

# **INTERIM JOINT COMMITTEE ON JUDICIARY**

## **Minutes of the 5th Meeting of the 2018 Interim**

**October 5, 2018**

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

The 5th meeting of the Interim Joint Committee on Judiciary was held on Friday, October 5, 2018, 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 Joseph M. Fischer, Co-Chair; Senators Danny Carroll, Perry B. Clark, Alice Forgy Kerr, John Schickel, Wil Schroder, Dan "Malano" Seum, and Robin L. Webb; Representatives McKenzie Cantrell, Jeffery Donohue, Daniel Elliott, Angie Hatton, Joni L. Jenkins, Stan Lee, Chad McCoy, Reginald Meeks, C. Wesley Morgan, Kimberly Poore Moser, Jason Nemes, Brandon Reed, and Gerald Watkins.

Guests: Laurie Dudgeon, Rachel Bingham, Pastor Edward Palmer, Eric Clark, Elizabeth Caywood, Carey Cockerell, Jason Reynolds, John Fitzpatrick, Eileen Recktenwald, Laela Kashan, and Michelle Wang.

LRC Staff: Katie Comstock, Dale Hardy, Matt Trebelhorn, Breanna Miller, and Yvonne Beghtol.

### **Approval of Minutes from September 7, 2018**

A motion to approve the minutes for the September 7, 2018 meeting was made by Representative Reed, seconded by Senator Schickel, and approved by voice vote.

### **Disproportionate Minority Contact (DMC)**

Chairman Westerfield said that the statistics presented at a previous Juvenile Justice Oversight Council meeting regarding Disproportionate Minority Contact (DMC) needed to be heard and that various agencies had been asked to present.

After an introduction by Laurie Dudgeon, Director of the Administrative Office of the Courts (AOC), and Rachel Bingham, Executive Officer of Family and Juvenile Services, presented on DMC in Kentucky, with a focus on African American youth. In January through June of 2017, 25 percent of the complaints filed against youth were against African American youth, who make up 11 percent of Kentucky's youth population. There was a slight reduction in 2018 to 22 percent. From January to June of 2018, African

American youth received 25 percent of the public complaints and 16 percent of the status complaints, which includes truancy charges. Of those public complaints, 29 percent are non-school related and 16 percent are school related. Research shows that youth of color are seen as approximately 3 years older. This may be a contributing factor as to why the non-school related charges are higher.

Pastor Edward Palmer, Senior Pastor at the Sign of the Dove Church, added that, during his work with the Louisville Metro Police Department, officers said they view predominately Caucasian and affluent areas differently from minority and poverty stricken areas. This may also be a contributing factor to the higher charges against African American youth.

Ms. Bingham stated the trend continues with status offenses. Within status complaints, the disproportionality is greater in non-school related complaints. African American youth make up 15 percent of school related complaints, but 19 percent of non-school related complaints. Complaints against African American youth make up 22 percent of all complaints filed against Kentucky's youth. African American youth make up 16 percent of the diversion agreements and 29 percent of the no diversion agreement categories. Not being offered a diversion agreement is not considered a positive point of contact. African American youth make up 15 percent of successful diversions and 21 percent of unsuccessful diversions. The Court Designated Worker Program (CDW) handles all pre-adjudicated youth in regards to detention at intake. The CDW is the first point of contact for law enforcement in determining if a youth should be released to a family member, to a program, or if a judge needs to determine if a youth needs to be detained. African American youth made up 43 percent of those detained at intake in 2017, and 37 percent in 2018.

Ms. Bingham explained that detention criteria involve looking at the least restrictive placement option for youth, based on what is available to them in the community. Parents and family members are their first resource. Not all agencies that have bed space are willing to take youth who have charges against them. Transportation, location, and funding are all issues of concern. Unless it is an absolute necessity, based on public safety, the goal is to not have the youth placed in detention. Ms. Dudgeon added that law enforcement are the primary source of transportation for the youth. Ms. Bingham continued by stating that transporting across county lines and the cost of reimbursement becomes an issue.

African American youthful offenders made up 49 percent of the referrals in 2017 and 60 percent in 2018. The office of Juvenile Justice and Delinquency Prevention (OJJDP) reported Hardin, Fayette, Christian, and Jefferson County as the top four DMC counties, with African American youth being the majority of youthful offenders, in spite of being the minority of their population.

Ms. Dudgeon added that SB 200 dictates who is eligible for diversion, but whether or not it is successful lies on the CDW. Ms. Bingham indicated that lack of transportation to appointments and access to services can lead to an unsuccessful diversion. Service access that are appropriate for youth in the community is another factor. As of October 5, 2018, 78 percent of youth in detention in Jefferson County are African American.

Pastor Palmer reviewed the success of SB 200. While SB 200 was successful among Caucasian youth, it was not successful with African American youth. Pastor Palmer believes the cause is due to doing different things for different children. He agrees with Chairman Westerfield that we need to figure out what is causing these disparate outcomes. Pastor Palmer advocated for a bill that allows for the collection of data to strategize about the best possible way to create the same positive outcome for all youth. Pastor Palmer believes this disproportionate data would be the same across the country, not just in Kentucky. Changing the culture of the agencies who deal with minority children could be beneficial.

Ms. Bingham stated that the DMC data along with Chairman Westerfield's leadership efforts has moved the AOC to make improvements and changes. Data from 2014 to 2017 shows that 60 percent of those given diversion do not re-offend. This data was shared with local community agency staff in an effort to get their input. One area determined to make the most positive impact was an internal policy change on appointment scheduling. Changes were made to the policy so that the youth and family can make appointments at a time and date convenient for them, which has reduced the failure to appear statistics. The AOC is also moving out of the downtown Jefferson location and establishing locations across the county. More release options that cater to both male and female, and partnerships with African American community leaders to create programs and mentoring opportunities has also been initiated, such as Pastor Farmer's church community works program.

Ms. Dudgeon, addressed considerations of the Juvenile Justice Oversight Committee. The first is that no children under the age of 12 should be charged, and should instead be referred to the Family Accountability, Intervention and Response (FAIR) Team. The second suggestion is mandatory diversion of certain cases when the child has no prior adjudications. The third is to examine the criteria used in determining when a youth is referred to circuit courts. Taking a deeper look at the youthful offender statute may be a place to start. Pastor Palmer suggests making diversion mandatory by changing "may" to "shall" for all of those who are fully eligible. By putting children in detention who are not a threat, Pastor Palmer stated that we are creating worse children in the end. Getting into the communities and building a relationship, and compassion for these youth will help keep them from going deeper into the system. Texas does not charge a youth as an adult unless the adult has committed an egregious crime against a person.

After an introduction by Commissioner Eric Clark, Cabinet for Health and Family Services (CHFS) Department of Community Based Services (DCBS), Deputy Commissioner Elizabeth Caywood presented on DMC and how it affects Child Welfare in Kentucky. Deputy Commissioner Caywood stated that the data shows that African American and bi-racial children are over represented from the start, and have poor permanency outcomes. African American and bi-racial children are over represented in child welfare, as victims of child maltreatment and entering foster care. CHFS's quarterly report for 2018 shows that the majority of children, regardless of race, exit Out of Home Care (OOHC) between two and twelve months. However, data shows a greater percentage of African American children exit in less than a month. This may be too soon, which suggests a deficiency of in-home service providers and/or relative placement support. The data also shows that African American and bi-racial children experience longer lengths of stay in care. Deputy Commissioner Caywood stated that African American and bi-racial children are more likely to be placed in more restrictive settings, which is not good for a child's development. African American children experience more placement moves, which leads to poor permanency placement outcomes. Based on the overall foster care population, the Relative Rate Index indicates the greatest disparity for African American children is that they are more likely to age out of care. While there is a downward trending in the number of children who do age out of care, reforms in juvenile justice needs to reach the African American population so that they can receive the same benefits, to avoid aging out of care.

Commissioner Clark stated that adoption, foster care, and child welfare are a top priority for the CHFS. The agency is appreciative of HB 1 and the Executive Branch Budget Bill, which offered the Department for Community Based Services additional funding and support. CHFS has reviewed the structure for child welfare to see where it can make improvements. A formal project management structure has been created, which consists of nine workgroups that began meeting monthly as of April 2018. In September, the workgroups came together to review their progress and get feedback from each other. Family First Prevention Services Act (FFPSA) is national child welfare legislation that transforms how child welfare systems will be operated and funded. Previously, Title 4 E funding was primarily for foster care, maintenance payment, and adoption assistance payments, which encouraged children to enter OOHC. FFPSA changes that focus and puts Title E funding toward service and support, to prevent children from entering OOHC. FFPSA also restricts the time in which children can enter congregate settings. While the FFPSA is not mandatory until October 1, 2021, Kentucky is going first. DCBS has an ongoing initiative to identify and address racial disproportionality through race, community, and child welfare initiatives. Commissioner Clark would like to commend the courts in being the most dedicated partner in this initiative. Examples of the efforts include: training for staff, training for foster parents, referral sources, adequate court representation, timeliness for minority children, and diligent recruitment for foster homes that best match the needs of the foster children, with focused, and intentional recruiting efforts for African American foster homes.

Pastor Palmer added that the consistency in racial disparity as one moves through the Child Welfare system mirrors that of the juvenile justice system. The five major counties account for 70 percent of the minority population. In January, Pastor Palmer inherited a girl in the system who is mentally disabled and was sleeping in a parking garage. She now has a job and is headed to college. This entryway into the Child Welfare system increases the likelihood of juvenile justice involvement by 55 percent. In visiting the juvenile detention centers, Pastor Palmer has seen many young people who have prior child welfare connections. Research has shown that three or more movements in the child welfare system puts one at a greater risk for Post-Traumatic Stress Disorder (PTSD) than combat veterans.

Commissioner Clark continued with other DCBS strategies. Dedicated funding for continued implicit bias training, protection and permanency staff, cultural humility training sessions, development of implicit racial bias curriculum pilot program. Review of initial and ongoing training for all DCBS staff. Right now the DCBS is at a record high of the number of children (9,700) in OOHC. Over 200 children have entered into DCBS care since July. Due to these record highs, social workers average 30 cases a day. A child typically stays in the welfare system 35 months before being adopted, which is another all-time high for Kentucky. The FFPSA works towards safely preventing children from coming into the system by enabling services in the home. If the number of children coming into care is lowered, caseloads will decrease, which leads to maintaining a workforce that is trained and not burned out. With a manageable caseload, one has more time and resources to offer the families and children can be placed in more permanent homes. The goal is to never reach these record highs again, so that the program can be more effective.

Commissioner Carey Cockerell, Department of Juvenile Justice (DJJ), began by stating that the DJJ is involved at the end of the process, when a child is presented for detention. The data presented was broken into four categories: 1) bookings; 2) probated and probated/suspended commitments; 3) children committed to the department; and 4) youthful offenders.

Bookings show a 20 percent decrease between 2014 and 2017, with a projected decrease for 2018. Bookings are not equitable by gender. Male bookings decreased by 16.5 percent and female bookings decreased by 32 percent. Decreases are not equitable by race. White youth decreased by 30.5 percent and African Americans decreased by less than 1 percent. The booking data does not include Jefferson County because it operates its own detention center. While African Americans represent only 7.4 percent of the population, they represent 24 percent of those booked. Three DMC counties identified in the OJJDP data are Christian, Fayette, and Hardin. Each shows an over representation of African Americans bookings based on their population. The decrease in bookings has largely impacted those 15 years of age and under, showing a decrease of 34 percent for ages 13 and under, 28 percent for ages 14-15, and 14 percent for 16-17 years of age.

In regards to probated and probated/suspended commitments to the DJJ there has been a decrease of 19.3 percent between 2014 and 2017, with a forecast of a 29 percent decrease for 2018. Since the creation of the Probated/Suspended Commitment Classification with SB 200 there has been a 19.3 percent decrease in probated and an increase in probated/suspended commitments. Males continue to be probated at a higher rate than females. Males decreased from 2014 to 2017 by 15.9 percent and females by 37.2 percent. As was previously stated, SB 200 affected Caucasians more so than African Americans. African American youth on probation has increased by 11.4 percent since 2014, while Caucasian youth has decreased by 28 percent. A comparison of the state, non-DMC counties and DMC counties was presented. In 2017, Jefferson County reported 115 African American probations and 28 Caucasian probations. Christian and Fayette counties also reported a majority of African American probations, while Hardin County reported more Caucasian probations. Ages 14 to 17 are the highest represented group of probation and probation/suspended commitments, although all age groups have shown a decrease since 2014.

Overall commitments have decreased by 10.7 percent since 2014, with a projected decrease of 16 percent for 2018. Male commitments have decreased by 5 percent between 2014 and 2017. While African American youth commitments have increased by 20 percent between 2014 and 2017, Caucasian youth commitments decreased by 32.6 percent. African Americans remain the majority of commitments for Kentucky, and are only outnumbered in the non-DMC counties by Caucasians. Jefferson County reported 108 African American commitments and only 18 Caucasian commitments. Christian and Fayette counties reported a majority of African American commitments, while Hardin County reported zero. In the category of confined youth (youthful offenders), an increase of 23 percent is reported between 2014 and 2017, and is consistently represented by males. SB 200 did not address youthful offenders. African American youth confined has increased by 60 percent, while white youth confinements have decreased by 35 percent. Ages 16-17 are the highest represented group in youthful offenders.

SB 20 categories for the DJJ to consider. One area is whether or not a father has involvement in the home or with the youth. Regardless of race, over 50 percent of all youth reported no involvement with a father.

Senator Schickel stated that looking at the statistics solely by racial breakdown is the wrong approach. If the majority of violent crimes comes from certain areas, it is unfair to make the correlation that it is race related. In working with the students who are having disciplinary issues in the Boone county school system, he finds that some are scared to discipline certain students because they are afraid it will be viewed as negative. In not disciplining, Senator Schickel believes we are cheating that student who is crying out for structure and guidance. They do not want to be perceived as being racist. While he

appreciates and finds the information useful, this is why Senator Schickel opposed the legislation last year.

In response to Senator Carroll's comment that, if the non-DMC areas are not showing African Americans as the majority, then maybe this is more of a geographical issue and not a system issue, Ms. Bingham confirmed that the trend is the same in non-DMC counties. Whenever AOC reviews how Caucasian youth are charged and how African American youth are charged, the trend continues across the state. She believes that the legislation will allow them to look deeper and review areas such as where the point of contact came from, how children start in the system, how end up, and what the trends look like, wherever one is in the state. Pastor Palmer agrees that there is a geographical component to how racial disparities appear. In response to non-DMC counties, Pastor Palmer says it is still seen in these counties but the volume is so small that it does not appear on the reports. In response to Senator Schickel's previous comment, Pastor Palmer believes the data is not racial biased and would be willing to meet with him to discuss further.

In response to Representative Jenkins inquiry, Ms. Bingham confirmed that the statistics are broken down by gender and that AOC has a human trafficking screener report. The percentage of children of color entering the system is much higher in some counties, but the number is diluted when considering all counties because of those areas where African Americans are such a minority. Ms. Bingham said she could provide the breakdown of each county.

In response to Representative Nemes, Pastor Palmer suggested reading the agencies' reports, as well as *The New Jim Crow*, because it deals with some of the systemic nuances as to how we build biases into the system. A spike in Jefferson County elementary school suspensions occurred in 2014-2015 and has continued to increase. The disproportionate impact of children being suspended at an early age will be reflected on the DJJ, AOC, and DCBS's data in four years.

### **Updates from the Kentucky Association of Sexual Assault Programs**

Eileen Recktenwald, Executive Director of the Kentucky Association of Sexual Assault Programs (KASAP), stated that KASAP represents Kentucky's 13 regional rape crisis centers that also assist with those who may have experienced sexual harassment, abuse, assault, or any sexual violence. KASAP offers a network of services and providers who offer emotional support and education to survivors; such as hospitals, law enforcement, medical personnel, 24-hour hotline, crisis counseling, therapy, and advocacy. This includes meeting victims in emergency rooms and accompanying them to court as many times as necessary. KASAP works toward preventing sexual violence, by providing a bystander intervention program called Green Dot in high schools across the Commonwealth. This program has proven to reduce rape, dating violence, sexual harassment, and sexual bullying by 50 percent. This past fiscal year the rape crisis centers

provided services to over 5,000 primary victims, and 909 secondary victims. KASAP's mission is to speak against sexual victimization.

Ms. Recktenwald is strongly aware of the need to make survivors aware of these services. Crisis Centers are reporting an increase in calls from survivors since the recent events in Washington. The National Sexual Assault Hotline reported more than 3,000 calls the day after the Christine Blasey Ford testimony. The Rape, Abuse & Incest National Network (RAINN) is the nation's largest anti-sexual violence organization. This was the busiest day in its history, along with a 2001 increase in daily calls. Self-care during times like this cannot be underplayed. It may involve taking a break from social media or the news, or even seeking help. We can encourage each other to be supportive and understanding of the stress of others.

Ms. Recktenwald stated that working together with local and state agencies is the key to KASAP's success. KASAP co-chairs with the Kentucky State Police's Sexual Assault Response Team Advisory Committee (SARAC). The agencies assist victims to seek justice.

SB 63 (the SAFE Act) passed in 2016, which has led to great progress in the testing of sexual assault kits. Implementation of SB 63 has identified that the legislation needs a few tweaks. Of the 3,090 SAKI kits, 2,653 have been reviewed, 1,232 entered, and 408 hits received. A requirement to track the kits was not included in the legislation, due to the cost. However, the lab has come up with a cost effective, and simple bar coding system. Since it is not yet mandated, only 67 hospitals are bar coding the kits. Current legislation requires data collection to ensure a backlog does not occur. However, gaps in collecting data were detected. Having sexual assaults reported to law enforcement documented on a specific form (such as a JC-3) would be more efficient. In addition, following a report from start to finish is difficult due to the code changing between agencies. While requiring law enforcement agencies to be trained in these areas, not all agencies come in contact or report on sexual abuse and could be dropped from this requirement. Sexual Assault Nurse Examiners (SANEs) have increased from 200 to 278 but Kentucky needs more. Hospitals need to be convinced that this is a critical need in dealing with victims of sexual abuse. KASAP received a grant from the Office of the Attorney General (OAG) to produce a training video for hospitals and others who may not encounter sexual assault victims on a regular basis. Ms. Recktenwald thanked all of the agencies that assisted in providing information to create the SAFE Act Report.

Laela Kashan, Staff Attorney for KASAP, thanked the legislators for their support of SB 48 and SB 109. KASAP's public policy positions have been updated. Over 100 responses were received when conducting a survey on the policy. In addition to the survey, KASAP is focusing on what to do as it moves forward in the effort to end sexual harm. Addressing all forms of oppression and inequality is a must. Oppression is the root cause of all sexual harm. The aim is to build a society founded on justice, equality, human rights,



human dignity, social inclusion, and non-violence. Sexual violence is historically gender based, but sexual violence happens to everyone, regardless of gender. Native Americans, African Americans, lesbians, gays, bi-sexuals, transgenders, queers, and those with intellectual or physical disabilities are at a higher risk of being sexually violated. As an advocate against sexual harm, KASAP needs to be involved with all legislation that comes into contact with sexual harm. To end sexual violence, Ms. Kashan stated that one must look at all of the issues. Intersectionality is key. Intersectionality is a term coined by Kimberle Crenshaw to discuss how we have different identities and experience layers of prejudice or privileges based on those layers, such as being female and being African American. Intersectionality helps identify how individuals interact with others, based on their historic identity with the world. KASAP has trained over 20 staff members, so that when dealing with individuals KASAP is inclusive and offering holistic services. Ms. Kashan also highlighted KASAP's efforts to address issues that contribute to the ability for people to commit sexual harm. With the joint effort of the numerous agencies and legislators, KASAP will continue to move forward to make Kentucky a safer and better place.

### **Survivor Bill of Rights**

Michelle Wang, RISE Representative, spoke about the Sexual Assault Bill of Rights. As a fourth year medical student at the University of Alabama's Birmingham School of Medicine, she has become aware of the tragedies surrounding sexual assaults. Such as giving birth to a child that is a product of rape, or not knowing your rights as a sexual assault victim, and realizing that any forensic evidence was washed down the drain of the hospital shower. To wake up one day with the financial and emotional resources to fight your assailant only to find that the rape kit had been destroyed without any notice. It is a privilege as a women's health provider to share these joys and sorrows with women. But these are preventable sorrows and injustices. The work is not done. There are rights to protect.

RISE was founded by Amanda Nguyen to protect the rights of survivors of sexual assault. Ms. Nguyen's fight to protect her own post-assault forensic evidence from being destroyed inspired her to write her own civil rights into existence, and to teach other survivors and advocates to do the same. The sexual assault rights include, but are not limited to, the right to consult a sexual assault counselor, fair and efficient rape kit procedures, standard procedures for ensuring survivors are informed of their rights, and that these rights are inalienable regardless of reporting or further legal action. The federal bill was signed into law by the President in 2016, and stands as one of the few pieces of legislation in recent American history to pass unanimously through the House and the Senate. It brought legislators together to codify a basic set of civil rights for the more than 25,000,000 rape survivors across the country. Survivors who, like Amanda, had been left feeling broken and hopeless after attempting to navigate the legal system alone.

Ms. Wang started the RISE system in Alabama and expanded into the southeast region, to work with lawmakers, and community stakeholders to ensure these basic civil rights for survivors. The majority of rape cases are adjudicated on the state level. Despite the passage of the federal bill, to ensure the survivors rights to the nearly 1.2 million survivors in Kentucky, there is still work to be done. These rights must be codified in state law to ensure their rights in three important domains: Rape kit procedures, notification of rights, and sexual assault counselors. Survivors must have the right to retain their rape kit indefinitely or until the statute of limitations for rape expires. When kits are vulnerable to be destruction, then rapists are more likely to walk free, commit another offense, and destroy another life. Though some law enforcement departments and crisis centers have made a choice to never destroy kits, this is not required. Justice for survivors should not be dependent on a private citizen's or organizations altruism. It should be protected by law. The burden of survivor advocacy often falls on the shoulders of survivors themselves. A survivor may not know about a legally protected right to be notified, in writing, of the nearest crisis centers or institution with a Sexual Assault Nurse Examiner who is able to properly collect forensic evidence. A survivor has the right to a copy of the police report, a copy of the medical records, and the right to retention of all rights, regardless of whether he or she chooses to report at the time of post-assault care or ever. If the burden is placed on the survivor, the state must ensure every piece of evidence is available to make it a fair, just fight. Informed survivorship should be a standard in law. The RISE movement is spreading across the nation. Since the passage of the federal bill, laws have been passed in 11 states. It is time to come together in Kentucky to support survivors and codify these rights into Kentucky law.

Chairman Westerfield commented that Marsy's Law and the SAFE Act have already addressed many of Ms. Wang's issues and suggested she connect with KASAP to collaborate on any other areas of concern.

Chairman Westerfield reminded members of the November 2nd meeting to be held at the University of Louisville, Louis D. Brandeis School of Law. There being no further business, the meeting adjourned at 11:58 am.