

# **JAIL AND CORRECTIONS REFORM TASK FORCE**

## **Minutes of the 5th Meeting of the 2020 Interim**

**November 6, 2020**

### **Call to Order and Roll Call**

The 5th meeting of the Jail and Corrections Reform Task Force was held on Friday, November 6, 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 and Robin L. Webb; Representatives Jason Petrie and Ashley Tackett Laferty; Brad Boyd, and Cookie Crews.

Guests: B. Scott West, Deputy Public Advocate; Damon Preston, Public Advocate; Jasmine Heiss, Project Director of In Our Backyards, Vera Institute of Justice; Bea Halbach-Singh, Research Associate, Vera Institute of Justice; Jim Engle, CEO of Combined Public Communications; and Brett Ruschman, Chief Technology Officer of Combined Public Communications.

LRC Staff: Katie Comstock and Kate Talley.

### **Approval of the Minutes**

Senator Nemes made a motion to approve the October 16, 2020 minutes, seconded by Representative Petrie, and passed by voice vote.

### **Judicial Discretion**

B. Scott West, Deputy Public Advocate, stated that judicial discretion is defined as the power or right to make official decisions using reason and judgment to choose from among acceptable alternatives. The Kentucky definition includes that the decision must be guided by the principal of law. In almost every case involving a discretionary decision, a judge must weigh factors and circumstances. However, case law, court rules, statutes, the Constitution, and the principles of fairness limit judicial discretion. Mr. West stated that judicial discretion is very broad and the abuse of discretion standard is the most deferential standard of review that asks whether a decision was arbitrary, capricious, whimsical, or unsupported by sound legal principles. Clear error is a less deferential standard that determines if findings of fact are supported by substantial evidence. The different evidentiary standards for finding facts include probable cause, preponderance of evidence, clear and convincing, and beyond a reasonable doubt. De novo is the least deferential

standard allowing the appellate court to decide the issue as if the lower court had not already made a decision. The clear error standard is used for factual findings and the de novo standard for conclusions of law. Different evidentiary standards can have different appellate review standards.

In response to Chairman Meredith, Mr. West stated that courts are given broad discretion in handling failure to appear in court, which can be an abuse of discretion review if the attorney challenges the decision. Damon Preston, Public Advocate, added that the inconsistency in judicial discretion from county to county is why the legislature needs to set the parameters in which judicial discretion can be exercised. Chairman Meredith added that jailers, county attorneys, and judges need to work together when determining whether or not to release an individual to help reduce the overcrowding of jails.

### **Fiscal and Policy Implications of COVID-19**

Jasmine Heiss, Project Director of the Vera Institute of Justice's In Our Backyards Program, stated that the decline in jail incarcerations due to COVID-19 has caused a decrease in the cost of running jails, which has prompted a review of jail policies and budgets.

Bea Halbach-Singh, Research Associate with the Vera Institute of Justice, presented a cost analysis based on reports from the Office of the State Budget Director, listing disbursements and receipts by Kentucky counties in FY 2019.

Ms. Halbach-Singh stated that in FY 2019 the average county spent \$2.6 million on jail expenses, which amounts to \$101 per resident. The total jail expenditures for all counties was \$308 million. Across the state the amount varies from three percent to 72 percent of the overall budget, which is \$5 to over \$1,000 per resident. The cost varies for each county due to the types of jails and jail services. Rural counties spend a greater share of their budgets and more per capita on jail costs which is likely due to having higher incarceration rates. Counties with a full service jail spend approximately 25 percent of their budget on jail costs and counties without a jail spend approximately nine percent. Counties with Life Safety or Regional Jails spend approximately 10 to 12 of their budget on jail costs. Personnel costs make up the majority of jail expenses at 54 percent, followed by operating expenses of 37 percent. On average, 75 percent of jail costs are variable, which means these costs are expected to change based on jail population. These costs include expenses such as food, medical services, supplies, employee benefits, and part time personnel. Ms. Halbach-Singh gave a comparison of top expenses for a county without a jail and a county with a full service jail. The top expense for counties without jails is contracts with government agencies, whereas the top expense for counties with jails is the cost of deputies.

Intergovernmental revenues make up the majority of jail revenues, followed by surplus, borrowing, and transfers. Most intergovernmental jail revenues come from the

state for housing class D felons. Counties received almost \$950,000 (or 24 percent of their jail revenues) for housing state inmates. Again, this varies significantly between counties. Counties that house inmates for the federal government received an average of \$1,333,201 from the federal government. Counties that house inmates for other counties received an average of \$264,672. Counties received an average of four percent of its jail revenues from fines and fees, with the highest amount being from inmate telephone commissions.

Ms. Halbach-Singh suggested redirecting savings from the reduction of variable expenditures toward investments that better promote community safety, including alternatives to incarceration, affordable housing, and treatment programs for mental illness and substance use disorder. The savings could also offset the revenue lost from not charging user fees. Ms. Halbach-Singh stated that Vera Institute is currently working on a tool to allow counties to estimate potential cost savings associated with reductions in the jail population.

Ms. Heiss stated that the nation's jail population declined 25 percent the first few months of 2020. Kentucky's jail population declined more than 30 percent. Currently, 49 jail facilities are operating at or above capacity; eight are above 150 percent capacity. Pre-COVID, 79 facilities were operating at or above capacity. The local jail population has rebounded more significantly in rural jails. One of the single biggest drivers in increased jail populations and rural incarceration has been pretrial detention. Bookings increased 107 percent from April 20, 2020 to October 24, 2020. Ms. Heiss presented a graph showing the increases and declines in pretrial interviews, same day releases, in custody at the end of the day, and financial custody between January 1, 2020 and November 1, 2020. On November 1, 2020, 37 percent of people with pretrial interviews were held on money bond with the majority being charged with class D felonies and class A misdemeanors.

In response to Chairman Westerfield, Ms. Heiss clarified that the total number of people in custody at the end of the day includes people who had a hold of some kind, which shows the gap between financial custody and total in custody. One of the other types of people in custody at the end of the day would be the population with a supervision hold or some other kind of hold.

Ms. Heiss stated that the Vera Institute of Justice works nationally with APRAS, the makers of victim notification software, to look at how bookings and releases have changed. Nationally bookings declined significantly from 2019 to 2020, with most being for court, driving, and drug offenses. The number of releases was increased by people bonding out and being released by courts. But the overall number declined from 2019 due to fewer people being booked into jail.

Ms. Heiss recommended reducing bookings into jails, diverting people with behavioral health needs away from the justice system, expanding the nonfinancial release of high-needs people, narrowly tailoring the imposition of money bail to people who pose

a clear and convincing risk to public safety, and individually tailoring the imposition of particularly onerous conditions of pretrial release.

In response to Chairman Meredith, Ms. Halbach-Singh verified that the county by county data presented is available for all Kentucky counties, all the way back to 2007. Chairman Meredith asked that they contact him to provide more data to be shared with the Kentucky Association of Counties in working with the financial reporting from the Department for Local Government.

### **Jail Phone Vendors**

Brett Ruschman, Chief Technology Officer for Combined Public Communications (CPC), gave a review of the services and equipment supplied by CPC, who the services are offered to, and CPC's investment in software and infrastructure.

Mr. Ruschman stated the cost for calls is \$.21 per minute. The jail receives \$.11 for commission, \$.08 goes toward expenses, and \$.02 profit for CPC. Fees include an automated payment fee of \$3.00, and a live agent fee of \$5.95. CPC does not charge a refund or transfer of funds fee. Mr. Ruschman reviewed the telecom taxes deducted from every call, and the quarterly changes to the Universal Service Fee for the past 8 quarters. Examples were given of intrastate and interstate charges.

Mr. Ruschman stated that inmates having access to calls, texting, tablets, and video visitation helps to lower recidivism.

Mr. Ruschman explained that when there is a new installation, CPC is given a list of attorney phone numbers to be on the non-record list. CPC also checks the state legal directory to gather attorney phone numbers to add to the non-record list. If an attorney wants to add their cell phone or any other phone numbers, they would have to send the request to CPC on legal letterhead. Once a new installation is made, that county becomes part of CPC's Attorney Project, requiring CPC to check every attorney, in every county, every year against the online state legal directory to ensure the most up-to-date information. If CPC is notified that an attorney's number was recorded, the number is immediately placed on the non-record list. Mr. Ruschman noted that when an attorney's call is not recorded, the ability exists for a third party call to be established without law enforcement knowledge. Inmates are allowed one free call to any number that has not been called in the past so that the inmate can notify the individual as to where they are.

CPC has two websites. One is geared towards jails and sheriff offices the other is for inmates.

Mr. Ruschman stated that the primary reason for increase in cost is due to larger companies dictating the commission paid to county jails, requiring CPC to increase cost to

be competitive. Other factors would be updating software and infrastructure to keep up with technology, and an increase in taxes.

In regards to using a statewide contract, Mr. Ruschman stated that each county has different needs and should be able to pick the services they require.

In response to Chairman Westerfield, Mr. Ruschman stated that they currently serve 52 counties in Kentucky. Some counties asked for bids and others issued request for proposals (RFP). Jim Engle, CEO of CPC, added that their success is based on not price gouging, and the knowledge of jailers in discerning the misrepresentation of information provided in RFP responses and written contracts. Chairman Westerfield stated that high commissions may incentivize jailers to encourage inmates to make as many calls as possible, which should not bring financial gain to the jails. Mr. Engle responded that the commission is generally remitted back to the jails and not to the fiscal courts, but that is determined by each county. Mr. Engle advised of additional equipment and services CPC offers when making negotiations. CPC does not use Western Union, so they do not receive a share or referral fee from them.

In response to Public Advocate Damon Preston, Mr. Engle stated that low bandwidth is a direct result of a company not wanting to spend money on the quality needed to deliver calls.

In response to Brad Boyd, Mr. Engle advised that most contracts run the length of the jailer's term, so they have not had any new contracts in the last six months. When there is a switch in providers at a facility, CPC does a side-by-side setup to install their equipment before the previous vendor takes theirs out, allowing for zero down time of services. Mr. Ruschman added that the switch in video equipment may require a couple hours of down time.

There being no further business, the meeting adjourned at 11:50 AM.