

MINUTES

HOUSE CORRECTIONS & CRIMINAL LAW SUBCOMMITTEE

Monday, March 9, 2020

10:00 a.m.

**Room 149, State Capitol
Little Rock, AR**

Committee Members Present: Representatives Nicole Clowney, Vice Chair; Stan Berry, Carol Dalby, Douglas House, Brandt Smith, and Dwight Tosh

Other Members Present: Justin Boyd, Andrew Collins, Denise Ennett, Jack Ladyman, and Johnny Rye

Representative Clowney called the meeting to order.

Discussion of ISP 2019-027 – An Act Concerning Bail Data and Transparency [Exhibit C]

Representative Collins gave a presentation regarding bail reform and provided the following information:

- The annual cost to Arkansas for pre-trial detention is \$100 million;
- The average nationwide felony bail amount is \$10,000; and
- President Trump's Super Bowl advertisement regarding criminal justice reform cost \$5.5 million.

The foundations of bail are that it must be available; it may not be excessive; monetary bail is only to be used as a last resort; and the purpose of bail is to ensure court appearance. Representative Collins stated that when someone is arrested, there are three things that can happen: the person can be released, be detained if it is a capital crime, or have a conditional release with monetary bail or without monetary bail. The two kinds of monetary bail are secured and unsecured. Secured bail is some sort of a collateral or deposit that is provided to the court in order to ensure that the defendant appears in court. In Arkansas, the collateral or deposit can be cash, a lien on property, a commercial or for profit bond, or a court bond. For a court bond, the defendant deposits ten percent of the total amount of the bond with the court directly. With unsecured bail, there is no security deposited, but if the defendant does not make the court appearances, the court can collect the amount of the bail. The problems with monetary bail are fairness, cost to taxpayers, and public safety. Lack of resources to make bail and defendants making false guilty pleas to avoid paying bail are contributed to the fairness of bail. For pre-trial detention in Arkansas, roughly half of the cost to taxpayers when defendants cannot make bail is an estimated \$100 million per year. The United States spends nearly \$140 billion a year on pre-trial detention. Of note, is that someone who spends even a short amount of time in jail is more likely to commit future crime, causing a concern for public safety.

Representative Collins stated that by using supervised release, reminders, and algorithmic risk assessment tools, that courts could reduce the reliance on monetary bail. His interim study proposes to implement a data collection system to better understand how bail is employed throughout the state and would provide the public with transparent information regarding bail.

Some other ways to consider bail reform are that court forms should be clearer and the ability to pay should be considered. Many states have a law that requires that a court consider the ability to pay in setting bail, but Arkansas does not. To presume release is another measure to consider. Presumed release is the expectation that a defendant will be released, but the court still has discretion to use forms of bail. Two other proposed reforms, which would require amending the constitution, are eliminating cash-only bail and monetary bail.

A case has been made that monetary bail does not work well enough to justify the high costs of maintaining the process. An alternative would be supervised conditions of release, rather than monetary bail. Relying on supervised release would require more funding for the courts. Representative Collins proposal is to make the existing system fairer by gathering data for further study, requiring use of clearer summons to court forms, amending court rules, establishing a statewide reminder system, and eliminating monetary bail by amending the constitution and court rules. This can be accomplished by allocating some cost savings to supervised release and integrating an algorithmic risk-assessment tool that is adjusted for racial bias.

With no further business, the meeting adjourned at 10:50 a.m.

DRAFT