

PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

Minutes of the 5th Meeting of the 2020 Interim

October 15, 2020

Call to Order and Roll Call

The 5th meeting of the Program Review and Investigations Committee was held on Thursday, October 15, 2020, at 1:00 PM, in Room 171 of the Capitol Annex. Senator Danny Carroll, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Danny Carroll, Co-Chair; Representative Lynn Bechler, Co-Chair; Senators Karen Berg, Tom Buford, Michael J. Nemes, Reginald Thomas, Stephen West, Whitney Westerfield, and Phillip Wheeler; Representatives Chris Fugate, Al Gentry, Kim King, Adam Koenig, Ruth Ann Palumbo, Steve Riley, and Walker Thomas.

Guests: Hilarye Dailey, Deputy Commissioner, Department of Corrections; Janet Conover, Director of Operations, Department of Corrections; Cathie Engle, President, Combined Public Communications; Jim Engle, Chief Executive Officer, Combined Public Communications; and Brett Ruschman, Chief Technology Officer, Combined Public Communications

LRC Staff: Gerald Hoppmann, Committee Staff Administrator; Jeremy Skinner; William Spears; Shane Stevens; and Elizabeth Hardy, Committee Assistant.

Representative King requested permission to present her analysis of previously requested information from the Cabinet for Health and Family Services about the top causes of death in Kentucky. She identified two open questions: whether the causes of death are classified correctly and whether other health concerns are being ignored. Senator Carroll stated that the committee is collecting and will continue to collect and compile additional data to better evaluate what is happening and draw conclusions.

Minutes for September 10, 2020

Upon motion by Senator Westerfield and second by Representative Bechler, the minutes for the September 10, 2020, meeting were approved without objection.

Senator Carroll noted that one agenda item for the October meeting had been removed because it was not ready for presentation.

Inmate Telephone Calls from State Prisons

Senator Westerfield said that the Jail and Corrections Reform Task Force that he co-chairs is considering the cost of inmate phone calls and the impact on inmates' families. Combined Public Communications (CPC), one of the vendors, agreed to testify at today's meeting after some previous miscommunication about appearing during a previous task force meeting

Officials from the Department of Corrections presented information and answered questions. Director Conover described the history of the contracts with prison inmate phone providers. All contracting followed the Model Procurement Code and went through the Finance and Administration Cabinet (FAC). Securus won the contract (master agreement) in 2006. A new procurement was conducted in 2011 with an award to another company. Securus protested, and FAC upheld the protest, so the department exercised a renewal of the previous contract and continued to renew the contract until another procurement was conducted in 2017 and awarded to another company. Securus protested again, and FAC upheld the protest, so the department extended the Securus contract as provided by FAC. The most recent procurement, in 2019, was awarded to Securus in 2020, but a competitor protested, and FAC is reviewing that protest. Securus continues to provide services on an emergency extension.

Ms. Conover reported that Securus provides phone installation and maintenance at all 14 state prisons. There are no tablets or video visitation services, but the new contract that is under protest would have provided an upgrade to include those services. The contract currently generates \$3.24 million of revenue per year for the department that offsets some of the need for general funds and helps pay for operational costs. Rates for different types of calls were listed on a slide. Ms. Conover stated that the rates are in line with Federal Communications Commission (FCC) regulations. The department has to review any change in the rates.

Ms. Conover cited KRS 45A.050(3) as the statute that permits localities to participate in all state agency master agreements such as the one with Securus. She said that the department did not know whether any local jails were aware of this statute.

In response to a question from Senator Berg, Commissioner Dailey said that she did not know the profitability of the contract to Securus but would research the question and provide that information.

In response to a question from Senator Westerfield, Ms. Conover confirmed that Securus serves all state prisons. Senator Westerfield asked if the last protest was filed outside of the permitted time frame. Ms. Dailey said that she was not sure; there might have been an extension to the protest window, but the department would defer to FAC.

In response to a question from Senator Carroll about the procedure to resolve a protest, Ms. Dailey deferred to FAC. She affirmed that protests are resolved within FAC.

In response to Representative Koenig's question about the rules determining inmates' use of phones, Ms. Conover said each prison sets its own rules. Most allow for inmates to make 15-minute phone calls. Inmates who have honor status might have longer phone privileges. Representative Koenig discussed one of his constituents who would like their children to have more contact with an incarcerated parent but has trouble finding enough money. He asked whether there was a program for reduced rates. Ms. Conover responded that the rates are set through the FCC, and the department ensures the rates do not exceed FCC regulations. She stated that the department cannot afford to pay for inmate phone calls because the rates are based on Securus's costs for equipment and services, including monitoring a percentage of phone calls for possible investigation. Securus has agreed to allow each inmate one free phone call weekly because in-person visits are restricted during the pandemic; this free service is reevaluated monthly.

In response to a question from Senator Carroll, Ms. Conover confirmed that Securus pays for the maintenance costs per the contract and that the system is server based.

In response to questions from Representative Bechler, Ms. Conover indicated the number of phones depends on the prison layout and the population. Representative Bechler requested a list of the number of phones in each prison. Ms. Conover said the department will provide a list. Ms. Conover also verified that the prison phones are not pay phones; inmates are assigned a billing PIN that they have to enter when making a phone call. The phone system makes inmates aware their calls are being monitored and when the call is about to be cut off. There is no limit to the number of calls an inmate can make unless there is a line. She stated that the department has nothing to do with the phone systems in county jails even though some of them house state inmates.

In response to a question from Representative Thomas, Ms. Conover said the new contract included video visitation and tablets for every inmate. While waiting for the protest to be resolved, they are operating on an extension of the old contract.

In response to questions from Senator Carroll, Ms. Conover explained that designated prison staff can listen to live or past phone calls up to six months old. Securus can provide access to older phone calls. Securus's staff listen to approximately 10 percent of the phone calls randomly and will refer any suspicious activity to the department. She stated that the department does not need a warrant to receive this information, but an outside agency would have to get a warrant.

In response to a question from Senator Westerfield, Ms. Conover confirmed that there is a minimum 15-minute charge for phone calls. Senator Westerfield commented that

this guarantees their profit and commission. He shared a link of the Securus presentation from the Jail and Corrections Reform Task Force meeting.

Senator Berg asked whether it was correct that the minimum cost of a 5-minute phone call is \$3.15, so to make such a call every day would cost \$94.50 per month. Ms. Conover said she did not know but the rates are in line with FCC regulations.

Inmate Telephone Calls from Local Jails

Representatives from Combined Public Communications made their presentation. Mr. Ruschman provided a history of CPC, the types of calling services for inmates, who CPC's customers are, software investment and infrastructure, costs per minute, FCC regulatory information, telecom taxes, benefits of CPC services, information about attorney calls, website information, and contract costs. He explained that in addition to outside phone service, CPC also provides a texting device, tablets for entertainment and education, and video visitation within the jail and off-site. Mr. Ruschman stated that efforts are made to identify calls to attorneys so they are not recorded, and all recorded calls inform the called party that they are being recorded. He stated that the amount of the commission paid to the county jails is dictated by competition and increased operating costs. He said that jails can have needs that the state Department of Corrections' contract cannot meet, so they work with other inmate phone providers to get what they need.

In response to questions from Senator Carroll, Mr. Engle said restrictions on whom an inmate may call can come from the family, court, or jail. The most common restrictions are due to harassment and domestic violence. CPC can block numbers via a password process. Tablets do not have communication ability. Video calls, whether pre-scheduled or not, are made at a station limited to video calling and a few other services so that there is no conflict with other uses. CPC offers a texting device that inmates may own, but texts are reviewable by law enforcement. Mr. Engle said that CPC operates in 52 county jails, and 30 are using video visitation. CPC has not bid on the statewide contract, however. He explained that CPC has an artificial intelligence system that identifies voices of inmates to verify who is making the call to prevent sharing of PINs or three-way calling to restricted numbers. The text message system looks for key words specified by law enforcement and has also been used for suicide prevention.

In response to a question from Senator Westerfield, Mr. Engle stated that CPC's contracted expenses vary depending on issues like bandwidth. Rural counties have limited bandwidth. CPC stores more than 100 million recordings indefinitely for law enforcement. All calls are encrypted since there are constant hacking attempts. CPC charges per minute with no minimum for a call. Taxes charged depend on whether the call is within or outside the state. Families outside Kentucky can work around out-of-state rates by getting a Kentucky phone number through Google, for example.

In response to questions from Senator Westerfield, Mr. Engle said the slide showing a 2-cent profit was for illustration; actual profit depends on the contract, as does the amount of the commission. He stated that jail management software has often been part of contracts. Mr. Ruschman clarified that the income tax shown in the presentation was the tax the LLC pays, not what individual employees pay. For the phone call tax, he clarified that the rate was per minute. The system keeps a running total of charges during each call to be sure the inmate's account has enough money to pay for it. The average call length is 7½ minutes. The maximum call time is set by the jail and is usually 15 minutes. Mr. Engle explained that law enforcement wants shorter calls because if they are conducting an investigation, it takes less time to listen to the calls. He said longer calls also result in complaints because inmates are more likely to run out of funds during calls.

In response to a question from Senator Westerfield about the number of connected calls on an annual basis, Mr. Ruschman estimated that CPC handles 15 million minutes of calls per month in various states combined. He said he would provide the connected call numbers to the committee for Kentucky.

In response to a question from Senator Westerfield, Mr. Ruschman said if a call with an attorney is recorded, the attorney can contact CPC's call center and send a statement on letterhead to request that their calls be deleted and future calls not be recorded. The records that the calls were made are kept.

In response to questions from Senator Westerfield, Mr. Engle stated that the commission rate varies by county. He said that the first thing on the CPC website is an offer for families to purchase minutes because that's often what they want to do.

Senator Westerfield expressed concern that the cost to families includes the 50 percent commission to jails and local governments. Mr. Engle explained that many counties are short on money and use the commissions to help with important purchases. CPC charges the FCC regulated rate but is willing to talk about lower rates. The average call costs for an inmate per month are \$26 compared to a monthly cell phone bill of \$89. CPC has to compete with commissary companies on unregulated video calling and texting. Jails also receive commissions from commissary companies that charge inmates to transfer funds into their phone call accounts and for other purchases.

Senator Carroll informed the committee that CPC would testify at the Interim Joint Committee on Judiciary on October 22 and at the Jail and Corrections Reform Task Force on November 6.

Discussion of Topic Selection for the November Meeting

Senator Carroll said the committee will vote on annual study topics for staff at the November meeting. The co-chairs decided to allow each leadership caucus to select a topic.

Senator Carroll asked staff to contact the leadership of each caucus to ensure they are prepared for the committee to vote on topics.

Remarks by Representative King About Cause of Death Data

Representative King provided additional remarks on the leading causes of death in Kentucky residents from 2018 to 2020 in March to August. This information was provided by the Office of Vital Statistics in the Cabinet for Health and Family Services. She noted several causes of death (such as lower respiratory, diabetes, intestinal infections, cancer, accidents, assaults, homicides, etc.) that changed significantly and expressed concern about whether deaths were misclassified.

Senator Berg said that the number of people dying at home from unknown causes has increased possibly because the pandemic has made people reluctant to go to hospitals to seek services. It is not yet known what portion are due to COVID-19.

Senator Carroll stated that the death rate might be the most important statistic to compare with past years. He noted there are many questions about what the numbers actually mean and how they are used. He said the committee will continue to study the numbers to address those and other questions.

Senator Carroll announced the next committee meeting will be held November 13, 2020, at 1:00 p.m.

The meeting adjourned at 2:44 p.m.