

INTERIM JOINT COMMITTEE ON JUDICIARY

Minutes of the 3rd Meeting of the 2021 Interim

August 5, 2021

Call to Order and Roll Call

The 3rd meeting of the Interim Joint Committee on Judiciary was held on Thursday, August 5, 2021, at 11:00 AM, in Room 149 of the Capitol Annex. Representative C. Ed Massey, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Whitney Westerfield, Co-Chair; Representative C. Ed Massey, Co-Chair; Senators Karen Berg, Danny Carroll, Alice Forgy Kerr, John Schickel, Wil Schroder, Johnnie Turner, Stephen West, and Phillip Wheeler; Representatives Kim Banta, John Blanton, Kevin D. Bratcher, McKenzie Cantrell, Daniel Elliott, Joseph M. Fischer, Samara Heavrin, Nima Kulkarni, Derek Lewis, Savannah Maddox, Patti Minter, Kimberly Poore Moser, Jason Nemes, Jason Petrie, Attica Scott, and Pamela Stevenson.

Guests: Representative Chris Fugate, Scott Blair, Representative Phillip Pratt, Sheriff Tony Hampton, Judge Jamie Jameson, Judge Karen Thomas, Judge Patricia Summe, and Laurie Dudgeon.

LRC Staff: Roberta Kiser, Cynthia LeFevre, Randall Roof, Michelle Spears, Matt Trebelhorn, Maria Macaluso, and Yvonne Beghtol

Approval of the July 08, 2021 Minutes

Representative Blanton made a motion to approve the July 08, 2021 minutes, seconded by Senator Schickel, and passed by voice vote.

Enhanced Penalties for Fentanyl Offenses

Scott Blair, Perry County Commonwealth Attorney, stated that there needs to be an increase of penalties for trafficking of fentanyl. In 2020, Kentucky experienced an increase of almost 50 percent in overdoses by having 2,000 cases, with 70 percent involving fentanyl.

Representative Chris Fugate, House District 84, stated that Hazard, Kentucky experienced ten overdoses at one time resulting in four deaths, four people having to receive 3 doses of Narcan, and the two responding police officers having to receive double Narcan due to exposure. Representative Fugate explained that fentanyl is not only hazardous to the person using it, but can also have effects on anyone in the surrounding area. The purpose

of BR 278 is to enhance the penalty for fentanyl trafficking, or any derivative of fentanyl, by requiring the individual to serve 85 percent of their jail time without the possibility of parole.

In response to Senator Wheeler, Representative Fugate stated that monetary forfeiture penalties are already included in the laws but he is not aware of specific provisions that allow the money seized to go to victims. While tightening up borders could help reduce trafficking of fentanyl into the United States, Kentucky could set the bar for not allowing fentanyl traffickers to continue operating in this state.

In response to Representative Blanton, Representative Fugate stated that fentanyl trafficking is currently a Class C felony that requires serving 50 percent of the sentencing time, but the individual could be shock probated out.

In response to Representative Bratcher, Mr. Blair stated that fentanyl is a type of drug and not a pharmaceutical name, it is manufactured elsewhere and brought into the United States, and it is most dangerous for first time users. Representative Moser clarified that fentanyl is a synthetic opioid manufactured to be about ten times stronger than heroin.

Representative Lewis commented that the Drug Enforcement Administration (DEA) believes fentanyl mostly comes from China to Mexico, and then through the United States border.

Senator Turner commented that there should be a legislative mandate for some type of rehabilitation for anyone serving time for fentanyl trafficking.

In response to Representative Cantrell, Mr. Blair stated that proving an overdose or injury, caused by being near someone else using fentanyl, is very difficult and therefore they cannot be charged for the death or injuries.

Representative Nemes commented that because this bill is against traffickers and not addicts, criminal justice reformer supporters should be in favor of this bill, and he requested to be a co-sponsor.

Anti-SLAPP Legislation

Representative Kulkarni stated that SLAPP stands for Strategic Lawsuits Against Public Participation and refers to civil lawsuits against non-governmental individuals or groups because of their communications to a government body on an issue of public concern. SLAPP lawsuits change the balance of power between parties, because SLAPP lawsuits intend to take a matter of public concern out of the public arena and into the courtroom, shifting the attention from the speech or activity toward a legal defense. SLAPP lawsuits are intended to delay matters or discourage individuals from continuing in that speech so that the plaintiff can continue the unresolved activity. SLAPP lawsuits are civil

lawsuits masquerading as potentially normal tort lawsuits filed not to prevail on the merits, but to delay, chill, suppress, or discourage free speech.

In response to Senator Wheeler, Representative Nemes agreed that he also trusts the justice system to come to the right resolution, but Anti-SLAPP legislation is intended to keep someone from filing and pursuing a frivolous lawsuit. The Anti-SLAPP bill allows an individual the opportunity to prove that the lawsuit is a misuse of the court system without being financially ruined. Representative Kulkarni added that a wide variety of Anti-SLAPP legislation has been enacted in 33 states. SLAPP suits are a meritless claim that somebody files without intent to win, but with the intention to delay. The individual being sued is essentially responsible for the economic burden of mounting a legal defense for the meritless lawsuit. Anti-SLAPP legislation provides a framework of identifying what actually constitutes a SLAPP suit and a way for the court to resolve the suit so that the underlying cause can move forward. The Uniform Law Commission (ULC) adopted a model Anti-SLAPP bill in July, 2020.

In response to Representative Bratcher, Representative Kulkarni stated that Anti-SLAPP legislation is needed to keep individuals from filing frivolous lawsuits just to take the focus off of the issue against them.

Anti-swatting Legislation

Representative Pratt explained that swatting calls are currently a misdemeanor and have no recourse for compensation to the victims. Representative Pratt showed a video of a swatting incident caught on camera at a home in Georgetown, Kentucky, where police officers arrived at a couple's house due to a 911 call from a young man stating that he shot his mother, and gave their address as his home. The couple had no idea as to what was happening or why the officers were surrounding their home. Representative Pratt told of a similar situation from Tennessee where the victim was so shocked and confused he died of a heart attack.

In response to Representative Banta, Sheriff Tony Hampton, Scott County Sheriff's Office, stated that there have been four incidents in Scott County since March, 2021.

In response to Senator Turner, Representative Pratt confirmed that the legislation would qualify the offense as a Class D felony with five to ten years penalty if there were any injuries. If there were any serious injuries it would qualify as Class B felony with 10 to 20 years penalty.

In response to Representative Bratcher, Sheriff Hampton stated that the caller for the March 2021 incident sounded like a teenage male, and was tracked to Texas. As a Class A misdemeanor, there would not be cause enough to extradite the individual. Any restitution would be determined by the courts.

In response to Chairman Westerfield, Sheriff Hampton stated that regardless of whether the call is known to come from a random phone number or from a dispatch system, the incident has to be treated as if it is factual. Chairman Westerfield complimented the Scott County Sheriff's Department for the way they handled the situation by calling the couple's home to announce the reason for their arrival.

Senator Carroll suggested checking with 911 and the new technologies available on how to trace where calls are coming from. Senator Carroll also stated that he is in support of the one to five year penalty for placing someone in this situation, regardless of any injuries or not.

Representative Blanton commented that the need to increase the penalty to a felony would be required to extradite an individual from another state.

In response to Senator Berg, Sheriff Hampton stated that if this were a felony charge, he believes they would have had enough reason to use sources to identify the perpetrator.

In response to Representative Cantrell, Representative Pratt and Sheriff Hampton were not aware of the charges against the perpetrator in the Tennessee incident or the specifics on the California swatting laws. Sheriff Hampton stated that the wanton endangerment laws have certain thresholds that have to be met, whereas creating an Anti-swatting statute would make it easier to pursue the perpetrator.

Chairman Massey stated that while officers are responding to a false claim, there may not be enough resources available to respond to a legitimate call elsewhere.

Virtual Judicial Proceedings

Judge Jamie Jameson, Marshall County Circuit Court Judge, advised that HB 551 was introduced during the 2021 Session to address virtual judicial proceedings and reviewed the concerns addressed such as requiring jails to cooperate with virtual court. The language in the amended bill did not require virtual hearings, but made them permissible. Judge Jameson stated that having the technology and training is necessary to make the adjustments. One of the major benefits to virtual proceedings is the cost savings and time in not having to transport inmates. The Administrative Office of the Courts (AOC) was allotted \$4,000,000 for conversion to virtual court.

Judge Karen Thomas, Campbell County District Judge, stated that while the COVID-19 pandemic caused a lot of issues, it also created a lot of opportunities to reexamine court proceedings. Judge Thomas stated that all of Campbell County civil cases are deemed virtual unless the individual requests to be in person, and all criminal cases are in person unless requested to be virtual.

Judge Patricia Summe, Kenton County Circuit Court, reviewed the concerns of not knowing when extradition of an inmate may or may not be best suited for a case, having separate options for virtual or in person arraignments, and communicating with other counties. Anything that affects the defendant's rights or credibility has to be a major consideration factor.

Laurie Dudgeon, Director of the Administrative Office of the Courts, thanked the legislators for passing HB 556, which appropriated \$11,000,000 to promote video arraignment systems, video conferencing systems, and to upgrade technology in all 463 courtrooms in the Commonwealth. Ms. Dudgeon recommends getting all of the stakeholders together to discuss concerns with virtual court proceedings and said that Chief Justice Minton suggests creating a Supreme Court Task Force Steering Committee for Remote Proceedings.

Chairman Massey stated that he is in favor of meeting with all agencies who are involved in the change to allowing virtual court proceedings and working through each of their concerns.

Chairman Westerfield commented that remote court should be available for any litigant who wants it, if the judge agrees to it. Virtual hearings improve attendance, are more cost efficient, limit the need for staff, and save time.

Senator Turner commented that his main concern is mandating that all cases be virtual.

Senator Wheeler commented that attending virtually or in-person should be an option for the litigant and judge.

Senator Berg commented that her initial response to allowing virtual medicine was not good, but now encourages it due to the cost savings, and believes it will be the same with virtual court proceedings.

Mr. Jerry Wagner, Executive Director of the Kentucky Sheriffs' Association, commented that he appreciates the conversation and input at today's meeting.

There being no further business the meeting adjourned at 1:00 PM.