

LEGISLATIVE OVERSIGHT & INVESTIGATIONS COMMITTEE

Minutes of the 5th Meeting of the 2022 Interim

October 13, 2022

Call to Order and Roll Call

The 5th meeting of the Legislative Oversight & Investigations Committee was held on Thursday, October 13, 2022, 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: Senator Danny Carroll, Co-Chair; Representative Jason Nemes, Co-Chair; Senators Michael J. Nemes, Reginald Thomas, and Wil Schroder; Representatives Lynn Bechler, John Blanton, Ken Fleming, Joni L. Jenkins, Steve Riley, and Scott Sharp.

Guests: Kerry Harvey, Cabinet Secretary, Justice and Public Safety Cabinet; Vicki Reed, Commissioner, Department of Juvenile Justice; Brent Hagan, Mayor, City of Lyndon; and Michael Ross, former supervisor, Jefferson Regional Juvenile Detention Center.

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

Minutes for September 15, 2022

Upon motion by Representative Fleming and a second by Senator Nemes, the September 15, 2022, meeting minutes were approved without objection.

Co-chair Nemes stated the purpose of the meeting is to discuss issues regarding Kentucky's regional juvenile detention centers, but more specifically the Jefferson Regional Juvenile Detention Center in the city of Lyndon and Jefferson County. He introduced the guests and invited Secretary Harvey and Commissioner Reed to make opening remarks.

Committee Testimony (not related to assigned study topics)

Jefferson Regional Juvenile Detention Center (JRJDC)

Secretary Harvey stated that the Department of Juvenile Justice (DJJ) operates eight juvenile detention centers statewide. These relatively small facilities typically house less than two dozen youths per facility, who are detained by court order. The DJJ has no control over the offenders sent to the centers. Currently, there are approximately 207 offenders in detention across the state and between 11-13 offenders at JRJDC. He noted that the number of detainees and the severity of the crimes for which they have been charged is increasing. He added that many of these detainees are charged with gun crimes and many have serious mental health issues. As a result, the demands on facilities are increasing, but without an increase in staff.

Secretary Harvey acknowledged that staffing is a major problem, with only two facilities having adequate staff. He noted that DJJ has a particularly difficult time meeting staffing needs at their Campbell County and Jefferson County detention facilities, which he attributed to high turnover, inadequate compensation, and the dangerous nature of the job. He stated that for FY 2021 DJJ hired 214 youth workers and lost 253 and in FY 2022, DJJ hired 205 and lost 236. The Boyd and Breathitt facilities have robust staff, but the other facilities struggle with staffing. Overall, starting pay is at \$17.20 and is one of DJJ's primary focuses to change.

Speaking specifically about JRJDC, Secretary Harvey stated that DJJ took over operations from Louisville Metro in January 2020. This facility was not designed to detain offenders and thus lacks many of the necessary security features. He noted that this, along with inadequate staffing, has recently lead to some newsworthy incidents. In August 2022, a female detainee at JRJDC smuggled in a cigarette lighter and a cell phone. She passed the lighter to a male detainee who started a fire in the dayroom. The fire did no significant damage but the lighter was not recovered following the incident and four days later, it was used to start another fire. The fire department was called to extinguish the fire, during which time a male detainee charged with a misdemeanor assault escaped, but was later apprehended. The police department was also called to the facility, but there was confusion as to whether officers could carry their weapons inside. According to the secretary, the cabinet's internal investigations branch is currently investigating the incident, which should never have happened. He stated that he and DJJ take full responsibility for the mistakes leading up to the two fires.

Secretary Harvey stated that one way DJJ is addressing staffing issues is by using money originally allotted for some of the 175 vacant youth worker jobs statewide to improve compensation for current and future staff. The plan will raise the hourly rate for existing employees to the mid-point for six facilities facing staffing issues (Campbell, Fayette, McCracken, Warren, Jefferson, and Adair). For these facilities, this calculates to a base hourly rate of \$21.45 (youth worker 1), \$24.37 (youth worker 2), \$26.54 (youth worker 3), and \$28.93 (supervisor). The plan also includes locality premiums for the six facilities and shift premiums for all facilities.

DJJ is also in the process of increasing training and staff accountability. It will ensure that disciplinary processes are reviewed to ensure they are adequate to address staff failures and will increase overall training. He noted that DJJ has significantly reduced the detainee population at JRJDC by only housing those youth awaiting a detention hearing and sending those requiring longer detention to the facility in Adair County. DJJ also plans to increase security in all facilities by installing body scanners and addressing structural issues. The secretary also mentioned two facilities with dropped ceilings that have been problematic, so they are fixing those ceilings, which may take some beds offline.

In response to Representative Blanton's question about whether other facilities would see the same monetary incentives implemented, the secretary stated that facilities in the eastern part of the state would see an increase in shift premiums, but not locality pay. Representative Blanton stated that all juvenile detention centers should benefit, especially when employees in the eastern part of the state are suffering from recent flooding. He also stated that living costs in rural parts of the state can be more expensive than those in urban areas.

Representative Fleming discussed workforce issues, facility issues, and judicial issues that have to be addressed by DJJ. With respect to judicial issues, he also mentioned mental health as an important component that should be included. He asked the secretary to comment on whether best practices are being reviewed for all issues, not just related to staffing and pay. Secretary Harvey said that DJJ has primarily focused on improving compensation to alleviate staffing problems, but Commissioner Reed added that DJJ tries to attract new hires by posting job openings on social media and holding job fairs, neither of which has worked. DJJ is in regular contact with agencies from other states and DJJ staff attends national conferences to stay current on best practices. The issue of staffing according to the Commissioner, is prevalent across the nation.

Representative Nemes noted that the August 2022 arson and escape incidents are not isolated incidents. He proceeded to list multiple incidents communicated to him from July 31st through October 3rd involving riots, fights, loss of control over the facility, injuries to staff, arson, stolen keys used to open cell doors, police and fire calls, firefighters at risk for physical attack, one escape, multiple days where more than 20 youth were assigned to the facility, altered staff reports, and one instance where staff was told not to contact police. The secretary stated that DJJ would work with LOIC staff to visit the facility and to review various documents.

Representative Nemes also questioned the appropriateness of housing male and female youth offenders together. Commissioner Reed said that detention facilities have been co-ed for as long as she can remember and that this is permissible by law. She noted that while DJJ would like to have the ability to separate particular detainees, the facilities are too small and understaffed for parallel programs. However, she stated they generally

meet the Prison Rape Elimination Act (PREA) guidelines and standards, but sometimes violations do occur related to separation of youth offenders.

Representative Nemes stated that he believes female detainees should immediately be separated and asked the secretary to look into making that change. Secretary Harvey agreed to look into it, but noted that there are other issues related to separating detainees based on gender that could be problematic. He also mentioned a 2017 audit of DJJ facilities where staffing was identified as an issue, which contributes to increased attacks and physical harm to both staff and youth offenders. He hopes that with an increase in staff, these instances can be prevented and that staff can intervene more quickly.

After commenting on quicker releases of juveniles leaving the more serious offenders for detention, Senator Carroll asked whether it was time for Kentucky to reassess its model for juvenile detention facilities, such as beginning to use other Department of Corrections (DOC) services to help alleviate some of the problems. The commissioner said everything needs to be on the table because DJJ is in a very rapidly changing environment. She noted, however, that DOC facilities are also experiencing similar problems with respect to staffing. The secretary stated that lower-level offenders are diverted partly because of the success of SB 200 (2014 RS), which focused resources on detaining higher-level offenders.

Responding to Senator Carroll's follow-up comments about the need to rebalance the penalties for severe offenders, he asked if other states partner with jails, where support services can be shared. Commissioner Reed said that she was not aware of any state that share resources, but noted that some do house youth detainees in an adult jail or prison. She stated that Kentucky is one of eight states where offenders under the age of 18 are not kept in an adult facility. As an aside, the commissioner noted the success of DJJ's post-depositional facilities, which are treatment-based and include program such as vocational training. On any given day, the Commissioner noted the state may handle 1,400 youth offenders in various facilities. Representative Nemes agreed that staff is very important and that recent proposed legislation to revise SB 200 may prove beneficial.

In response to Senator Thomas's question about the root causes of increased crime in Lexington and other cities in Kentucky, Secretary Harvey said that addressing mental illness in youth is important because by the time a youth commits a crime they are often too violent to get help from a psychiatric facility. Commissioner Reed added that gang issues are also becoming more serious, noting that more prevention and youth programs are needed to keep kids out of gangs. She mentioned the state just received Office of Juvenile Justice Delinquency Prevention (OJJDP) dollars that will be used at the community level for youth advocacy.

Representative Jenkins noted that as stewards of the budget, the legislature is responsible for ensuring that DJJ has the money it needs to run juvenile detention centers properly and to adequately fund intervention and trauma-based treatment programs.

Representative Nemes noted however, that DJJ has not made additional budget requests during the past two administrations regarding JRJDC.

In response to Representative Sharp's question about whether staffing problems were related to the COVID pandemic, Secretary Harvey said that COVID exacerbated an already existing problem. He reiterated that an external audit identified problems with turnover and staffing shortages back in 2017. Responding to a follow-up question by Representative Sharp, the secretary noted that while they have staffing problems in nearly all facilities, problems are most problematic at the Campbell and Jefferson county detention centers. The Commissioner stated that new staff often experience emotional hardship as well, regarding the work at the detention facilities. Secretary Harvey acknowledged that his staff would get the committee a copy of the 2017 external audit, as requested by Representative Sharp.

Michael Ross introduced himself as a former supervisor at JRJDC and that he left his position in November 2021. When asked by Representative Nemes to provide his comments, he noted that he was not present for the August 2022 incident, but described the intake procedures that should have occurred when the female detainee arrived at the facility, as well as when the lighter was not found on her person.

In terms of staffing, Mr. Ross said four to five staff per shift are needed to operate the JRJDC properly and safely. He added that, even with the reported reduction of youth numbers, the facility remains understaffed. He confirmed Representative Nemes' statement that no more than 16 detainees are supposed to be held at the JRJDC. He also stated he complained about youth numbers exceeding the cap beginning in July 2021. Other issues he brought to DJJ's attention included units that did not have restroom facilities, detention rooms without suitable locks, lack of written policies and procedures, violation of detainee rights, improper procedures used on isolation units, and staff working positions for which they were not certified (i.e., cooking meals).

Mr. Ross stated that he and others were detailed to JRJDC because of a lack of staff. When he arrived late in 2019, he found a lack of procedures, which caused him to file grievances in 2020. He stated that he was moved to 3rd shift after he complained and was told he was just trying to get others in trouble. Ultimately, his camera access was taken away, which prevented him from properly monitoring activity in certain areas. He also said that he has copies of staffing records showing inconsistencies regarding leave, which created unnecessary overtime and lack of adequate staffing. He ultimately ended up leaving his position because of the safety violations.

Mr. Ross stated his primary purpose in front of the committee was to get everything out there regarding the problems at the center. Representative Nemes asked whether it was appropriate for females and males to be housed together. Mr. Ross responded that he has not personally witnessed problems when he was supervisor, but is aware of two incidents

when females and males interacted. He added that these incidents should not have occurred if staff had followed proper policies and procedures.

Responding to Representative Nemes' question about whether juvenile detainees are safe, Mr. Ross said that they are not. He also noted that, at least at JRJDC, many of the offender's rights related to receiving telephone calls, taking showers, and having clean blankets are being violated.

Brent Hagan introduced himself as the mayor of Lyndon, Kentucky. When asked by Representative Nemes if he had anything to add about the state of JRJDC, he stated that policies and procedures are not being followed, which is causing the citizens of Lyndon to fear for their safety. When the fire department responded to one incident, staff did not know which keys opened the appropriate doors in order to access and fight the fire. One firefighter was placed at risk for attack during the same incident by a juvenile brandishing a piece of metal, which prompted the fire chief to state they would no longer enter the JRJDC, unless staff could guarantee his firefighters' safety. Mr. Hagan noted that the Jefferson county facility is surrounded by single-family homes and that recent incidents have left citizens feeling unsafe in their own homes.

Representative Nemes assured Mayor Hagan that he believes Secretary Harvey is serious about making the necessary changes and that committee staff will be looking into the matter also.

Senator Carroll commented that DJJ should have never decided to use the facility to detain offenders, since it was never designed for that purpose. He noted there also appears to be issues with DJJ's reporting protocols, since incidents at JRJDC may not have been brought to the commissioner's attention. In response to Senator Carroll's question about the breadth of the cabinet's investigation, Secretary Harvey replied that all of the issues would be reviewed and none are off the table. He added that the ultimate goal is to find solutions that keep detainees, staff, and local community residents safe. The secretary also added that the facility had been used in the past to house offenders, but was not used to detain them.

Senator Carroll noted that DOC has utilized probation and parole officers to help with staffing shortfalls in prisons and asked whether DJJ had considered similar solutions. Secretary Harvey said that staff from DJJ's home office have logged hundreds of hours helping at JRJDC to fill staffing gaps.

Senator Carroll asked if Lyndon citizens and the surrounding community are safe and questioned whether things are better off today than they were when the incidents discussed earlier happened. Secretary Harvey said that things are better because DJJ has taken steps to significantly reduce the population in that facility. He noted that the installation of body scanners at the facility will only enhance security, but staffing is a

primary issue that should be addressed. Senator Carroll commented that staffing is an issue, but it appears there were many other issues that were not addressed.

Senator Carroll asked why DJJ did not make a capital expenditure budget request during the 2021 regular session of the General Assembly to secure JRJDC better. Secretary Harvey stated that at the time his staff was preparing DJJ's budget request, the problems discussed today had not come to his attention. For example, he was not aware at that time of defective doors at JRJDC or the use of false ceilings at two other facilities. Senator Carroll noted that with levels of experience and expertise at DJJ, someone dropped the ball on these matters by not properly reporting problems. Secretary Harvey agreed and noted they are currently reviewing DJJ's disciplinary procedures, as well as related failures.

Sen. Thomas stated that legislators are in a position to help fix many of the issues brought up today, but noted the problems are simply manifestations of larger problems in our communities. And, that the law allows for certain things such as housing male and female offenders together. He also stated it is important to reduce the population of youth offenders at the state's detention facilities.

Representative Nemes acknowledged that the increase in violent crimes in our communities is being driven by youth offenders and is something that needs to be addressed. However, he stated that the purpose of today's meeting was about JRJDC, as well as the other juvenile detention facilities statewide. He said that the staff and offenders at JRJDC are in danger, as well the community because of problems at the center.

Representative Nemes adjourned the meeting.