

INTERIM JOINT COMMITTEE ON JUDICIARY

Minutes of the 1st Meeting of the 2023 Interim

June 8, 2023

Call to Order and Roll Call

The 1st meeting of the Interim Joint Committee on Judiciary was held on Thursday, June 8, 2023, at 11:00 AM, in Room 149 of the Capitol Annex. Representative Daniel Elliott, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Daniel Elliott, Co-Chair; Senators Danny Carroll, Matthew Deneen, Gerald A. Neal, and Johnnie Turner; Representatives Kim Banta, John Blanton, Kevin D. Bratcher, Josh Bray, Lindsey Burke, Jennifer Decker, Stephanie Dietz, Patrick Flannery, Keturah Herron, Nima Kulkarni, Derek Lewis, Kimberly Poore Moser, Jason Nemes, Jason Petrie, Steve Rawlings, Scott Sharp, Pamela Stevenson, and Nick Wilson.

Guests: Representative Deanna Frazier Gordon, House District 81; Chief Rodney Richardson, Richmond Police Department; Major Josh Hale, Richmond Police Department; B. Scott West, Deputy Public Advocate, Kentucky Department of Public Advocacy; Susan Hopf, Directing Attorney, Kentucky Innocence Project; Laurie Roberts, State Policy Advocate, Innocence Project; Mike Von Allmen; Johnetta Carr; Edwin Chandler; Eric Schuller, President, Alliance for Responsible Consumer Legal Funding; and Sherman Joyce, President, American Tort Reform Association.

LRC Staff: Roberta Kiser, Matt Trebelhorn, Randall Roof, Michelle Spears, Stacy Byrns Taulbee, and Elizabeth Hardy.

Controlled Substances and Homicide

Representative Frasier Gordon and Representative Blanton discussed the need for an amendment to KRS 507.020, Kentucky's murder statute, to include the unlawful delivery, distribution, or sale of a controlled substance that results in death due to injection, inhalation, absorption, or ingestion of that substance. Chief Rodney Richardson and Major Josh Hale of the Richmond Police Department discussed the number of calls their department receives relating to drug overdoses that have resulted in death, particularly those that involve fentanyl. Chief Richardson advised that many of the victims were unaware that what they were using contained fentanyl. While a charge of manslaughter in the second degree is available if someone sold a controlled substance that resulted in death, it is a non-violent felony offense and requires the transfer of some type of payment which

can be difficult to establish as many of these sales are done in cash. Chief Richardson stated that families cannot comprehend why the individual who supplied the drug can only be charged with manslaughter and not murder. Major Hale described the investigation process and reiterated the questions from the families of the victims regarding why the person who gave their child the substance that resulted in that child's death is not being charged with murder.

Representative Blanton advised that the proposed legislation would be a tool to go after the bad actors and keep the people who are feeding this poison to our families and friends off the streets. He stated that while some may say this will cause people not to report an overdose, he does not think that will be a problem as law enforcement wants the dealer. If you are with someone and they overdose, all you have to do is tell law enforcement who sold the drugs.

In response to a question from Representative Decker, Chief Richardson provided statistics regarding the number of cases charged and the result in those cases. Adding the word "transfer" as it relates to the controlled substance as is contained in the proposed legislation would resolve some of the issue.

In response to questions from Representative Bratcher, Chief Richardson stated that the information and statistics they receive from government agencies is helpful to their community and law enforcement, and we should never stop fighting this fight for the victims and their families. Representative Blanton added that this legislation will not solve our problems, but it will provide an additional tool to help with control of the problem.

In response to a question from Representative Banta, Representative Blanton stated that the people who would be prosecuted under this proposal would be the drug dealers.

In response to questions from Representative Herron on the number of individuals charged with manslaughter related to drugs who had addiction issues, Chief Richardson stated that he did not know that number and he did not have statistics for the number of individuals charged with manslaughter throughout the state.

In response to a question from Representative Burke regarding amending the current manslaughter statute to address the concerns raised, Chief Richardson stated that it would be helpful but something stronger than a non-violent offense that is eligible for early release is needed.

Scott West advised the committee that while the intent to curb the scourge of overdose deaths in this state is sincere, he does not believe the proposed legislation curbs the problem. He stated that drug-induced homicide laws are counterproductive as the threat of increased prosecution does not stop the people who are selling drugs, but the fear of

being charged does have a chilling effect on Good Samaritan laws. He stated that there was no requirement of intent and this results in absolute liability.

EXONERATION COMPENSATION

Representative Jason Nemes stated to the committee that exoneration is not only good for the exoneree, it is also good for the state as it models the right type of behavior. When the state makes a mistake, even unintentionally, it is right to pay in some way for the consequences of that action.

Susan Hopf informed the committee that 38 states, the District of Columbia, and the federal government provide compensation for wrongful convictions. She further stated that exonerees often spend decades in prison and when they are released they may have ailing health and no family to help them. The proposed legislation is an important part of making an exoneree's life whole again.

Mike Von Allman told the committee about his wrongful conviction based upon a composite drawing that resulted in a prison sentence of 30 years. He stated that while he was granted parole after 11 years on his fourth appearance before the Parole Board, for any application that he filed he had to check the box that he had been convicted of a felony. On occasions when he was offered the job, as soon as he told them he was a convicted felon, the job offer was taken away. When one employer hired him after he said he was a convicted felon, he was assigned to work the hardest job designed to make him quit. He continued to work the jobs assigned to him and stated he finally worked himself into an apprenticeship program and became a successful plumber. The Kentucky Innocence Project later helped him and he urged the committee to support legislation to compensate those individuals who have been wrongfully convicted.

Edwin Chandler informed the committee that he is an exoneree after serving eight years in prison and another seven years on parole. He stated it was difficult to get employment as a convicted felon. He thought things would be different when he was exonerated but he still faced obstacles including PTSD from being incarcerated. Some exonerees cannot enter the work force because of their age and the length of time they have spent in prison. This results in no social security or anything else, which is why this exoneration compensation is so important.

Johnetta Carr informed the Committee that when she was 16 years-old she was interrogated for 11 ½ hours without parental consent for a crime she did not commit or have anything to do with. Before trial she was told that she could enter a plea and maintain her innocence or face the possibility of death. She ended up serving four years in jails and prisons and serving out nine years on parole. She advised the committee that the emotional and psychological toll of being wrongfully convicted cannot be overstated. Even though she was exonerated she still had difficulty finding employment.

Ms. Hopf stated that it is not guaranteed that anybody would receive an award under this proposal as a judge would make the determination as to whether they qualified or not. She stated that it is estimated approximately 23 individuals are eligible, and 6 of them have pending civil suits. If an individual prevails in a civil action they would most likely not be eligible for any kind of compensation under this statute, as there would be an offset. Of eligible individuals, approximately 60 percent apply and of those approximately 75 percent receive compensation.

In response to questions from Representative Rawlings, Representative Decker, Representative Herron, Representative Dietz, Representative Nemes, Ms. Hopf, and Laurie Roberts discussed legal procedural issues, including matters involving juveniles and child support. Ms. Roberts stated that if an individual successfully establishes his or her innocence, a Certificate of Innocence is issued by the court.

Nonrecourse Consumer Legal Funding

Representative Flannery stated that nonrecourse consumer legal funding transactions are not unlawful, will not cause more litigation, and is not litigation financing. Eric Schuller explained the process in obtaining consumer legal funding and stated that all steps are codified in statute where this has been adopted. He stated that the funds can only be used for household needs, not for financing litigation.

Sherman Joyce discussed concerns about these loans including the rates the lenders routinely charge and the negative impact on potential settlements of litigated matters. Mr. Joyce stated that if Kentucky were to move forward with nonrecourse consumer legal funding, he would recommend that the loan be subject to the state's usury statute and that any agreements be required to be disclosed in litigation to ensure all parties and the court are aware of the loan.

In response to a question from Representative Sharp, Representative Flannery stated that while this type of funding has some similarities to payday lending it is not the same, but it does need regulation. Mr. Schuller stated that under this proposal, no repayment is required until after an award is received.

In response to a question from Representative Banta, Mr. Schuller stated that this type of consumer lending is not the same as litigation funding.

In response to a question from Representative Bray, Mr. Schuller stated that all fees are stopped at the 42-month mark. Mr. Schuller stated that in general terms the loan amount is capped at 10 percent of the likely recovery in the litigation resulting in usual loan amounts in the \$2,000 to \$5,000 range.

There being no further business, the meeting adjourned at 1:00 p.m.