

# INTERIM JOINT COMMITTEE ON JUDICIARY

## Minutes of the 3rd Meeting of the 2019 Interim

August 23, 2019

### Call to Order and Roll Call

The 3rd meeting of the Interim Joint Committee on Judiciary was held on Friday, August 23, 2019, at 10:00 AM, in Room 149 of the Capitol Annex. Representative Jason Petrie, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Jason Petrie, Co-Chair; Senators Danny Carroll, Alice Forgy Kerr, Gerald A. Neal, John Schickel, Wil Schroder, Dan "Malano" Seum, Robin L. Webb, and Phillip Wheeler; Representatives John Blanton, Kevin D. Bratcher, McKenzie Cantrell, Daniel Elliott, Joseph M. Fischer, Chris Harris, Angie Hatton, Joni L. Jenkins, Nima Kulkarni, Savannah Maddox, C. Ed Massey, Chad McCoy, Patti Minter, Jason Nemes, Brandon Reed, and Maria Sorolis.

Guests: Secretary John Tilley, Justice and Public Safety Cabinet; Cyndi Heddleston, Legislative Liaison, Department of Corrections; Kathleen Kenney, Interim Commissioner, Department of Corrections; Erica Hargis, Director, Department of Corrections Division of Probation and Parole; Kristin Harrod, Director, Department of Corrections Division of Reentry Services; Kirstie Willard, Director, Department of Corrections Division of Local Facilities; Judge Kelly Easton, Hardin Circuit Court; Shane Young, Commonwealth's Attorney for the 9<sup>th</sup> Judicial Circuit; Rod Seelye; and Sean Hankins.

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

### Approval of the July 12, 2019 Minutes

Representative Reed made a motion to approve the July 12, 2019 minutes, seconded by Representative Nemes, and passed by voice vote.

### Introduction and System Overview

Secretary John Tilley of the Justice and Public Safety Cabinet addressed the over-incarceration crisis in Kentucky and its relationship to the opioid drug epidemic. Kentucky is currently tenth in prison growth and second in female per capita incarceration, costing approximately \$650 million. Lower parole grant rates are a contributing factor.

Kentucky currently houses 24,000 in prison, with all class D offenders being housed in county jails. Only 21 of the 76 county jails offer drug treatment programs. A \$9 million federal grant was recently given to incentivize a drug treatment program for women in county jails that already offered a program for men.

Secretary Tilley noted that justice reform requires an ongoing effort with reentry, probation and parole, and substance abuse. Since the passing of 2014's juvenile justice reform bill, the juvenile justice population has been cut in half, forcing the closure of four facilities with another facility is anticipated to close this year. Secretary Tilley stated this proves that when you mandate changes, good changes come.

In response to Chairman Petrie, Secretary Tilley said there are currently 12,000 Class D felons housed in county jails and that jailers are allowed to refuse to house them.

In response to Representative Hatton, Secretary Tilley explained that housing a state inmate in prison costs \$71 a day. County jails are paid \$31.34 a day for housing each state inmate. The jails receive approximately \$70 a day for housing a federal inmate. Secretary Tilley stated that he is an advocate for performance-based funding, paying jails based on their programs and performance.

The Department of Corrections Interim Commissioner Kathleen Kenney reviewed the infrastructure challenges with many facilities over 50 years old. The required maintenance has led to the closure of some units, causing the absorption of inmates into other facilities. The statewide staffing vacancy rate is currently 21%, with one facility being over 50%. Of these staff members, 65% have less than five years of experience and 28% have less than one year. There are inexperienced staff having to work overtime in facilities with infrastructure issues.

Secretary Tilley mentioned that the shortage of staff leads to extra expenses with overtime and travel expenses. This also leads to high burnout and stress for correctional officers.

In response to Senator Schickel, Interim Commissioner Kenney agreed that eight hour shifts with two days off is the goal.

In response to Senator Webb, Interim Commissioner Kenney agreed that, while overtime pay and fewer days with longer hours is appealing in the beginning, it is not safe for the correctional officers or the inmates. Interim Commissioner Kenney stated that the department needs to offer forms of incentives to retain staff. Secretary Tilley added that the care of correctional officers is of great concern and there are plans to try and improve their pay, training, and benefits.

In response to Representative Harris, Secretary Tilley stated that county jails would not lose revenue by not housing state inmates because the cost to house them is more than the state pays. He then added that we need fewer prisoners not more prisons. Kentucky's high rate of female incarceration has a high impact on children and families.

In response to Representative Nemes, Secretary Tilley stated that he agrees that having unused treatment beds is a negative. However, getting prisoners into a treatment facility is often the decision of a judge, the Parole Board, or the arresting officer. Once a prisoner is released, they work with social service technicians for immediate drug treatment. Currently, 1,200 offenders are serving time in a state prison for only simple possession. If simple possession was changed to a misdemeanor (something that more than 20 other states have done), those offenders could be diverted directly into treatment and not prison. That would fill the unused treatment beds.

In response to Senator Wheeler, Secretary Tilley advised that the cabinet is looking into creative ways of recruiting college students as correctional officers; such as offering part-time or contract employment and college loan forgiveness. In regard to offering incentives to jails that offer various programs to prisoners, Secretary Tilley is hopeful that the upcoming budget will help support this effort.

In response to Senator Schickel, Secretary Tilley explained that drug rehabilitation often takes several attempts but is successful in the long run.

### **Probation and Parole Update**

Erica Hargis, Director of the Division of Probation and Parole, informed the committee of the status of their clients and officers. Currently, the average caseload for Probation and Parole officers is 99 to 1. In an effort to retain officers, a 12% raise was recently approved. Secretary Tilley clarified that this money was allocated to fill vacancies, but with no qualified applicants available, it was more useful to use the money to retain current officers. Director Hargis mentioned other incentive tools such as expanding technology offered to assist officers in their duties. Secretary Tilley commented that there were 6,000 returns to prison in 2016 for technical violations.

Director Hargis described the new community orientation intake process, the use of expanded graduated sanctions, and giving officers more options in dealing with each client. Cyndi Heddleston, Legislative Liaison with the Department of Corrections, added that the use of graduated sanctions showed a 3% reduction of individuals reentering the prison system at the end of the last fiscal year.

In response to Senator Webb, Ms. Heddleston advised that 20-25% of court ordered fees are paid into the system by defendants. It is a statutory requirement that offenders remain on supervision until restitution is paid in full. Secretary Tilley added that the

General Assembly should look at lowering the time of supervision, which would lessen the cost for offenders.

In response to Senator Carroll, Secretary Tilley stated that, while there has to be a penalty, they need to offer proportionate options other than a return to prison.

### **Division of Reentry Services Overview and SB 120 Update**

Kristin Harrod, Director of the Division of Reentry Services, explained that reentry programs help keep offenders from returning to prison by preparing them for reentry into the public workforce. Currently, there are ten employment administrator programs throughout the state that assist offenders in finding work and advise employers of the benefits in hiring a justice-involved individual. Over 40% of individuals who enter the reentry programs become employed. Kentucky is participating in the Safe Streets and Second Chances program and is working with the Transportation Cabinet to release inmates with a state identification letter to supply them with the tools needed to apply for work. The Department of Corrections is also working on a mentor program and currently has 60 mentor volunteers. In addition, Kentucky was selected nationally to host a reentry simulation program, showing society the barriers involved for those in the system trying to reenter society. If funding were available, Director Harrod believes they could be successful in more areas.

In response to Representative Bratcher, Secretary Tilley confirmed that there are 24,000 state inmates, an additional 50,000 on supervision, and 13,000 in county jails awaiting pretrial or on misdemeanor charges. In regards to drug dealers being released onto the streets, Secretary Tilley believes we have to lessen the demand for drugs. One way Kentucky is doing this is to limit prescription drugs to three days.

### **Hardin County Inmate Release Program**

Judge Kelly Easton introduced Sheriff Staffing Services, a privately owned inmate release program in Hardin County.

Shane Young, the Commonwealth's Attorney for the 9<sup>th</sup> Judicial Circuit, explained that the program was designed to give those released from prison an immediate start in the workforce to keep them from relying on their previous contacts and falling back into the system.

Rod Seelye, owner of Sheriff Staffing Services, began a staffing company that only employees inmates. The company transports the inmates from the jail to work. A GPS ankle tracker, provided by the company, is worn at all times. There is no cost to the county. Mr. Young added that a check is issued every two weeks to the jailer for work release fees in the amount of approximately \$4,000. Mr. Seelye said his company currently employs 40 inmates. Since May 2019, the inmates have earned over \$74,770, paying over \$12,000 in

jail fees, and over \$6,000 in child support. If an inmate gets out of hand, they are returned to the jail and another inmate is selected to work.

Sean Hankins gave his testimony on working through the inmate release program, and the success he has had since his release.

Mr. Seelye clarified the difference between a typical jail work release program, where inmates are paid 63 cents per day, and his company, where inmates make a decent wage, learn valuable skills, and receive resources for success.

In response to Senator Webb, Mr. Seelye explained that his staffing company is privately owned and operates like any other staffing service. He supplies the workers who are paid through his company. Taxes and other payroll deductions are withheld, and the company receives a percentage from the businesses using their service. Mr. Young stated that while the staffing company will make a profit, at this point it has been operating in the red. Mr. Seelye's accounting records are accessible to the county, as contractually required.

### **Justice and Public Safety Legislative Priorities to Address Population Challenges**

Secretary Tilley mentioned the Strategic Initiative for Transformative Employment Program (SITE) and the benefits it has achieved. Some suggested legislative changes to consider include reclassifying simple drug possession as a misdemeanor, raising the felony theft threshold level, limiting supervisory time for those on parole to three years, bail reform, mandating the use of graduated sanctions for probationers, and expanding the work for time credit.

Kirstie Willard, Director of the Division of Local Facilities, commented on the impact of the Work Release Program and SB 120. Currently, seven jails and 99 state inmates participate in the program.

In response to Representative Blanton, Secretary Tilley agrees that raising the theft level and changing simple possession to a misdemeanor will shift some of the expense of housing prisoners from prisons to jails. Possession only cases could also be diverted into treatment instead of jails. In regards to traffickers who plead to the lesser charge of possession, the system would have to adjust and deal with trafficking appropriately. A focus on victims is addressed by placing victim advocates in state police posts and by offering a week long Victim's Assisted Academy.

There being no further business, the meeting adjourned at 12:07.