus pays for and installs the new network, which is part of the cost of service. Securus currently has three data centers but is moving to two. Securus has a fully redundant network so that if any of the data centers are wiped out, they can complete the entire county's volume of traffic within one data center. The centers are located in Miami and Dallas. Securus is looking at ways to migrate some of the data center traffic to Amazon web services.

Mr. Roberts stated that the investments Securus has made in Kentucky has helped keep essential communication flowing during the pandemic. The price range for video connect ranges from \$5.00 to \$12.99 for up to 30 minute visit sessions. Chairman

Westerfield agreed with Mr. Roberts that video communication should not replace in-person visits.

Senator Schickel commented that in-person visitation is necessary to ensure rehabilitation and that we need to be vigilant in making sure video communication does not replace in-person visitation.

In response to Chairman Westerfield, Mr. Roberts stated that a defense attorney would work with the jail, and the jail would notify Securus tech support if corrections to recorded conversation are required. Mr. Roberts confirmed that Securus receives a list of defense attorney contacts and the information is updated into the system. Ms. Emily Utz, Kentucky Account Manager for Securus Technologies, stated that Kentucky jails notify her as to what names and phone numbers are to be free and private from recording. The list is updated daily. Ms. Utz feels confident that the customers are aware of this process.

Solitary Confinement of Mentally Ill Prisoners

Kevin Sharkey, Staff Attorney for Protection and Advocacy, stated that his division is a federally mandated state legal agency designated by the Governor to protect and promote the rights of individuals with disabilities, including monitoring state prisons and jails. One priority of the agency is to eliminate the practice of placing individuals with serious mental illnesses in solitary confinement. In working with the DOC, Protection and Advocacy has consulted with an expert on prison segregation policies, conducted five death investigations, monitored and toured solitary confinement units, and has interviewed mentally ill inmates in solitary confinement.

Solitary confinement is the practice of isolating an individual for 22 to 24 hours per day with virtually no human contact for periods ranging from days to decades. A solitary cell is a little bigger than a parking space, with white or gray walls, concrete, florescent lighting, a concrete bunk with a thin mattress, stainless steel toilet and sink combination, and sometimes a stone shelf for the inmate to read or eat.

Most human interactions occur with staff through a small window on the steel door or through the tray slot. Inmates rarely leave the cell to meet with case workers, psychiatrists, or nurses. One hour of recreation per day is allowed only Monday through Friday.

Two of the main reasons for a prisoner to be placed in solitary confinement are disciplinary segregation and administrative segregation. Disciplinary segregation is limited to 30 days but administrative segregation can be indefinite, based on 90 day reviews to determine if the inmate can be released. Researchers say that at least 30 percent of prisoners held in solitary confinement suffer from mental illness. A 2016 Yale Law School survey showed that 98 of the 362 Kentucky male inmates in solitary confinement suffered from a serious mental illness (SMI). SMIs include schizophrenia, bipolar disorder, and major

depression. In reaching out to the DOC for updated information, the DOC stated that this data is not collected.

Mr. Sharkey shared that the 8th Amendment requires that prison officials provide humane conditions of confinement, requiring that inmates not be punished in a matter that poses a substantial risk of serious harm. The typical effects of solitary confinement include hallucinations, paranoia, distorted perception, increased risk of suicide, and post-traumatic stress disorder. Decompensation is a term used to describe the inability of a person with a mental illness to maintain normal or appropriate psychological defenses when faced with stress. When an individual with a mental illness is subjected to solitary confinement they can deteriorate dramatically. Half of the suicides committed in prisons occur in solitary confinement. Mr. Sharkey stated that studies show that self-mutilation is more likely to occur in isolation. Courts require that prison officials provide adequate medical care, which includes mental health treatment.

Protection and Advocacy has observed that the DOC regularly assigns prisoners with SMI to segregation for conduct that may be caused by their mental illness. Some inmate's behavior, while in solitary confinement, caused them to spend years in segregated housing. Some guards have admitted to not being adequately trained to deal with persons with SMI.

Mr. Sharkey stated that many professional organizations and most federal courts rule that placing individuals with SMI in solitary confinement is cruel and unusual punishment, and a constitutional violation. Many states are amending their policies to uphold the rights of the mentally ill prisoners. While Kentucky made a recent reform regarding solitary confinement, Mr. Sharkey stated that it does not go far enough and gave a list of proposed reforms to be considered. Alternatives to solitary confinement include de-escalation rooms, loss of privileges, loss of good time, restricted privileges dorm, and extra duty.

In response to Chairman Westerfield, Mr. Sharkey stated that, while the loss of privileges can deter positive behavior, studies indicate that these alternatives are better than placing a person with a mental illness in solitary confinement. Commissioner Crews commented that the goal is to get people out of prison, and taking privileges away escalates their negative behavior which keeps them in prison longer. Commissioner Crews encouraged writing a contract with prisoners who have a mental illness on how they will get through a program and reviewing that with them in lieu of taking away privileges.

In response to Chairman Meredith, Commissioner Crews stated that if a prisoner is suicidal, taking away privileges is not an option. Unless actively suicidal, the goal is not to have prisoners placed in restrictive housing. Mr. Sharkey stated that prisoners are mentally assessed prior to being placed in solitary housing and the majority of prison suicides occur within solitary housing. Secretary Noble added that the Justice and Public Safety Cabinet

has been in the process of looking at reforms in this area. Secretary Noble noted that most statistics shown by Mr. Sharkey are based on a national level and are not tailored to the state of Kentucky.

There being no further business, the meeting adjourned at 11:44 AM.