

INTERIM JOINT COMMITTEE ON JUDICIARY

Minutes of the 2nd Meeting of the 2020 Interim

July 9, 2020

Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Judiciary was held on Thursday, July 9, 2020, at 10:30 AM, in Room 171 of the Capitol Annex. Representative Jason Petrie, 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, Michael J. Nemes, John Schickel, Wil Schroder, Robert Stivers II, Robin L. Webb, Stephen West, and Phillip Wheeler; Representatives Kim Banta, John Blanton, Charles Booker, Kevin D. Bratcher, McKenzie Cantrell, Daniel Elliott, Joseph M. Fischer, Chris Harris, Angie Hatton, Samara Heavrin, Nima Kulkarni, Stan Lee, Derek Lewis, Savannah Maddox, C. Ed Massey, Chad McCoy, Patti Minter, Kimberly Poore Moser, Jason Nemes, Brandon Reed, Maria Sorolis, and Rob Wiederstein.

Guests: Chief Joe Monroe, Shawn Butler, JD Chaney, Sheriff Keith Cain, Kate Shanks, Robert Hudson, Cindy Effinger, and Rob Mattingly.

LRC Staff: Katie Comstock and Yvonne Beghtol.

Approval of the Minutes

Senator Nemes made a motion to approve the June 04, 2020 minutes, seconded by President Stivers, and passed by voice vote.

Body Cameras

Shawn Butler, Executive Director of the Kentucky Association of Chiefs of Police (KACP), stated that the KACP worked with the Kentucky League of Cities (KLC) in 2018 on the open records statute, and with the Kentucky Association of Counties (KACO) to develop a model policy for Kentucky police and sheriffs.

Chief Joe Monroe, University of Kentucky Police Department, stated that in 2013 approximately 33% of municipal police departments in the United States had some form of a body cam program, which increased to over 50% by 2016. Currently, only two states require the use of body cameras, and 24 other states have laws governing the required policy, storage, or specific procedures for police body camera programs. The total cost

estimates range from \$1,000 to \$5,000 per officer, depending on the camera selection, storage requirements, and licensing software provided by different vendors.

Chief Monroe reviewed pros and cons of body cameras. Pros include better transparency, improving trust, reducing complaints, fewer use of force incidents, quicker resolution of complaints, providing coaching opportunities, and holding officers and citizens accountable. A major con is that no matter where the body camera is fastened to the officer, it does not give a true perspective of what the officer sees and experiences in real time.

There are significant start-up and maintenance costs. Storage and retention are the major expenses. There has to be an employee to manage the program as well as audit the videos. Body cameras can lead to a distrust by officers who feel the administration is spying on them, although body cameras are meant to protect and keep the officer from frivolous complaints. The uploading of body cameras can be time consuming. Smaller agencies may not have the infrastructure to upload videos quickly. If a mandatory program is going to be put in place, funding has to be considered. Smaller agencies will not be able to afford these types of programs.

In response to Chairman Petrie, Chief Monroe estimated that the annual cost for a body camera and video storage will be \$1,500 to \$1,800 per officer.

In response to Representative Bratcher, Chief Monroe stated that several police departments across the state share the belief that body cameras are a great way to record confessions.

Sheriff Keith Cain of Daviess County stated that requiring officers to wear body cameras will help build trust in the community by providing police accountability. Sheriff Cain stated that many agencies are in favor of equipping officers with cameras. He estimated that 30 officers could be equipped with body cameras for about \$50,000 the first year. However, the licensing, systems maintenance, and data management is where the majority of the cost is incurred, totaling approximately \$40,000 annually. Another cost would be the hiring of full-time employees to maintain the system, manage the data, and respond to open records requests. This cost is estimated at \$60,000 per year. All of these costs brings the five-year total to approximately \$500,000, which is beyond his budget. Sheriff Cain added that officers who have earned the trust of their community know that it was earned and is not a permanent condition.

JD Chaney, Executive Director/CEO of KLC, stated that the Kentucky Sheriff's Association encourages the adoption of body cameras for police officers. The 2018 body camera legislation balanced the open records law with personal privacy interests. As a result, many organizations have already voluntarily adopted wearing body cameras. If the recording contains anything related to the use of force by an officer, the request for release

of the records cannot be denied. Both the plaintiff and defense attorneys have access to the recordings through the open records process. The KLC concluded a survey with their members which indicated 95% of police departments with over 50 employees require and utilize body cameras. The number goes down for smaller departments. Mr. Chaney agrees that the majority of the cost for having body cameras is in the storage, maintenance, and open records requests. Mr. Chaney stated that much of the time and expense dealing with police officer bill of rights claims go away when you can produce video evidence.

In response to Chairman Petrie, Chief Monroe stated that the use of body cameras is worth the cost. Sheriff Cain responded that he is confident that body cameras are worth the investment but that his department does not have the money. It would be up to the General Assembly to determine if the cost is worth it and to help find the funding. Mr. Chaney added that it may depend on how active the police department is and whether or not the General Assembly would assist in providing funding.

In response to Senator Webb, Chief Monroe stated that the University of Kentucky Police Department has an internal policy making body cameras mandatory in certain incidents. Since the chance for camera malfunctioning is possible, the devices are to be tested and a spare is to be on hand.

Senator Schickel stated that this policy needs to be at a city level and not a state level.

In response to Senator Wheeler, Chief Monroe stated that the University of Kentucky Police Department's policy is retention of camera data for a minimum of 30 days. Having the Commonwealth provide the data storage would be a helpful option.

In response to President Stivers, Chief Monroe stated that the release of video recordings has to have guidance and a policy of best practices, as well as making sure these policies specify the different types of releases, to protect the right to privacy in certain situations. Sheriff Cain added that these issues mandate moving forward very cautiously.

In response to Senator West, Chief Monroe stated that storage of recordings can be in the cloud on a virtual server or onsite if security standards are met. Storage retention is specified in the contract with the vendor. The threat of having someone hack into your system depends on your firewall security and can be an issue whether storing remotely or internally.

In response to Senator Neal, Chief Monroe stated that University of Kentucky officers want to be recorded to show their accountability and behavior.

In response to Senator Carroll, Chief Monroe advised that some vendors are working on providing livestreaming. The upload technology would depend on the capability of the Wi-Fi or network speed.

COVID-19 Liabilities

Kate Shanks, Vice President of Public Affairs for the Kentucky Chamber of Commerce, reviewed the challenges for businesses during the COVID-19 pandemic. A recent CDC survey shows that more than half of those who contracted COVID-19 could not pinpoint where they came into contact with it. There are more than 3,000 lawsuits filed across the United States, with approximately 50 being in Kentucky. The concern from the Chamber of Commerce is whether or not courts are ready to handle this issue. Legislators are intervening to help provide clarity by putting in a safe harbor, providing civil protections for businesses that meet the safe harbor standards, and providing protection for businesses that manufacture personal protective equipment (PPE) in lieu of their typical products. Kentucky passed SB 150, addressing concerns regarding the PPE manufacturing and protecting healthcare professionals. Unless there was gross negligence, over 80% of Americans show support of COVID-19 lawsuit protection for businesses. The Chamber of Commerce has made a coalition with more than 20 organizations that represent public and private employers to address this issue. Ms. Shanks added that as we talk and work on recovery, we also need to talk about the economic recovery. The economic recovery should not be stalled or stopped because of lawsuits and inadequate protection for businesses.

Robert Hudson, an attorney with Frost Brown Todd, began by stating two reasons why COVID related tort immunity can be good public policy. The first being tort liability can promote public safety. Employers already operate under legal requirements to maintain safe work places. Kentucky OSHA has a general duty clause that imposes a broad base obligation on employers to maintain safe work places. One positive COVID test may require an employer to shut down an entire part of their business for an extended period of time. Secondly, tort liability may be too large of a burden for some employers during these difficult times. Kentucky employers face compliance responsibilities with respect to extensive new rules from the executive branch and federal government which change often. The CDC guidance on returning to work after exposures changed twice, masks were deemed not helpful, then change to being helpful, and the federal government extensively changed its employment laws. OSHA stated that employers must conduct an investigation into the cause of any positive COVID-19 tests, as if the employer is an expert on the spread of this disease. Mr. Hudson asks that legislators consider whether tort liability serves public policy, given the preexisting legal and operational protections, and the interest of justice in subjecting employers to a challenging layer of judicial scrutiny.

Cindy Effinger, an attorney with McBrayer Law Firm, confirmed that businesses have had to navigate through these new laws and regulations to remain open or to reopen. Ms. Effinger stated that businesses are asking what their liability as a business is, so they can comply. Each COVID-19 death represents a possible lawsuit. Ms. Effinger stated that

there is no consistency with the safety messages from Governor Beshear or the CDC. Because of the multiple interpretations, businesses do not have proper guidance to determine how they will be judged in the legal system.

In response to Chairman Petrie, Ms. Effinger stated that, as of July 7, 2020, 50 employer liability, banking, civil rights, and lawsuits against the state have been filed in Kentucky related to COVID-19.

Rob Mattingly, an attorney with DeCamillis & Mattingly, stated that there needs to be protection for employers, employees, and the public. Bringing a case related to COVID-19 can be difficult due to the burden of proof as to where you contracted the disease. Civil liability should require people and businesses to act reasonable. Businesses can be protected through legislation when the business acts reasonably. Preexisting OSHA guidelines are based upon employers acting reasonable. There are required infection protocols already in place. Mr. Mattingly stated that the legislative body may not need to move forward in enacting more legislation toward COVID-19 liability. Mr. Mattingly mentioned that some businesses purchased business interruption insurance and the insurance companies do not want to pay the businesses, which kicks it back on Frankfort, unemployment, and different agencies.

Chairman Petrie stated that he would be interested in updates through the interim as to the number of lawsuits and types, as well as the business interruption proceedings. Senator Webb added that an inquiry as to the complaint versus the agency's ability to enforce or investigate would also be of interest. Senator Wheeler agreed that businesses are trying to comply with the changing regulations and that the issue lies mainly with insurance companies that do not want to pay out on contracts or liability premiums.

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