

INTERIM JOINT COMMITTEE ON JUDICIARY

Minutes of the 6th Meeting of the 2021 Interim

November 17, 2021

Call to Order and Roll Call

The 6th meeting of the Interim Joint Committee on Judiciary was held on Wednesday, November 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.

Present were:

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

Guests: Jennifer Green, Edward Harness, Representative Patrick Flannery, Stacy Tapke, Alan George, Eric Johnson, Kyle Smith, Blake Christopher, and Charlotte Weddington.

LRC Staff: Roberta Kiser, Matt Trebelhorn, Randall Roof, Michelle Spears, Lexington Souers, Stacy Byrns Taulbee, and Chelsea Fallis.

Approval of the October 7, 2021 Minutes

Representative Heavrin made a motion to approve the October 7, 2021, minutes, seconded by Senator Turner, and passed by voice vote.

Louisville Metro Government Civilian Review and Accountability Board

Jennifer Green, Board Chair, presented on civilian review and accountability. The Civilian Review Board work group conducts research to provide the most accurate recommendations to include additional independent review for the Louisville Metro Police Department (LMPD) agencies. The scope of authority increases the Jefferson County citizens' involvement with investigations and reviewing police misconduct allegations.

In response to Senator Carroll, Ms. Green stated that there is not a designated liaison with the LMPD with whom she makes contact for board relations.

Representative Blanton recommended pursuing an individual that has law enforcement experience to be on the Civilian and Accountability Review Board.

Representative Bratcher requested documentation on the geographical areas in which the board members reside.

In response to Representative Nemes, Ed Harness, Inspector General, stated if a complaint is lodged against a law enforcement officer, the officer will be afforded all procedural due processes.

Proposed D.U.I. Legislation

Representative Patrick Flannery presented potential legislation regarding search warrant procedures when an offender refuses a request for a blood test. Alan George, Treasurer of the Kentucky County Attorneys Association and Woodford County Attorney, explained that the Kentucky Supreme Court's *McCarthy* opinion rendered on April 29, 2021, has had a significant impact on D.U.I. prosecutions in Kentucky. The *McCarthy* case states D.U.I. arrestees have a constitutional right to refuse a blood test and that refusal cannot be used as evidence or for penalty enhancement. A warrant for a blood test is necessary to prosecute defendants that are driving under the influence of drugs or alcohol. In 2020, drugs were a factor in 54 percent of Kentucky's impaired driving accidents, and there were 173 deaths as a result of impaired driving.

In response to Senator Carroll, Stacy Tapke, President of the Kentucky County Attorneys Association from Kenton County, stated that the *McCarthy* case is being appealed to the United States Supreme Court, and was reconsidered by the Kentucky Supreme Court, but the reconsideration was denied.

Senator Turner requested statistics on individuals who served time in a correctional facility after submitting to a blood screening for a D.U.I. related charge, resulting in a negative blood test for drugs or alcohol.

In response to Senator West, Mr. George stated that states who have implemented the use of a search warrant for a blood test have been successful in their use.

In response to Representative Nemes, Representative Flannery stated that additional language will be considered before the bill is prefiled.

Supporting Heroes

Eric Johnson, Executive Director, presented on the Supporting Heroes organization. For 17 years, Supporting Heroes, a nonprofit organization whose mission is to honor line of duty deaths, has supported families of those that have lost their lives.

Senator Carroll requested a summary of assistance needed from the Kentucky General Assembly for the Supporting Heroes Foundation.

Casey's Law Update

Representative Moser presented on the Matthew Casey Wiedington substance abuse intervention law. From 2004 to 2021, there have been approximately 6,000 cases of Kentucky citizens using Casey's Law for court-ordered drug abuse treatment. Blake Christopher, Deputy General Counsel, Office of Kentucky Attorney General, explained that several Kentucky counties have concerns about the constitutionality of the law and will not allow for petitions to be heard. Changes that the Kentucky Attorney General's office would like to be implemented on the current Casey's law include adding the beyond a reasonable doubt standard that the petition must satisfy before someone can be committed to court-ordered treatment. Clearly providing a substance abuse dependent individual the right to cross-examine health care professionals who submit testimony about the individual's condition is also recommended. These changes would preserve the current Casey's law provision and ensure that it can be enforced.

There being no further business the meeting adjourned at 12:53 P.M.