

INTERIM JOINT COMMITTEE ON JUDICIARY

Minutes of the 4th Meeting of the 2021 Interim

September 17, 2021

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Judiciary was held on Friday, September 17, 2021, at 11:00 AM, in Room 149 of the Capitol Annex. Senator Whitney Westerfield, Chair, called the meeting to order, and the secretary called the roll. The minutes from the August 5th 2021 meeting were approved.

Present were:

Members: Senator Whitney Westerfield, Co-Chair; Representative C. Ed Massey, Co-Chair; Senators Karen Berg, Danny Carroll, Gerald A. Neal, John Schickel, Wil Schroder, Robert Stivers, and Phillip Wheeler; Representatives Kevin D. Bratcher, McKenzie Cantrell, Jennifer Decker, Daniel Elliott, Joseph Fischer, Samara Heavrin, Nima Kulkarni, Derek Lewis, Savannah Maddox, Chad McCoy, Patti Minter, Kimberly Moser, Jason Petrie, and Attica Scott.

Guests: The Real Young Prodigys, Cookie Crews, Kiernyn Fannin, Robyn Bender, John Moberly, Greg Speck, Jeff Hancock, Mike Bosse, and Tyler Whitworth.

LRC Staff: Roberta Kiser, Matt Trebelhorn, Randall Roof, Michelle Spears, and Chelsea Fallis.

Approval of the September 17, 2021 Minutes

Senator Carroll made a motion to approve the September 17, 2021, minutes, seconded by Senator Westerfield, and passed by voice vote.

CROWN (Creating a Respectful and Open World for Natural Hair) Act

Senator Westerfield welcomed Senator McGarvey and his guests “The Real Young Prodigys” of Louisville. The group presented a video it had created support on the CROWN Act and discussed legislation that will expand the definition of race and extend statutory protection to hair texture and protective styles in the workplace, K-12 public schools, and charter schools.

Inmate Classification and Transfer

Kiernyn Fannin, Director of the Division of Population Management, Department of Corrections, stated by definition that a controlled intake inmate is an inmate sentenced to the Department of Corrections after judgment, who is pending classification to a jail

program or awaiting admission to an Assessment Center. Director Fannin reviewed the classifications used by the department as required under KRS 532.100.

Director Fannin stated that DOC uses an objective based risk instrument that was developed in the 1980s, with assistance of the National Institute of Correction (NIC). With the most recent version implemented in October of 2020. The classification manual is reviewed and updated in accordance with recommendations from valid and reliable studies.

Director Fannin stated that the instrument includes levels of custody and scored risk factors that include disciplinary behavior, severity of current offense, history and severity of other convictions, escape history, age, high school diploma or GED, employment status or attending school at the time of arrest, and kyRAS peer companion and family social score. The department also has a discretionary override if the committee feels that the inmate's final score is incorrect and does not accurately show the risk the inmate poses.

Director Fannin stated that the classification process begins at sentencing. Once the inmate is sentenced, probation and parole will add the inmate into the offender management system for controlled intake. There are approximately 1,500 inmates per month being classified as controlled intake, compared to approximately 1,900 per month prior to the pandemic. During classifications, staff reviews each offender and enters a projection for that offender in regards to program eligibility and a projected trustee level. Inmates can be classified into a jail program, classified pending admission to an assessment center, or transferred directly to state penitentiary, if it is a death penalty sentence. The inmate has the right to appeal the classification and is eligible for custody review every 90 days at request of the jail. After any triggering event, an inmate classification is automatically reviewed.

Director Fannin stated in 2019, DOC has classified an average of 992 inmates per month into jail programs. The number decreased in 2021, with those being transferred resulting from the pandemic, the average classifications was 691 per month. On average it takes 30 to 40 days to classify an inmate. Director Fannin identified several factors that impact those time frames. Additionally, Director Fannin stated that the institutional process for classification is different than the jail program.

In response to an inquiry from Senator Westerfield, Director Fannin provided further information regarding protocols instituted as a result of COVID-19 during transfers. Inmates are tested for COVID-19 before and after transfer to a facility. Additionally, staff reviews the impact of receiving the vaccination would have on the length of time an inmate is in quarantine. Upon admission into an assessment center, each inmate is assigned to a classification treatment officer and has a classification hearing. The pandemic significantly impacted classifications and transfers. Director Fannin further stated that upon intake of transferred inmates, it is protocol to hold an inmate in quarantine for 14 days. If an inmate tests positive for COVID-19 after the 14 day quarantine, they will not be released from

quarantine until a negative test has been recorded. In response to Senator Westerfield, Commissioner Crews added further information regarding the testing process.

Director Fannin stated that the Department of Corrections has added additional assessment centers as a result of the number of inmates waiting for classification. Those centers are now closed due to critical shortage of staff, but while they were running, an additional 254 inmates were able to be transferred.

Director Fannin reviewed the transfer status of inmates in controlled intake in February 2021, and in September 2021. In response to Senator Westerfield, Director Fannin stated that classification is to be completed within ten days upon the receipt of the judgment and PSI being received. Senator Westerfield asked how insufficient staffing would cause the classification process to exceed past ten days. Commenting that there have been numerous complaints from local correctional facilities and practicing attorneys who have been waiting three years for clients to be classified. In response to Senator Westerfield, Director Fannin stated that the classification date does not begin until after sentencing and receipt of the court order. Commissioner Crews, added that the complexity of classifying inmates does not allow for the ten day statutory requirements to be met.

In response to an inquiry by Senator Schickel, Commissioner Crews agreed to provide him information regarding the restrictive custody centers.

Representative Petrie requested DOC review the statutory requirements regarding timing of classifications and provide an analysis of necessary statutory or budgetary modifications of existing nonfunctioning procedures. Senator Carroll requested a current state-wide census count.

Law Enforcement Reciprocity

Senator Carroll advised the committee that the issue being discussed arose from a certification issue in Pulaski County and has resulted in further conversations to help officer shortages in the law enforcement community.

Major Jeff Hancock, Pulaski County Sherriff's stated in March 2021, he had an impressive interview with an officer from Alabama. After the interview a reciprocity process was initiated through the Kentucky Law Enforcement Council, but the officer did not meet the criteria for reciprocity. Sherriff Jeff Speck also commented on the officer's qualifications.

John Moberly, Executive Director of the Kentucky Law Enforcement Council, stated that KLEC's sole purpose is to hold Kentucky's law enforcement and training accountable. Director Moberly stated that as a part of the council they are statutorily required to do pre-employment testing to determine if an individual is suitable for long-term employment and officer reciprocity. The council includes 25 members, half of which

are appointed by the Governor. Director Moberly stated that decisions were made by council members to promulgate an amended regulation allowing employment opportunities in Kentucky to out-of-state officers, adding that the current statute states that 50 credit hours were required before reciprocity.

Director Moberly stated that organizations such as the Fraternal Order of Police, police chiefs, and KLEC agreed that the current regulation be amended. Drafts reflecting language changes were submitted to the Legislative Research Commission in August of 2021. Public comment been scheduled for October of 2021.

Officer Whitworth discussed his training and desire to work with the Pulaski County Sheriff's Office.

Responding to Officer Whitworth, Senator Carroll recognized the importance of changes to be made on reciprocity. Stating that the additional credentials and experience of officers being recruited that meet the one year completion of training upon transfer would greatly benefit the Commonwealth.

In response to Senator Carroll, Director Moberly stated the military to law enforcement program known as the Skill Bridge program would allow for substantial recruitment opportunities. Under this program, military personnel, no longer actively serving, can be paid to attend six months of civilian- based academy training for potential employment.

In response to Representative Moser, Director Moberly stated that 70 online classes have been implemented for online training courses at universities across the nation. The Department of Criminal Justice monitors individuals during the online testing process, providing limitations and capturing the screening process.

There being no further business the meeting adjourned at 12:44 PM.