

LEGISLATIVE OVERSIGHT & INVESTIGATIONS COMMITTEE

Minutes of the 6th Meeting of the 2021 Interim

November 10, 2021

Call to Order and Roll Call

The 6th meeting of the Legislative Oversight & Investigations Committee was held on Wednesday, November 10, 2021, at 1:00 PM, in Room 131 of the Capitol Annex. Representative Jason Nemes, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Jason Nemes, Co-Chair, Senator Danny Carroll, Co-Chair; Senators Jason Howell, Morgan McGarvey, Michael J. Nemes, Wil Schroder, Brandon J. Storm, and Reginald Thomas; Representatives John Blanton, Lynn Bechler, Ken Fleming, Angie Hatton, Joni L. Jenkins, Steve Riley, and Scott Sharp.

Guests: Stacy Tapke, Kenton County Attorney, President, Kentucky County Attorneys Association; Jenny Oldham, Hardin County Attorney, President-Elect, Kentucky County Attorneys Association; Joe Ross, Logan County Attorney, At Large Member, Kentucky County Attorneys Association; Lois Windhorst, Regional Director, Mothers Against Drunk Driving; and Yolanda Mack.

LRC Staff: Gerald W. Hoppmann, Committee Staff Administrator; Committee Analysts William Spears, Jacob Blevins, Joel Thomas, Jeremy Skinner, Shane Stevens, Jacob Blevins, Chris Hall, Ryan Brown, Taylor Johnston, McKenzie Ballard; and Ashley Taylor, Committee Assistant.

Minutes for October 14th, 2021

Upon motion by Representative Blanton and second by Representative Fleming, the minutes for the October 14, 2021, meeting were approved without objection.

Representative Nemes stated that at the October 14, 2021, meeting, the committee adopted the Child Fatality and Near Fatality External Review Panel report by voice vote; however, statute requires that reports be adopted by a roll call vote. Upon motion by Representative Blanton and second by Representative Jenkins, the Child Fatality and Near Fatality External Review Panel report from the October 14, 2021, meeting was adopted with a roll call of 14 yes votes and 0 no votes.

Representative Nemes stated that the minutes of the October 14, 2021, meeting will be amended to reflect this action. Upon motion by Senator Howell and second by Senator Nemes, the amended minutes from the October 14, 2021, meeting were approved with a roll call of 14 yes votes and 0 no votes.

Staff Report: *County Attorney Traffic Safety Programs*

Legislative Oversight staff members William Spears and Jacob Blevins presented the County Attorney Traffic Safety Programs report. Mr. Spears stated that Kentucky Acts Chapter 190, section 15 from 2021 requires the Legislative Oversight and Investigations Committee to review the system of traffic safety programs operated by county attorneys in the Commonwealth in fiscal year 2020. Mr. Spears and Mr. Blevins discussed the report's findings and recommendations related to the lack of an internal control structure to ensure that statutory requirements are met.

Staff's full presentation is available on the Legislative Oversight and Investigations Committee webpage.

In response to a question from Representative Nemes related to past allegations of misconduct, Mr. Spears stated that the report identified largely technical and miscoding issues that need to be addressed as opposed to misconduct. He did note that with the exception of some issues identified by the Auditor of Public Accounts (APA), staff's report focused primarily on the lack of processes to catch misconduct. Representative Nemes said that the more important issues seem to focus on the need to create request for proposals (RFP) and contracting processes. He also stated that rather than the Transportation Cabinet, the Prosecutors Advisory Council (PAC) and the state Attorney General are appropriated entities to assist.

Representative Nemes inquired about the self-operating counties. Mr. Spears stated that 24 counties operate their own programs, but the report did not review these programs. Representative Nemes also commented about operating expenses and asked whether identified credit card payments were used initially for operating expenses. Mr. Spears noted that the APA was available to answer questions related to their work in this area.

In response to a question from Representative Fleming, Mr. Spears agreed that after taking out the vendor fee, the Administrative Office of the Courts fee, and the Finance and Administration Cabinet fee, roughly 50 percent to 60 percent of the funds go back to the county attorney offices. Mr. Blevins stated the Kentucky County Attorneys Association (KCAA) indicated that in order to keep these programs competitive, the county attorney offices want the total cost to be roughly the same as if someone paid their ticket. In response to a question from Representative Fleming, Mr. Spears said that "reasonable fee" is not defined in statute.

In response to a question from Representative Bechler, Mr. Blevins stated that other than discovering there are no contracts in place, staff were not able to establish any clear reasoning for why the RFP process was not used to select traffic safety program vendors. Mr. Spears added that KCAA stated it had attempted more structure related to RFP and contracting processes in the past, but it became complex. Representative Bechler also commented on the complexity and uniformity of costs. Mr. Spears explained that every rate in the state was not compared to a typical fee, but that costs do appear to be within a reasonable range.

In response to a question from Representative Bechler, Mr. Blevins explained the curriculums of the two vendors appeared to be comparable, and staff found that personal preference was the reason for county attorneys choosing one vendor over the other. Mr. Spears said it did not appear that certain vendors were chosen based on cost. In response to another question from Representative Bechler, Mr. Spears stated that county attorney offices can use both vendors. Mr. Spears also stated that since agreements are verbal, there appear to be no restrictions or timeframes on the amount of time that one has to stay with a certain vendor.

Ms. Tapke introduced Ms. Oldham and other Kentucky County Attorneys Associations members who were present, including County Attorney Mike O'Connell from Jefferson County, County Attorney Joe Ross from Logan County, and County Attorney Martin Hatfield from Pulaski County. She stated that Mr. Ross and Mr. Hatfield are two of KCAA's three representatives on the PAC.

Ms. Tapke stated that she provided a letter to the committee addressing staff's draft report, which is available on the Legislative Oversight and Investigations Committee webpage.

She stated the traffic safety programs provide two purposes: educating offenders and supplementing the state funds that county attorneys receive for operating costs (approximately \$3,000). She said others also benefit from the fee allocations, including deputy clerks.

She stated that the two vendors used by county attorneys, Drive Safe Kentucky and AdventFS, are both comparable in price. However, her staff prefers AdventFS, because of its platform for inputting data. Ms. Tapke said she somewhat disagrees with the report's finding related to a lack of data verification because her staff checks citations to make sure offenders do not hold commercial driver licenses (CDLs), they also check CourtNet to review driving histories of offenders. Her staff inputs data and creates a spreadsheet to verify the data. Ms. Tapke stated that a higher-level review may require allocating additional costs. She said that amending the PAC form is a good idea to clearly show the breakdown of the total fee.

Ms. Tapke stated that KCAA is working with APA to develop agreed upon procedures (AUP) related to operating expenses, as opposed to paying for an audit, which can be expensive. Some offices, such as Kenton County, can afford to pay for an audit, but others that only have a \$25,000 operating budget cannot. She also believes the risk that CDL offenders are using the program is quite low, based on the numbers in the draft report provided by Legislative Oversight staff.

Mr. Ross stated that AdventFS was already established as a vendor related to cold check collection, so a lot of offices were familiar with them prior to the authority for county attorney offices to operate their own traffic safety programs. Mr. Ross stated he chose Drive Safe Kentucky because it was \$1 cheaper than the competitor. His office did not have enough participants for a formal bid, but he stated that the Jefferson County Attorney did put out a competitive bid at the time and went with the cheaper vendor, Drive Safe Kentucky.

Ms. Oldham said Hardin County is the fifth largest county, with 45 percent of her operating salaries coming from PAC. She stated that her office would not have the money to employ victim's advocates or district court staff without the additional revenue generated from the traffic safety programs. Before the programs, her office could dismiss a case, but without the educational component. She said the programs are valuable in that sense. Ms. Oldham stated that related to CDL offenders participating in the programs, those particular offenders identified in the draft report could have come from out of state.

Representative Nemes commented on the complexity of the county attorney budgets. With respect to operating costs, offices only receive \$3,000 from the state. He stated his office pays that much on printing and toner. He also stated it is important to have protocols in place, given the amount of money that passes through these programs. With that, he asked if KCAA would commit to working with APA, PAC, and the Department for Local Government to work on implementing Recommendation 3.2. Ms. Tapke stated they have been working with APA on the AUPs and other types of engagements, and are committed to working with groups identified in Recommendation 3.2. She stated she also wants to make sure that KCAA is included when potential legislation is being discussed.

Representative Nemes stated that the recommendation does not only envision auditing but also RFPs and contracting. Representative Fleming asked about the curriculums that self-operating programs use. Ms. Tapke provided examples of Fayette and Henderson Counties where a combination of in-person and law enforcement participation is used. Representative Fleming stated that he heard anecdotally that in some counties that self-operate, offenders simply check in without benefit of any curriculum. Ms. Tapke commented that these examples could be some type of diversion. Representative Nemes followed up and requested a list of counties that self-operate their programs. He also stated

that diversion is something that is commonly used in the Commonwealth for other types of legal cases, so it is not an unusual disposition for a traffic offense.

Representative Blanton thanked staff and KCAA for their work in this area. He commented that staff's research shows nothing outside of statute is occurring, but there are some procedures that could be improved.

Upon motion by Representative Fleming and second by Representative Riley, the County Attorney Traffic Safety program staff report was adopted with a roll call of 13 yes votes and 0 no votes.

Louisville Community Bail Fund

Ms. Windhorst introduced herself as the founder of the first chapter of Mothers Against Drunk Driving in Kentucky and the previous regional executive director overseeing Kentucky, Tennessee, and Indiana. She continues to volunteer, after funding for her position ended in October. She lost two family members in 1980 to a repeat impaired offender.

Ms. Windhorst recently became aware of the Bail Project after an impaired driver crossed the center line on Dixie Highway, killing Madelynn Troutt, a 17-year-old high school student. She discovered that the driver was a convicted felon and had three prior arrests. The day of the incident, he had stolen a vehicle and firearms, according to Ms. Windhorst. She stated that the Bail Project posted a \$5,000 cash bond for the driver.

Through research, Ms. Windhorst stated she found that the average bond posted in Jefferson County is \$3,500. She also stated that the intent of the Bail Project and other similar programs, however, is to bail out nonviolent offenders who cannot afford a \$500 bond. Ms. Windhorst also discussed the Louisville Community Bail Fund, which she stated is considered a corporation.

She introduced Yolanda Mack whose brother, Terrance Sheckles, was shot in the back of the head as he walked away from an argument. Ms. Mack talked about her brother and how he did not deserve to die in this manner. Representative Nemes stated it is his understanding that the person who was apprehended for murdering her brother was released on a \$50,000 cash bond paid by the Louisville Community Bail Fund. Ms. Mack and Ms. Windhorst concurred.

Ms. Windhorst stated that her research shows that 50 percent to 60 percent of cases where bail money is paid by these groups are for violent offenders. She stated she is not asking for the legislature to get rid of these entities in Kentucky but would like to see laws that detail what they can and cannot do in order to protect the citizens of Kentucky. For

example, she stated that the Macks were not aware of the \$50,000 bond and did not know that the individual was back on the streets.

Representative Nemes discussed his understanding that bail is a constitutional right, and that he does not think either Ms. Mack or Ms. Windhorst believe bail should be eliminated. He stated that these groups raise a lot of money, which should be expended appropriately and not for the benefit of the people running the organizations. He also discussed the notion of surety, which requires an individual to somehow vouch for the individual. However, when an unassociated third party posts bonds, there is no personal association with the defendant, which does not protect the public. He went on to state that he believes Ms. Mack and Ms. Windhorst are asking for parameters to be established for such programs to ensure the safety of the public. They both concurred.

Representative Blanton commented that bad actors are skirting the laws of bail by disregarding public safety. He and Representative Nemes are working on legislation to address these issues, including how donated money is being used. Ms. Windhorst also commented that the Louisville Community Bail Fund no longer includes its name on the bonds it posts, which are on file with the Jefferson Circuit Court Clerk.

Senator Carroll asked if research has been conducted in terms of the groups and individuals donating money to these groups. He wanted to know if the donations are primarily coming from outside Kentucky. Ms. Windhorst stated it is difficult to identify the actual parties donating to these funds. Representative Fleming discussed the website GuideStar as a possible source, which lists donors for various organizations.

Representative Nemes also commented that donors may not know their money is being used to provide bail for offenders charged with other than smaller crimes.

Senator Carroll asked if the groups are not-for-profits or 501(c)(3) organizations. Ms. Windhorst stated that the national bail project and the Louisville chapter are not-for-profit organizations. However, she stated that the Louisville Community Bail Fund may be designated as a limited liability company or assumed corporation, but she was not sure. Senator Carroll discussed the legalities of whether forfeited bail is an acceptable loss under federal regulations. He stated he would be happy to help with legislation to set some parameters on these groups.

Representative Fleming asked for examples of criteria and requirements when drafting a bill to monitor these operations. Ms. Windhorst stated it is important to include the organization's name and the name of the individual who is posting a bond. She also said the amount of money and offense where a bail is acceptable needs to be established. She stated that Kentucky is not the only state where offenders released on bond commit violent offenses. For example, she discussed Indiana where two women were recently

killed by individuals who were out on bail. She stated that the Bail Project posted bond for the offenders.

Representative Nemes also stated that in domestic cases, family members might not bail out relatives if they know there is potential for violence. He also stated that the judge tried to protect Ms. Mack's family with a \$50,000 cash bond, but the system failed them.

Representative Nemes adjourned the meeting.