

Criminal Justice Collaborative Council

Meeting Minutes
April 21, 2006
200 North Main Lower Level Conference Room
Ann Arbor, MI
7:30a.m. – 9:00a.m.

Members Present: Brian Mackie (County Prosecutor), Barbara Ryan Fuller (Public Representative), J Cedric Simpson (District Court Presiding Judge), John Shea (Attorney, Bar Association Representative), Dan Dwyer (Trial Court Administrator), Patrick Hughes (Department of Corrections Probation), Paul Bunten (Chief of Police, City of Saline), Wesley Prater (Board of Commissioners, Chair), Barbara Levin Bergman (Community Corrections Advisory Chair), Bob Guenzel (County Administrator), Lloyd Powell (Public Defender), Archie Brown (Circuit Court Chief Judge), Jose Bartolomei (Public Representative)

Members Absent: Lawrence Kestenbaum (Clerk/Register), Kathy Reynolds (Executive Director, WCHO), Dan Minzey (County Sheriff), Michael Moran (Ann Arbor Township Supervisor)

Others Present: Delphia Simpson (Public Defender Manager), Scot Cannell (Courts Information Technology Administrator), David Behen (Director, Information and Technology Services), Scott Patton (CJCC Staff), Karen Edman (Chief Deputy Clerk/Register), Fran Alexander (Consultant), Sheila Blakney (Senior Assistant, Public Defender), Kerry Sheldon (Management Analyst), Curtis Hedger (Corporation Counsel)

Call to Order

Wesley Prater called the meeting to order at 7:40 a.m. Archie Brown arrived at 7:45 a.m. and took over as chair for the meeting.

I. Approval of Minutes

The motion to approve the minutes of the March 17, 2006 CJCC Full Council meeting was made by Wesley Prater, seconded by Barbara Ryan Fuller, and approved by CJCC members.

II. Public Participation

None.

III. Update on Inmate Boarding Out Issue

Wesley Prater proposed an agenda change to add Bob Guenzel's update. Bob Guenzel reported that the Sheriff's department does not have contracts with other county jails where inmates are being boarded out. The Board of Commissioners (BOC) was briefed on this issue. The BOC then instructed Corporation Counsel to issue letters to these counties informing them that there are no current contracts for these services, and Washtenaw County will not be held responsible unless a contract is in place. Bob Guenzel noted that this issue raises the importance of the CJCC's work as it tries to address jail overcrowding. The BOC was also updated on the issue that continued policy of boarding out inmates to other counties (assuming an average of 70-100 inmates boarded

out) will cause a shortfall projection in the corrections budget of \$2 million. Projections will be taken back to the BOC in May 2006. If current trends continue, the discussion with the public about jail expansion will continue.

Given the previous two proposals to address jail overcrowding were rejected by the public, as the county tries to find a balance for the future, good information on what the county is doing to address the issue is needed. For instance, does the county really have good diversion programs? Has everything been done to make sure that the population in the jail deserves to be there? As such, the county needs to know who is in the jail, why they are there, and is Washtenaw County living up to its statutory requirements related to the jail overcrowding act. Wes Prater noted that the Sheriff, and not his representatives, should be present to participate in these discussions. He recommended that the CJCC send a message to him.

Dan Dwyer asked how many total jail beds were boarded out in the four counties with which Washtenaw County has contracts. Curtis Hedger indicated that count was fairly low, about 20 to 25. He also noted that with the non-contracted counties the count was 74. Costs for boarding out inmates range from \$32.50 to \$35 per day. He clarified that contracts are being pursued with the non-contracted counties. He said that officials from non-contracted counties have been appreciative of the information and sympathetic.

Bob Guenzel explained that one of the ideas being proposed for the BOC was to get contracts with a set number of beds and to set a limit on the number of boarded out inmates. Curtis Hedger said that the issue before the BOC is how many inmates are to be boarded out, and where are the most reasonable places for these inmates to be boarded out (considering distance, how quickly they can be brought back in for court appearance). Discussion ensued on the procurement process for acquiring contracts to board out inmates, and the failure of the Sheriff's Department to follow these procedures.

Barbara Ryan Fuller asked what would happen if any other department head, whether elected or not, if they were to make a \$2 million obligation without the approval of the Board of Commissioners. Bob Guenzel indicated two avenues of recourse: 1) County employee would be personally liable; 2) employee will be subject to some type of disciplinary measure. If the action was not an error, or after the employee was on notice and continues with the action, the employee would probably be fired, or asked to repay the amount. Curtis Hedger noted that the Sheriff would probably state that he followed the procurement procedures to a point to at least show good faith, and was waiting for General Counsel to respond. But the problem was that he never followed up on Counsel's end before he boarded inmates out.

V. Jail Overcrowding Committee Report

John Shea referred members to the Inmate Population Chart: January 2005 to March 2006. He noted that the purple line showed total population during that time, and the blue line is the inmate population in the jail itself. The difference reflects the number of boarded out inmates. Historically, boarded out inmates have averaged 25-40 at a somewhat consistent rate. However, the numbers spiked from 50 to 85 boarded out inmates towards the end of the overcrowding emergency from January 13 to February 27, 2006. In 27 days, the boarded out inmate population had increased by roughly 150%. He gave two observations: a) unlike previous overcrowding emergencies, during this recent one, the county's jail population trended up, b) as a result, the county boarded out inmates as a solution. The committee then looked at a number of hypotheses on the cause of this trend.

John Shea then referred members to the Public Service & Justice Needs Assessment Data and brought attention to the bookings number by month. Total figures for January to March 2006 were 1,968 bookings. Comparable figures for January to March 2005 were 1,652 bookings. This showed a 19% increase from Quarter 1 2005 to Quarter 1 2006. Also, the bookings from the last quarter of 2005 were a similar increase from the last quarter of 2004. He identified this increase in bookings as the cause of the jail population spike.

John Shea passed out another chart that summarized bookings by police agencies (to study the distribution of bookings historically). He reported that total case filings are up 23% from 2005, and are up 6 percent from the fourth quarter of 2005. This confirms that across all police agencies, bookings have increased. In addition, total Circuit and District court case filings are up significantly in the first quarter of 2006 (up 23% from Quarter 1 2005). Therefore it demonstrates that as bookings increase, case filings will also increase. Dan Dwyer clarified that the chart does not include civil filings. Felony filings are up 14% from the first quarter of 2005 and they are up 22% from fourth quarter 2005. Capital felonies are up 70% and up 100% from the first quarter 2005. Therefore, this is an increase in the most serious offenses which will tend to have additional individuals in jail on a pre-sentence status.

John Shea noted four observations: 1) there is an increase in the number of serious cases filed, 2) even if serious misdemeanor cases are up modestly, the ones that carry potential jail sentences are up 30%, 3) the distribution of cases by district courts has remained relatively consistent, 4) the distribution among police agencies is consistent. The question of what caused the increase in bookings remains. Could it be due to more jail sentences given out by Circuit or District courts? Could it be from bench warrant sweeps? The anecdotal evidence points to the negative for both questions.

John Shea looked at the ratio of bookings to case filings by quarter and it has remained consistent -- around 44%. This means that many cases get filed when people are actually not booked into the jail. If there were judges who were using jail sentences as a sanction in more significant numbers than in the past, then this ratio should be higher. This is because existing cases would be constant, arrests and bookings would increase. He therefore saw the increase as driven by raw numbers of additional arrests for new cases.

John Shea then shared a graph which illustrates the fluctuations in Circuit and District court criminal filings from January 1998 to January 2006. There was a sharp increase at the very end of the graph which points to the increase in capital and non-capital felony cases. Archie Brown noted that the cases were relatively static through 2003 to 2005 before becoming more erratic. Capital cases were down significantly in 2004 and then started trending up in 2005. More interestingly, District Court cases have gone significantly down over the last eight years. He suspected that law enforcement capacity, rather than law enforcement discretion, was the reason for this trend. With fewer officers on the street, there would be fewer arrests. J Cedric Simpson noted that there have also been changes in legislation over this period of time that decriminalized certain activities.

Archie Brown indicated that the Michigan Supreme Court annual report essentially substantiates the numbers given earlier. On a statewide basis, between 2000 and 2005 there was a 21% increase in non-capital and capital felonies. Similarly, there has been a 21.5% decrease in non-traffic misdemeanor criminal cases statewide. However, these changes occurred between 2000 and 2003, and remained static in the next two years.

John Shea also said that the committee looked at other hypotheses, such as jails could be overcrowded not because admissions go up, but releases go down. There are no current numbers on whether average daily releases have gone down for the first quarter of 2006. Data from the annual report indicate that overcrowding releases in 2006 are lower than in 2005. The committee also looked at average length of stay numbers, where jails can be overcrowded if inmates are staying longer (even if admissions and releases stay the same). The average length of stay was up in 2005 (18.6 days, up from 15.3 days in 2003). There is no information as of yet for 2006, so the committee is uncertain how that plays into the spike in numbers. Another question studied was whether magistrates are setting higher bonds. There is no data to confirm this. Anecdotal evidence indicates that this is unlikely. Relative to total case loads, magistrates are setting bonds as before. As their numbers go up, more people would have money bonds set. But in terms of percentage of case loads, it was highly unlikely that it is playing any role in the spike in numbers.

John Shea concluded that the jail overcrowding spike is due to the increase in jail admissions bookings. That in turn is due to more arrests for new jail-able crimes across the board, especially felonies. While there may be a few more jail sentences than normal or more bench warrant arrests, these factors do not have as much material impact on the numbers.

Bob Guenzel raised two issues. First is the increasing numbers for the average length of stay. Second is the investment that the BOC made in the pretrial services program, which originally was supposed to help limit overcrowding through its approach. All the evidence is pointing otherwise. Mark Ptaszek and Kirk Filsinger have informed him that as the program seeks information about offenders are being placed in jail more often and with longer stays. Bob Guenzel emphasized the importance of the Sheriff's input into the report. If the information is incorrect, then he should be present to dispute the findings. There are still questions that remain unanswered by the data, and solutions are not forthcoming.

J Cedric Simpson clarified that it is difficult to reach a conclusion at this point on Mark Ptaszek's comment. While not speaking for all the judges, the pretrial services program has allowed him to use alternative conditions of bond in a better way because he has a verified address. John Shea clarified that Mark Ptaszek and Kirk Filsinger were more positing, rather than holding as truth, the statement given at the meeting. Dan Dwyer said that the pretrial services project is just two months into the pilot program. As such, the committee should be cautious about holding the program as responsible for the spike in numbers.

V. Jail Overcrowding Process

Archie Brown acknowledged that the Sheriff and his staff should have been present to assist in his presentation. He then referred members to a series of e-mails and a copy of the overcrowding emergency act. The first email notifies 14 judges of possible overcrowding at the jail and consequences. A second email is sent out that certifies overcrowding and identifies that the status will not change until the numbers are reduced to 322 inmates. A fax notification is sent to the judges which lists each inmate.

Procedures have changed where Circuit and District Court judges are now seeing a consolidated list to allow coordination between the offices. This list is then sent back to the Sheriff's department which then identifies the individuals who can be released. A document is signed from the Sheriff's department or Community Corrections that states an inmate is eligible for Community Corrections or some other program. After the judiciary signs the form, the inmate can be released from the jail.

If this process does not reduce the jail population to the required 322, the next phase follows. The judges then identify anyone being held in jail (everyone except classification 1 and 2) as being high or low risk. Archie Brown then determines whether this identification is appropriate based on the files under a tight deadline. He also determines whether an inmate's sentence time can be commuted under a certain percentage. The jail identifies a date, and at midnight, they release selected individuals. The final notice is sent stating that the jail is out of overcrowding if the required 322 is reached. If not, the Sheriff is responsible for deciding what needs to be done.

According to the statute, the Sheriff may give up to 30% reduction in sentence. Archie Brown was not aware if the Sheriff has done this. His options are to: a) do nothing; b) transport people to other counties; c) give a credit up to 30% of their jail sentence. Statute 801 55 identifies various alternatives to reduce the jail population. Many of these options are already exercised. Archie Brown discussed his concerns over the early release of low risk individuals.

Fran Alexander noted that the Sheriff has the discretion to define "custody" and this has been exercised in Saginaw County. When an individual is remanded to custody, the Sheriff has the choice of what "custody" means. Once a jail overcrowding occurs, the Sheriff can put that person on tether, day reporting, use of good time credit, etc. J Cedric Simpson indicated that the Sheriff should be required to inform the judiciary in the emails about any discretionary decisions according to statute. Archie Brown clarified that the Sheriff may not have done these decisions because he chose to board the inmates out. However, the Sheriff does not currently state in the emails that he has addressed the overcrowding through boarding inmates out.

Wes Prater indicated that the Board will seriously consider establishing a maximum number of boarded beds. He would like to bring that back to the CJCC for discussion before BOC action. Paul Bunten said that some strategy must be figured out how to work with the Sheriff. The county needs to identify a strategy to increase the size of the jail. Fran Alexander indicated that a planning retreat does not seem to be the point right now. The two things that were brought up by Paul Bunten should be the issues addressed.

J Cedric Simpson said that the courts are continually meeting with the Sheriff to see how the overcrowding issue can be addressed. The solution resolved was that the district court judges had given the Sheriff the authority to release individuals by category of offense. Sometimes it was exercised, sometimes it was not. He noted that the Sheriff's department has yet to come back to the courts with a solution they have come up with and need assistance with the solution. The engagement process should therefore begin with parties coming together on this issue.

Wes Prater said that the BOC's frustration with the Sheriff's department's ignoring of the budget process, and continued spending over its budget. Members acknowledged that efforts are at an impasse even after continued meetings. Repercussions cannot be done because the Sheriff is an elected official and uses his statutory abilities to send the BOC the bill. Dan Dwyer said that the CJCC should shift back to the main issues – focus not on the problems but on solutions. J Cedric Simpson said that it was important for the BOC to realize that good things (such as the pretrial services program) have come out of the CJCC's work. In the budget process, it would be important not to cut funding for these working programs just because some agency does not control their budget.

VI. CJCC Goal Setting

Archie Brown suggested that given half of membership was not present (at the time), an email be sent out identifying what the survey showed and what Fran Alexander stated on the record. It will also include some options for moving forward. Archie Brown said that it could also incorporate

some of the discussion from the present meeting to lend focus on what to do at the retreat. Wes Prater confirmed for Fran Alexander that the report presented by John Shea starts to move in the direction of finding solutions. Barbara Levin Bergman said that the report presents significant information on causes. The information on ways of possibly releasing individuals, the emails and statutes, has made the council look at the possibility of different solutions. The challenge then is how the CJCC can handle the other end. John Shea said that the discussion has become very personal, and should not drive the policy decisions of the BOC.

VI. Adjournment

Wesley Prater moved for adjournment at 9:31 a.m.

VII. Next Meeting

The next CJCC Full Council meeting is scheduled for Friday, May 19, 2006, 7:30-11:45 a.m. at the Library Learning Resource Center (LLRC), 4135 Washtenaw Avenue, Ann Arbor, MI 48108. Please note that this meeting is reserved for the CJCC's annual retreat.