

INTERIM JOINT COMMITTEE ON JUDICIARY

Minutes of the 2nd Meeting of the 2019 Interim

July 12, 2019

Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Judiciary was held on Friday, July 12, 2019, at 10:00 AM, in Room 154 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 Jason Petrie, Co-Chair; Senators Danny Carroll, Alice Forgy Kerr, Gerald A. Neal, Wil Schroder, Dan "Malano" Seum, Robin L. Webb, Stephen West, and Phillip Wheeler; Representatives John Blanton, Charles Booker, Kevin D. Bratcher, McKenzie Cantrell, Daniel Elliott, Chris Harris, Joni L. Jenkins, Stan Lee, Derek Lewis, Savannah Maddox, C. Ed Massey, Patti Minter, Jason Nemes, Brandon Reed, and Maria Sorolis

Guests: Senator Wil Schroder, Ted Sandmann, Jasmine Heiss, Mike Shea, Tom Underwood, Gay Williams, Ed and Karen Hyde, Matthew Henderson, Gabrielle Summe, and Senator Robby Mills

LRC Staff: Alice Lyon, Chandani Kemper, Dale Hardy, Matt Trebelhorn, Raleigh Dixon, and Yvonne Beghtol.

Dissemination of Personally Identifying Information About Minors

Ted Sandmann, father of Nicholas Sandmann, said that, on June 18, 2019, Nicholas attended the March for Life in Washington, DC with other students from Covington Catholic High School. Video from that day of Nicholas standing face-to-face with a Native American man who was chanting and beating a drum was posted online. That video became "viral" by being shared widely across social media platforms and resulted in threats of violence against students, parents, and the school.

Senator Schroder testified that he would be filing "anti-doxing" legislation, similar to SB 240 from 2019, to protect minors from the types of threats Nicholas Sandmann faced. SB 240 criminalized the online dissemination of personally identifying information about a minor when done with the intent to intimidate, abuse, threaten, harass, or frighten a minor, and when it creates a reasonable fear of physical injury to the minor. Sentencing begins at a Class A misdemeanor. If physical injury is involved, it is a Class C felony. If the minor

or minor's household members suffer monetary losses, there are additional graduated criminal penalties.

Chairman Westerfield stated that, while the legislature cannot keep adding new crimes, he supported this legislation because being in the age of the internet brings new conduct and requires new boundaries.

In response to Senator Wheeler, Senator Schroder said he will amend the bill to include all high school students, regardless of age.

In response to Representative Cantrell, Senator Schroder could not recall Utah's exact anti-doxing penalties.

In response to questions from Representative Nemes regarding criminal penalties being contingent upon the acts of another person, Senator Schroder stated that if someone makes the identifying information available, then that person participated in the crime by giving others the tools to make contact.

In response to Representative Jenkins, Senator Schroder advised that merely posting online alone would not qualify as a crime; there would also have to be a reasonable fear of injury and the necessary intent. Existing bullying laws would not cover doxing.

In response to Senator Harris, Senator Schroder said holding a person from another state accountable under a Kentucky statute is done in other areas of law.

Approval of the minutes of the June 7, 2019 meeting

Representative Petrie made a motion to approve the minutes, which was seconded by Representative Massey and approved by voice vote.

County Jail Populations and Trends in Incarceration

Jasmine Heiss, Campaign Director for "In Our Backyards" with the Vera Institute of Justice, and Mike Shea of Government Strategies presented statistics on jail incarceration in Kentucky. "In Our Backyards" is focused on shrinking jail populations in rural communities, which bear the heaviest burdens of mass incarceration while major urban areas reduce their use of jails.

Vera's analysis of the data collected by the U.S. Bureau of Justice Statistics, the Kentucky Department of Corrections (DOC), and individual counties identified the drivers of jail incarceration: high rates of pretrial detention, the prevalence of drug related charges, and the use of local jails to hold people for the state and federal prison systems.

Regarding pretrial detention, the Vera Institute seeks to support accused people in the community before trial, rather than holding people who cannot afford monetary bail

prior to trial. Between 2000 and 2015, pretrial detention in Kentucky grew at nearly twice the national rate, with most of the growth in counties with fewer than 30,000 residents.

The Vera Institute has documented lasting negative impacts. A 2013 study of Kentucky's pretrial practices found that people who were held for all of the pretrial period were more likely to be re-arrested on new charges following disposition of their case than those released before trial. As few as 2 days in pretrial detention were associated with an increased likelihood of a new arrest, and the longer people were held, the more likely to be re-arrested. The negative impacts of pretrial detention are most pronounced for those classified as low risk, charged with lower-level offenses, or held on low monetary bail amounts. Families are also impacted; a 2002 national study found that two-thirds of the women held in jail because they could not afford monetary bail amount were also the mothers of children under the age of 18.

In the United States, 68 percent of the jail population has a substance use disorder. Research has shown that community-based drug treatment is more effective than incarceration, and produces long-term savings from reduced crime and the reduced cost of incarceration. Also, recently incarcerated people are significantly more likely to die of an overdose because a person's tolerance for drugs has lessened while incarcerated.

Kentucky is one of only a few states that relies on contracts with local jails to confine people sentenced to a state prison term. Nearly half of state inmates are held in Kentucky's 76 county jail facilities, led by Fulton, Simpson, Webster, Larue, Todd, and Casey counties. In August 2018 approximately 90 percent of Kentucky's jails were operating above capacity. A 2006 State Auditor's report on Kentucky jails found that housing state inmates exacerbated overcrowding in county jails.

Some counties see building large jails to hold state prisoners as a revenue solution for the county, but the Vera Institute has identified two major risks with that approach: when having more beds eliminates a physical limit on pretrial detention, pretrial detention rates grow, and local taxpayers must pay for the cost of an expanded jail if DOC decides to stop using the beds. For example, after the Breckinridge County jail expanded in the early 2000s to hold more convicted state inmates, the pretrial population increased 450 percent between 2000 and 2015.

In response to Representative Bratcher, Ms. Heiss said that drug charges underlie most criminal charges, and giving judges more tools to address that could improve public safety outcomes.

In response to Senator Wheeler, Ms. Heiss said connecting offenders with substance abuse programs before trial would benefit everyone, but the methods of coercing people into treatment should be individually tailored.

In response to Representative Minter, Ms. Heiss responded that bail reform is a critical first step in narrowing pre-entry detention.

In response to Senator West, Ms. Heiss stated that available beds are often quickly filled. When beds are not available, authorities must find alternatives. An unintended consequence of having more facilities built is the increase of pretrial detention.

In response to Senator West, Ms. Heiss said reasonable bail should be individually set for each person, lowering the number of those held in detention.

In response to Representative Booker, Ms. Heiss will share Vera Institute materials on disproportionate racial and ethnic impacts in incarceration. Nationally the gap between black and white incarcerations is closing in urban areas, but not rural areas.

In response to Representative Massey, Ms. Heiss stated that the Vera Institute is working to understand federal funding and investing it in community based substance abuse prevention and treatment programs is a key to serving more people.

In response to Senator Schroder, Ms. Heiss stated that the Vera Institute relies on the Bureau of Justice Statistics for their data, and the last comprehensive study was in 2015. Regarding the concern for women in jails, Ms. Heiss will share a Vera report called *Overlooked*. Tennessee passed legislation enabling judges to consider alternatives to incarceration for primary caregivers of children, recognizing that separating caregivers from their children puts the children at a higher risk of incarceration.

In response to Representative Blanton, Ms. Heiss stated that looking at the front end of the causes of these criminal behaviors is what drives the Vera Institute.

In response to Senator Neal, Ms. Heiss will share materials on racial and ethnic demographics in jail populations.

Perfecting Vehicle Liens

Tom Underwood, with the Rotunda Group, introduced Gay Williams, President of the Kentucky Automobile Dealers Association. Ms. Williams introduced Ed and Karen Hyde, owners of Legacy Nissan.

Mr. Hyde explained that when a customer acquires a loan to purchase a vehicle, the dealer has to perfect a lien on that collateral to protect the bank, and the lien is filed in the county in which the customer resides. Sometimes the county in which the customer resides is not the county shown on their driver's license. In the event of bankruptcy, the trustee can deem the lien invalid because it was not filed in the correct county of residence, requiring the dealer to pay off the loan.

Chairman Petrie suggested changing the definition of a perfected lien to “recorded in the county in which the debtor/owner lies resident or in an adjoining county.”

Gabrielle Summe, President of the Kenton County Clerks Association, testified that there are approximately 15 statutes regarding the perfection of liens. If clerks make a mistake in filing the lien, then they are responsible for paying off the loan.

Matthew Henderson, with the Kentucky Transportation Cabinet, said the Cabinet would like more legal certainty for all stakeholders regarding the status of the lien. Improvements in the database at Transportation may create new options. Centralized lien recording is the most expansive option. Mr. Henderson noted that the county of residence will not be included on federally-compliant REAL ID driver’s licenses.

In response to Senator West, Ms. Summe said the Transportation Cabinet has an online search engine called OVIS, in which one can enter the VIN number to see if liens are filed and in which counties, but the lien statement itself is not available. Each county clerk determines whether to provide lien access online.

In response to Representative Cantrell, Ms. Summe said she participated in an unreported federal bankruptcy case, *In re Godsey*, in 2012. The decision interpreted Kentucky statutes as requiring underlying documents to be completely error free, otherwise a lien could not be perfected. The Kenton County Clerk’s office has had to payoff car loans involved in bankruptcy cases due to misspelled information, the wrong county listed, and other errors.

Chairman Petrie added that if the legislature redefined what perfection is in Kentucky, the federal courts would utilize that definition. Until then, any imperfection will invalidate a lien under federal law.

Disposition of Decedent’s Body

Senator Mills presented BR 201, and said he was also speaking on behalf of Representatives Miles and Wiederstein. After a murder in Henderson last year, the husband of the deceased was charged. While awaiting trial in the local jail, the husband was called by the coroner regarding the disposal his wife’s remains. This was because under KRS 367.93117, unless another person is designated, the decedent’s surviving spouse controls the disposition. BR 201 amends current law to exempt any survivors who have been arrested or charged with an offense which resulted in the death of the decedent.

In response to Senator Webb, Senator Mills explained that the bill does not require a conviction because of the length of time involved. If the person charged is later acquitted, the person could relocate the remains.

Chairman Westerfield said that a statement from Ms. Amye Bensenhaver, retired Assistant Attorney General and currently with the Kentucky Open Government Coalition, regarding Senator D. Carroll's bill from the 2019 Session on redacting personal information from public records is in members' folders for review.

Chairman Westerfield reminded members of the August 23, 2019 IJC meeting, and invited members to attend Fancy Farm the first weekend in August.

There being no further business, the meeting was adjourned at 11:47 am.