

LEGISLATIVE OVERSIGHT & INVESTIGATIONS COMMITTEE

Minutes of the 2nd Meeting of the 2023 Interim

July 14, 2023

Call to Order and Roll Call

The 2nd meeting of the Legislative Oversight & Investigations Committee was held on Friday, July 14, 2023, at 1:00 PM, in Room 131 of the Capitol Annex. Representative Adam Bowling, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Brandon J. Storm, Co-Chair; Representative Adam Bowling, Co-Chair; Senators Julie Raque Adams, Danny Carroll, Donald Douglas, Jason Howell, Gerald A. Neal, Michael J. Nemes, and Reginald Thomas; Representatives John Blanton, Lindsey Burke, Ken Fleming, Matt Lockett, Steve Riley, Scott Sharp, and Pamela Stevenson.

Guests: Kerry Harvey, Secretary, Justice and Public Safety Cabinet; Vicki Reed, Commissioner, Justice and Public Safety Cabinet, and Rebecca Norton, Executive Director, Office of Financial Management Services.

LRC Staff: Gerald W. Hoppmann, Committee Staff Administrator; Committee Analysts William Spears, Jeremy Skinner, Joel Thomas, Ryan Brown, McKenzie Ballard; Preiss Terry, Graduate Fellow; and Elizabeth Hardy, Committee Assistant.

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Upon motion by Representative Blanton and second by Representative Sharp, the minutes for the June 15, 2023, meeting were approved without objection.

Co-Chair Bowling stated that the committee's interest in Kentucky's juvenile detention centers began in October 2022 when the committee asked staff to investigate an August 2022 fire, and subsequent inmate escape, at the Jefferson Regional Juvenile Detention Center. In November 2022, a riot occurred at the Adair Regional Juvenile Detention Center which resulted in the committee expanding its investigation to include all of the state's regional juvenile detention centers.

Staff Report: Kentucky Department Of Juvenile Justice Regional Juvenile Detention Centers

Committee analysts William Spears and Jeremy Skinner presented the staff report "Kentucky Department Of Juvenile Justice Regional Juvenile Detention Centers," which discussed the report's findings and recommendations regarding the Department of Juvenile

Justice (DJJ) and the regional juvenile detention centers. Staff's full presentation is available on the Legislative Oversight and Investigations Committee Webpage.

Upon conclusion of the presentation, Co-Chair Bowling asked for clarification on why DJJ was unable to provide the data needed to evaluate whether detention facilities were meeting Prison Rape Elimination Act standards of a 1:8 ratio of staff to juveniles during waking hours and a 1:16 ratio during sleeping hours. Mr. Spears stated that DJJ has general information on the number of staff and the number of youth detainees, but is unable to generate a report showing the ratio of staff to youth detainees at any given time. He noted that the ratio can be complicated; several variables must be considered, such as staff who called in sick, worked extra hours, or worked in security positions they typically do not, among other factors.

Senator Howell asked how often the data provided by DJJ was lacking and unreliable enough to make accurate assessments difficult. Mr. Spears said that nearly every data set had problems; the incident reports were particularly problematic.

Representative Lockett asked if DJJ explained why there were 19 unfilled staff positions at the Jefferson Regional Juvenile Detention Facility. Mr. Spears said DJJ did not provide an explanation. Mr. Skinner added that during past meetings DJJ officials mentioned difficulties staffing some regional juvenile detention centers, specifically Jefferson and Campbell. Mr. Spears indicated to Representative Lockett that DJJ officials at the meeting may be able to provide an explanation.

Representative Lockett asked if South Carolina is the only state that operates a psychiatric hospital specifically for its juvenile offenders. Mr. Spears said that staff did not systematically look into this issue, but he was not aware of any others. Representative Lockett followed up by asking if staff knew why South Carolina had made the decision to build that hospital, to which Mr. Spears said staff will review its information and provide a response to the committee.

Senator Thomas noted that while annual salaries for some detention staff had increased to \$50,000, this may not be a competitive salary in more urban areas. He asked if this could be impacting why DJJ has many vacant positions in juvenile detention centers in Jefferson and Northern Kentucky. Mr. Spears confirmed that competitive pay does appear to be a contributing factor in filling vacant positions in the more urban areas.

Senator Howell asked if staff did any trend analyses. Mr. Spears stated that, given the problems with the data DJJ provided, staff could not. Instead, the study focused on data compilation and identifying where improvements were needed. Staff is hopeful that DJJ will be able to do its own trend analyses as its data collection procedures improve.

Representative Burke asked for clarification on the problem that staff identified regarding DJJ's use of the term "dependency" and how the legislature can help. She also opined that when a child goes to foster care, the child is still dependent. Ms. Ballard stated the problem stems from DJJ interpreting the legal definition of "dependency" differently than other state agencies who also work with these juveniles. This prompted staff's recommendation that the legislature may wish to consider clarifying the definition in statute.

Senator Carroll asked for more detail about the problems with DJJ data. Mr. Spears noted that the quality and completeness of DJJ data is concerning because facility reports are the best way for superintendents to monitor and address problems at their facilities. The incomplete nature of some data stems from DJJ's use of narratives to document incidents, which can lead to insufficient data to explain the factors that contributed to an incident. Senator Carroll continued his line of questioning by asking if staff saw any instances where reports had not followed the proper chain-of-command or were not reviewed. Mr. Spears said that staff had not systematically looked at that issue, but the files staff reviewed were approved by supervisors.

Senator Carroll noted that issues related to the inpatient treatment of juveniles with mental health problems was not solely a DJJ issue, but is a concern of the Cabinet for Health and Family Services. He is aware of efforts to address these concerns, but noted the General Assembly may need to consider the issue next year and that building a state-operated inpatient mental health treatment facility for juveniles might be an option.

Co-Chair Bowling asked if staff had the full in-house investigation reports for the incidents that occurred at the Jefferson and Adair facilities. Mr. Spears confirmed that staff had copies of those reports and had reviewed them.

Co-Chair Bowling called Secretary Harvey and Commissioner Reed to the testimony table and asked for their response to the report.

Secretary Harvey began by stating he and his staff had a good collaborative relationship with committee staff throughout this study and that the cabinet had provided any information that committee staff requested. Regarding the expressed concerns about staff shortages, he noted there had been pay increases recently but they are still not able to offer competitive pay in some regions. At the beginning of 2023, the Jefferson facility had 17 vacancies and by the end of the fiscal year there were only 11 vacancies. He added that DJJ is seeing similar improvements in staffing statewide.

Secretary Harvey said that the Justice and Public Safety Cabinet (cabinet) agrees with most of the findings and recommendation made in the report. The cabinet's concerns were not fundamental, but related to an interpretation of legal definitions. The cabinet is committed to working with stakeholders and the legislature on addressing those issues.

Secretary Harvey said the cabinet agrees with all staff recommendations related to data collection and reporting. The cabinet has been working to rectify many of these issues and will continue to do so.

The secretary emphasized that everyone agrees no child should be at a detention center, if there is nowhere else to place them, but that this does occur. This sometimes results in children coming to detention facilities with physical or mental health issues for which DJJ staff are not equipped to handle or provide appropriate services. He and his staff are committed to working with stakeholders and the legislature to find solutions to this problem.

Co-Chair Bowling asked for further clarification of why the eight Jefferson facility youths were moved to the Adair center. Secretary Harvey discussed the failed fire suppression system test at Jefferson, the inspector's conclusion that it was not safe to keep children in the facility until the system was fixed, and the subsequent decision to move

those eight youths to the Adair facility. Co-Chair Bowling noted that staff's report found the Adair facility did not follow proper intake procedures when the eight youths arrived, allowing members of the same gang to be housed together and asked if this could still occur today. Secretary Harvey said the cabinet brought in a Department of Correction specialist to provide additional training to juvenile detention center staff on identifying gang members during intake. While this has improved their ability to mitigate the problem, he could not guarantee that it would not happen again. The physical layout of some detention facilities does not allow for as much separation of rival groups as DJJ would like.

Co-Chair Bowling asked if the investigation into the Adair facility incident was still ongoing and requested a copy of that report when it is complete. Secretary Harvey confirmed DJJ's investigation is ongoing and he would provide the committee a copy when it is completed. There is also an ongoing law enforcement investigation, but the cabinet is not involved.

Co-Chair Bowling said the report stated there were differing opinions regarding whether the cabinet had involved DJJ in the decision to move to the Kentucky Offender Management System (KOMS). Secretary Harvey stated that it is inaccurate to say that DJJ was not involved in the decision to use KOMS, given an early meeting with DJJ information technology personnel.

Senator Adams was concerned by the secretary's comment that staffing challenges would always exist at juvenile detention centers and asked whether he intended to have creative approaches for staffing. Secretary Harvey reviewed steps that had already been taken, including pay increases and the reallocating of cabinet dollars to increase pay, and noted that staffing has improved. The cabinet continues to develop creative solutions, but it operates in a competitive market and issues vary over time and across the state. Senator Adams asked if the workforce issues at detention centers are only related to pay. Secretary Harvey said working at a detention center is a very difficult job and that pay is not the only contributing factor to staffing challenges. Commissioner Reed added that facility staff must consider personal risks, such as physical injury and liability concerns. When recruiting, DJJ emphasizes that detention facility staff employees can make a difference in a child's life; at the same time, they are honest with potential candidates about the job's difficulties. Among younger applicants, the inability to take cell phones into the facility is a dealbreaker. Senator Adams noted that the legislature stands ready to help with staffing problems when needed.

Representative Blanton noted that the investigative nature of staff's report was very helpful and recommended the committee conduct similar investigations of all state agencies. He recommended the committee have at least one meeting each interim dedicated to such investigations so the committee can identify high risk areas before they become a problem.

Representative Lockett asked whether staff's finding that many DJJ forms were not properly completed was caused by improper training or staff not following protocol. Secretary Harvey did not believe it was a training issue, but most likely a staffing and supervision issue. Commissioner Reed added there are instances where staff cannot fill out reports immediately after an incident because they cannot leave their post and they cannot

have computers at their post because of security concerns. Automating the process will help. Representative Lockett asked whether the two incidents discussed today would have occurred if proper procedures had been followed. Secretary Harvey noted that properly filling out reports is essential and necessary, but he does not believe it would have prevented the two incidents. He acknowledged that proper intake procedures were not followed and added that the Jefferson Regional Juvenile Detention Center incident was exacerbated by the facility not being designed as a detention center.

Upon a motion by Senator Carroll and a second by Representative Lockett, the committee report was adopted without objection (roll-call vote).

Senator Carroll cited the recent incident at the Mayfield Youth Development Center (MYDC) and asked whether there were plans to change rules, procedures, or security measures at the development centers. Secretary Harvey answered that the cabinet is reviewing the findings of security reviews of all YDCs and determining how to implement recommendations. He also stated they should and must anticipate increasing problems at the YDCs. Commissioner Reed noted the facilities have different levels of security depending on types of youth detained and the severity of offense with which they are charged.

Senator Thomas noted that a wage differential exists; a \$50,000 annual salary in northern Kentucky is not as competitive as it might be in other areas of the state. He said it must be acknowledged that juveniles detained today tend to be more violent and dangerous than in the past; there is a higher risk of physical injury to detention center staff. He said both issues must be addressed before the state will see improvement.

Representative Burke asked if DJJ had any policy similar to first responders being able to take off work for up to 48 hours after a critical incident and, if not, would DJJ like the general assembly to consider a similar policy. Commissioner Reed replied that DJJ does not have such a policy but implementing the policy at this time would exacerbate the current staffing problem. Representative Burke suggested indexing wages to local median income may set comparative pay rates for each detention center's staff. Secretary Harvey stated he is willing to consider any suggestions from the legislature.

Representative Burke asked about the transition to KOMS. Secretary Harvey said his understanding was that the vendor offers a separate module for juvenile facilities that can be added to the existing KOMS. Representative Burke is concerned that corrections officers around the state will have access to juvenile records through KOMS. Ms. Norton explained the vendor will take the KOMS platform used by corrections and modify it to the needs of DJJ. The vendor will make the systems so they can be crosswalked. The two versions of KOMS can operate independently, but can still transfer a youth's information if that youth transfers from DJJ to the Department of Corrections. Correctional officers will not be able to access information about DJJ youth and vice-versa.

Upon motion by Representative Lockett and second by Representative Sharp, Co-chair Bowling adjourned the meeting.

