

Criminal Justice Coordinating Council Meeting

Tuesday, August 11, 2020

11:00 a.m. – 12:30 p.m.

CALL TO ORDER

Attendance included: Members: Commissioner Michelle Derusseau, Mike Patrick, Pam Weigand, Jennifer Ananda, Judge Scott Miller, Patrick Schmitz, Charles Branson, Sarah Plinsky, Tamara Cash, Charles Epp, Melinda Zilliox, Anthony Brixius, Judge McCabria, Carrie Neis, Bob Tryanski, Shaye Downing, Darren Canady, Craig Owens, Lori Alvarado, Steve Buchholz, Anthony Sanchez, and Sarah Plinsky.

Staff and Additional Attendees: Mike Brouwer, (CJC Coordinator), Matt Cravens (Data Analyst CJCC), Patrick Kelly (County Commissioner); Karrey Britt (Communications Specialist), Jill Jolicoeur (Assistant County Administrator), Stacy Simmons, and Heather Cessna.

KANSAS STATE BOARD OF INDIGENTS' DEFENSE SERVICES (SBIDS) – Heather Cessna, Executive Director of the SBIDS.

Cessna conducted an overview on what it would take to have a Public Defenders Office in Douglas County.

Highlights included:

- Eighty-five percent of the 7th Judicial District adult felonies require appointed counsel from the State of Kansas. Every attorney appointed on an adult felony case in Kansas is provided by BIDS.
- Kansas has 18 Public Defender Offices, with 11 being trial Public Defender Offices. Many cases require backup counsel.
- The Defense Board is given the authority to determine what system to use for defense.
- Douglas County utilizes an Assigned Counsel program, which uses an appointment list with contracted counsel.
- In 2019, Douglas County had 736 defense cases costing \$828K; 2020 was lower with 659 total cases costing \$778K. The lower cost was due to COVID-19 closures.
- A rough estimate to operate a Public Defender office is \$810K per year.
- Considerations for the Board of County Commissioners is the cost of using private appointed attorneys versus public defenders. Something to consider is there is no quality control when using private defenders. You may want to consider the cost if a client files a malpractice claim or wrongful conviction. There is more day-to-day control over the public defender system. However, the other side to consider is the large caseload and large turnover rate when using public defenders.
- The Board needs to look at funding availability and sources. There needs community interest and support.
- To start the process for a Public Defender Office, you need to make a request to Kansas State Board of Indigents' Defense Services to see whether a Public Defender's Office is appropriate for your judicial district. At least two board members must vote to hold a public hearing. The BIDS administration would then work up a cost benefit analysis for the Board and the board would hold a public hearing on the issue. The BIDS would consider the question at a public board meeting and vote to pursue a change to the local system. Douglas County would need to show a sufficient funding source.
- The process would take approximately two years for approval.

Questions/Comments:

- Question on whether BIDS only covers felony cases? Cessna confirmed BIDS covers only adult felony cases and occasional misdemeanor cases. Some counties provide drug court support.
- Do you support first appearances with council? Cessna responded when there is sufficient staff. Currently only Johnson County supplies council for first appearances.
- Currently Douglas County already helps support many State funded programs. Do any counties supplement funding to the BIDS programs? Cessna said currently BIDS is only receiving county funding for Drug Court.
- Has the BIDS looked at how public defenders offices affect race and equity and case outcome, and if so, is that data available? Cessna responded that is not an area that has been explored, but she agreed it is something that should be worked on. As background, they are in a transition period and have had many vacancies. Those vacancies are being filled with people who have willingness to do better in that area.
- As Executive Director, do you have impressions on how using a public defender versus a private attorney affects the case outcome? Cessna responded in her personal opinion without data support, on issues related to race and equity using multiple attorneys for multiple areas initially brings about more system changes.
- Does the County Commission have to initiate the process request? Cessna responded anyone could make the request, as it does not have to be formal.
- What county is helping to fund Drug Court? Cessna responded Salina though the majority comes from the State General Fund. Salina makes direct payment to the court.
- If the County can provide some staffing, but not enough, do courts still contract outside council? Cessna responded contract council is provided for case overload and can be added as backup to the County Defenders Office. The County does not pay for the contract provider.

OPEN COMMENT – Judge James McCabria

McCabria has been a part of CJCC since January 2020. In reading the bylaws, the CJCC is “a working forum to support communication and collaborative coordination between and among key criminal justice system officials, advisory boards, agencies, departments, and community members to promote public health, public safety in an effective, equitable, efficient criminal justice system in our community.” Though there is no ethical reason Judges cannot participate in the CJCC, it is actually encouraged, McCabria has concerns that the public may have the perception that the decisions of the CJCC are also the decisions of the 7th Judicial District.

McCabria said he wanted to make a few comments. 1) He wants to encourage all of the CJCC members to put their full voices forward for the benefit of the council, including the courts. Competing ideas produce the best outcomes. The Council has the ability to do great things; and 2) McCabria wants to assure Douglas County citizens that all of the judges decide cases independently. Do not interpret that decisions of the CJCC are the decisions of the courts. McCabria thanked the council for letting the courts participate in this program.

COMMENTS:

- Jennifer Ananda stated we all play multiple roles in the community. Being neutral is a distinction we have to make.
- Darren Canada asked what the courts are wanting from the CJCC, such as speaking up and talking more openly in the public about discussions within the CJCC? McCabria responded the decent he is encouraging is among the members of the CJCC themselves. This board looks at things the effects the lives of so many people in such profound ways. There is the reality of how the criminal justice system happens to those that are in it every single day,

and then there is the public perception. He used the example of how the public views Defense Attorneys, Prosecuting Attorneys, and Judges. When you are in the system, you have a different appreciation for what those jobs do. The people on the CJCC counsel in law enforcement, prosecutors etc. have a different view than others. Certain voices speak more than others. He wants to hear views from all members of the Council.

- Mike Brouwer added if you are on this Council, you need to be ready to share your ideas. Different opinions help move us forward. Regarding action from the Council, Judicial members would need to dismiss themselves from any votes.

UPDATE ON JAIL POPULATION/DECREASING JAIL USAGE – Captain Stacy Simmons
Simmons stated this information was recently presented to the Board of County Commissioners at their last meeting. This information will continually change through the pandemic.

Highlights include:

- The jail capacity is 186 beds. Functional capacity is leaving a few beds in each housing unit to accommodate inmates that change classifications. Functional capacity is 167 people; Functional capacity with COVID-19 is 150 people. Staff has had to make changes in the facility to accommodate quarantine areas for social distancing and safety standards.
- Last week the Maximum, Special Management and Medium Pods were all full. As of this morning, we have 11 cells available.
- Women's pod (now pre-class or male observation) was full on Monday 7/27, Tuesday 7/28 there are three people. The area holds 14.
- Minimum Pod (now the Women's area) is using only 10 of 28 beds.
- The Work Release Pod (now used as Minimum security for men) is using 29 of 46 beds.
- We had to house 15 people out of County. The 15 are medium custody men, 4 are Reentry clients (housed in Jackson, Anderson, Jefferson, and Pottawatomie counties).
- On this date, we were functionally full at 126 inmates due to limitation of how housing is designed.
- 74 of 186 beds do not have locking doors (40%). Those beds can only house minimum custody. It is not possible to add doors to those cells because a bathroom is shared by 14 cells. Nor can these cells be used for COVID observation period because they do not lock or have their own bathers. COVID has limited the function of these beds to 74.
- The jail capacity problem is happening across the state.
- KDOC has informed all Kansas Sheriffs, it will not take inmate transfers to prison before mid-September.
- Maximum capacity is still an issue though law enforcement is still not making many arrests.

COMMENTS:

- Tamara Cash asked if this information means no women inmates are being housed out of county. Simmons responded it depends. When we first started COVID we took all of the women in our facility to another facility. Due to an influx in classifications, we had to bring them all back. Currently women are being housed in booking in our facility.
- Darren Canady asked if staff has a number in mind when they say they are predicting an influx. Simmons responded we cannot necessarily predict a number, but what they do know is the alternatives to incarceration were already in place pre-COVID. Nothing has changed there. There will be people that do not go to court. With all the cases ready to be summoned by the District Attorney, some of those people will not show up at court. To get them to go to court there will have to be a warrant issued. There are also people that will have mandatory minimum sentences through the court system that have no jail alternatives for, unless the law are changed at the State level.
- Plinsky stated it is also important to note there are a number of cases that are in the District Attorney's office that have not been formally charged because court is not in session.

- Charles Branson said there are at least 55 cases in his office ready for summons to be issued. Those cases date back to March and April. We need to move these cases forward as people need them resolved.
- Judge Scott Miller said the failure to appear rates are up right now. People are not coming to court even with reminder notifications. In general, in Municipal Court there are about 5,000 warrants in the system. With failure to appear, these cases could last several years. At some point, the failure to appear warrant will have to be release causing an uptick in stress on the jail.
- Brouwer stated Dr. Matt Cravens has been collecting data and plans to present in September so the CJCC can brainstorm of efforts to reduce Failures to Appear.
- Miller mentioned that some people refuse to come to court by video, even those sitting in the jail. Some refuse to leave their cells and participate the justice system.

IMPLICIT BIAS TRAINING – Jennifer Ananda

There was discussion on making a decision on whether meet in person versus on Zoom for the Implicit Bias Training. The consensus was to meet in person on August 29, 2020.

WORK GROUP UPDATES

CIT COUNCIL - *Written update provided to the Council.* Annual training scheduled for October 26-29. Council will appoint a member to the State Board. Next meeting: September 1.

INCARCERATION ALTERNATIVE/EVALUATION - *Written update provided to the Council.* This work group will resume meeting in September. CSG Justice Center and Vera Institute of Justice have offered to help create data dashboards. More information soon

INCARCERATION ALTERNATIVES/RESEARCH – *Written update provided to the Council:* Work group is working on a plan for work release and assistance for probationers. Present 9/8 CJCC mtg.

MOBILE CRISIS RESPONSE – *Written update provided to the Council:* Present plan for MCRT 9/8 to CJCC. Working on communication between crisis call lines. Next meeting

STEPPING UP INITIATIVE – *Written update provided to the Council:* Sequential Intercept Mapping workshop with PRA. Schedule: August 5 & 26

RACIAL & ETHNIC DISPARITIES - *Written update provided to the Council:* Dr. Cravens presented several tables of data to the work group. Data needs refined. Next meeting: August 24.

COMMENTS, SUGGESTIONS AND RECOMMENDATIONS – none.

NEXT MEETING

- **Next Meeting:** September 8, 2020 at 11:00 a.m. location to be determined.

ADJOURN

Weigand adjourned the meeting at 12:33 p.m.