

JUVENILE JUSTICE OVERSIGHT COUNCIL

January 17, 2017
Capitol Annex, Room 171

Members Present: Senator Whitney Westerfield; Representative Joe Fischer; Secretary John Tilley, Justice & Public Safety Cabinet (JPSC); Acting Commissioner Wendy Morris, Department for Behavioral Health, Developmental and Intellectual Disabilities, Cabinet for Health and Family Services (CHFS); Commissioner Adria Johnson, Department for Community Based Services, CHFS; Commissioner Carey Cockerell, Department of Juvenile Justice (DJJ), JPSC; Laurie Dudgeon, Director, Administrative Office of the Courts (AOC); Christina Weeter, Department of Education; Ed Monahan, Department of Public Advocacy (DPA); Major Shara Parks, Louisville Metro Police Department; Steven Gold, Henderson County Attorney; Judge Lisa Jones, Chief District Judge; and Paula Stafford, Montgomery County Public Schools.

Members Absent: Dr. John Sivley

Staff Present: Marlene Mundine

I. Welcome/Call to Order and Approval of Minutes

The meeting was called to order by Senator Westerfield who welcomed members and guests.

II. Discussion of Juvenile Justice Reform Bill

Senator Westerfield provided an overview of the juvenile justice reform bill, which will be filed as SB 20. He noted that members' comments have been taken into consideration in drafting the legislation and he would continue to do so. The bill includes language from SB 201 and SB 270 from the 2016 session along with a number of other elements. SB 201 provided updates to SB 200 and SB 270 addressed disproportionate minority contact. He noted that KDE and DBHDID were added to the data collection section as they were previously not included. There are additional changes aimed at addressing disproportionate minority contact including changes to the youthful offender statute, the process by which a juvenile is tried as an adult and transferred into circuit court. He stated that this was found to be a point of disproportionality within the system; therefore, the statutes have been changed to require the underlying offense be a crime against a person. The prior offense must also be a crime against a person.

Senator Westerfield also noted that definitions of restraint and seclusion have been added along with changes in reporting requirements, how often restraint and seclusion are used and the circumstances under which they can be used. He stated that the required data reporting creates a way for Protection and Advocacy to scrutinize cases when it relates to children identified with a disability in particular. Senator Westerfield commented that restraint and seclusion should be relatively limited in its use and only when absolutely necessary. He noted there are training elements included in the bill that apply to all agencies involved.

A minimum age of criminal responsibility is also included in the legislation. Senator Westerfield stated that consequences should be consistent with a child's development, and their competence and

capacity to appreciate the nature of their conduct. The bill draws a bright line at the age of ten. Children ten and under cannot be charged with a criminal offense. He noted the bill has those cases being referred to FAIR teams and then can perhaps go to DCBS for dependency, neglect and abuse action or other resources for the child and family. Senator Westerfield welcomed other suggestions in this area noting that detention and justice system consequences are not what is best for a child at ten years old and certainly not at seven. He stated the bill presently indicates that a child under fourteen but at least eleven is presumed not criminally responsible but that can be rebutted by the prosecution. In looking at the actual impact, there were 3600 complaints filed in that age range in FY16, of which 30% were felonies. Senator Westerfield commented that to have an evaluation completed for every one of those may not be feasible and will have to be determined.

Senator Westerfield noted the bill includes a definition for restorative justice practices and it also includes language limiting an order of detention for violation of a valid court order to not exceed thirty days. He then asked for any comments or suggestions regarding the draft legislation.

Commissioner Johnson expressed her support for reporting requirements to address disproportionality and also for establishing a minimum age of criminal responsibility. She stated the challenge is going to be in having adequate resources. She commented on the struggle to find adequate placement and resources for high-risk children. She stated that there must be an intentional effort to look into developing the types of behavioral health services needed statewide and then determining the right placement setting. Senator Westerfield agreed. He noted that just fewer than 200 cases fell into the ten and under group and inquired about any suggested alternatives to referring those to the FAIR teams who can then refer on to DCBS. Ms. Dudgeon commented that she is hoping trends hold in the number of cases FAIR teams are referring to DCBS in an effort to avoid a potential commit to DCBS but will work closely with Commissioner Johnson on that issue. She stated that AOC reviewed the bill primarily with respect to application and implementation and did not have any significant concerns or objections. She noted that in reviewing Ms. Lachman's previous testimony, some of the bigger issues with respect to DMC were indicated in the area of overrides and inquired about addressing that as well as the lack of placement options. She stated that many youth in the overrides are detained due to lack of placement options. Senator Westerfield agreed this is still an issue and welcomed suggestions. Ms. Dudgeon suggested requiring AOC to provide training and education to judges and prosecutors on the actual data and its impact. Senator Westerfield indicated that might be added to the bill. Secretary Tilley commented that the bill backs the philosophy of making certain that decisions are evidence based and that it is the best thing for that child and the family. He noted that whether you make a placement or not, there will still be a cost somewhere in the system. He stated that if it is not a safety issue, resources in the community could better benefit a child. He commented on the extraordinary cost of detaining a child and the possible need to shift some of those resources elsewhere.

Mr. Gold expressed his support for the data collection requirements and also expressed the need to have a public searchable database. He noted that prosecutors and judges are elected officials and if it is apparent to the public that something is askew, it could provide pressure in areas that might even be more effective than legislation. With the regard to the age of criminal responsibility, he stated that prosecutors do not object to a bright line. However, there is concern about the presumption between eleven and fourteen, as it would potentially require two trials. He noted there would be expert witnesses on both sides and it is possible there would have to be testimony from a victim. He stated prosecutors are against having to put a victim thru sitting on the stand a twice to relive something traumatic. Mr. Gold also commented on the lack of effective local resources and the need to define

what the FAIR team can and cannot do. With regard to the youthful offender statute and requiring it to be an offense against a person, Mr. Gold expressed the need for consistency in language and referenced a victims' rights bill that has been filed which defines the victim as someone emotionally harmed by a crime.

Commissioner Morris stated that her department is very supportive of the data collection requirements in the bill. She noted an issue with the disability definition as it not consistent with the school system's definition. She stated that they are working to provide alternate language to capture all children served. She also noted that they will be reviewing and providing written comments regarding Section 28 about commitment to psychiatric facilities and community based treatment agencies. Ms. Weeter agreed with the comments about the definition of disability and noted that it is an important data point to collect. She stated that special education staff is taking a look at that specific definition. Ms. Weeter also stated she would like to advocate for collecting socioeconomic status as a part of the data. Senator Westerfield noted that language would be included in SB 20.

Commissioner Cockerell stated that DJJ is in support of the minimum age of criminal responsibility but has some difficulties with the language regarding developmental immaturity and its potential for dramatically increasing the length of stay for children in detention. He also opposed sentencing status offenders to detention for 30 days. Commissioner Cockerell commented that the state should not be criminalizing status offenses. Senator Westerfield agreed. Commissioner Cockerell stated that doing so is introducing trauma into kids' lives and it is a social services issue. Senator Westerfield commented on the cost also, noting the evaluation shall take no longer than 20 days but that it is possible that it could take longer with 3600 cases. Commissioner Cockerell noted that the language reads 20 days unless an extension is granted. Senator Westerfield also noted that it might not be something that a local community is set up to handle. Commissioner Cockerell commented that everyone would be working together over the next couple of years to strengthen the FAIR teams and get incentives and funding. Senator Westerfield stated that agencies should ask for an appropriation for SB 200's programming, the one part of the bill that has not yet been tested, and that it should be a priority in 2018.

Mr. Monahan noted the bill is a good reflection of what the council has heard over the last year in terms of evidence. He stated that he concurs with what others have stated about the bright line, ten and under. On the presumption between eleven and fourteen, he noted that he understood the concerns expressed but the significant advantage of having it in the bill is that it provides a framework to inform practitioners about how to handle those situations. Mr. Monahan also suggested adding a definition of offense against a person. Senator Westerfield noted that it is also not defined in the current youthful offender statute and expressed concern that if defined now, it could frustrate judges and others. Judge Jones commented that having a set definition is also security for judges and prosecutors in that they know what it is. Mr. Monahan suggested language for the definition and noted that too often discretion ends in disproportionality. Senator Westerfield stated that was a valid point and asked Mr. Monahan to email the proposed language to council members as a starting point.

Ms. Dudgeon commented on Mr. Gold's suggestion regarding publishing data. Senator Westerfield responded that he has asked the Justice & Public Safety Cabinet to provide input on how to have all the data in one central place for juveniles and adults alike. He noted they are working on this and he would like to include it in SB 20. Secretary Tilley confirmed that the Justice & Public Safety Cabinet is working on this issue. Ms. Dudgeon commented on the number of prior adjudications. Senator Westerfield responded that the number did not go up and they have to be distinct adjudications. Ms.

Dudgeon noted that was her concern as usually they are coming in from schools when a child has had a bad two or three weeks. Senator Westerfield stated that is the intent, as children should not be treated more harshly than adults and charges cannot be added up before there has been an adjudication.

Mr. Monahan offered an alternative to the eleven to fourteen language. He suggested changing the ten and under to under twelve as a compromise. Senator Westerfield stated it is worth looking at and noted that prior to the current proposed language, twelve and under with no presumptive period was considered. Judge Jones stated that she thought twelve and under was the original recommendation of the task force. Ms. Stafford inquired about the percentage of status offenses of the 3600 previously referenced. Senator Westerfield stated that 25% of the 3600 were status offenses and 30% were felonies. He noted that more than half of the 3600 cases are thirteen year olds. Only 1700 cases went to court. The remaining were diverted and 90% of those were successful. Ms. Stafford inquired if the presumptive language remains, would there be a way to fork the road with status offense vs. public offenses. Senator Westerfield stated that he would consider that suggestion.

Ms. Weeter noted there was concern among special education staff regarding possible conflicts with sharing some data, as there are restrictions with federal privacy laws. Senator Westerfield asked to meet with KDE and Permanency and Advocacy staff together to discuss the data sharing concerns. Ms. Weeter stated that it would be good to include a definition of arrest in the bill based on some of the testimony previously heard by the council. She also commented on the need to close the loop in missing data regarding arrests as a result of behavior that occurs on school time and property when the actual arrest occurs at a later time outside of school property. She also noted that KDE supports the training requirements in the bill but would want to address the mechanism for providing that training for school staff.

Pastor Palmer gave brief comments and Senator Westerfield recognized him as the recipient of a Dr. Martin Luther King Jr. Leadership Award recently presented to him by Governor Bevin. He thanked Pastor Palmer for his leadership and contribution to the process of juvenile justice reform.

III. Agency Updates

Written updates were provided by Administrative Office of the Courts, Department of Public Advocacy and Department for Behavioral Health, Developmental and Intellectual Disabilities.

IV. Adjourn

The next meeting will be held on Tuesday, February 21st at 2PM. With no other business to discuss, the meeting was adjourned.