

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Special Board Meeting
Monday, November 18, 2013, 1:30 p.m.
Commissioners' Conference Room
Benton County Justice Center, Kennewick, WA

Present: Chairman Shon Small
Commissioner James Beaver
Commissioner Jerome Delvin
County Administrator David Sparks
Clerk of the Board Cami McKenzie

Benton County Employees Present During All or a Portion of the Meeting: Eric Hsu, Office of Public Defense; Prosecuting Attorney Andy Miller; Human Services Manager Ed Thornbrugh; DPA Ryan Brown; District Court Judges Terry Tanner, Joseph Burrowes, Bob Ingvalson, Katie Butler, and Dan Kathren; Clerk Josie Delvin; Jacki Lahtinen, District Court Administrator; Sheriff Steve Keane; Commander Jon Law; Dixie Jameson, District Court; Undersheriff Jerry Hatcher.

Discussion with Cities and Possible Action Regarding Orders of Incarceration and/or Work Crew for Failure to Pay Criminal Fines

Chairman Small said the agenda would be specifically related to orders of incarceration and or work crew for failure to pay criminal fines. He said he expected to hear from District Court, Andy Miller, Dee Willis, and the cities and would allow public comment for a maximum of 15 minutes. Commissioner Beaver reminded the audience the agenda could not be expanded to items not covered on this agenda per RCW 42.30.080.

District Court Judge Joe Burrowes said the subject of individuals being incarcerated in lieu of paying fines would be discussed. He said the purpose of this subject being at issue was because a judge was sued for incarcerating an individual for not paying a fine. He said that District Court wanted to know if this Board wanted to continue to use the practice.

Judge Burrowes indicated that District Court was uncomfortable making that decision without knowing whether the Board would support it or not. He stated it was up to the legislative body to set the rate for sitting out fines and District Court was not advocating for or against the practice. He indicated this practice was post-conviction and was a form of punishment. Fines were a form of punishment and every day they had people in the jail that were incarcerated for not paying their fines and there were a lot of fine hearings. He indicated it was a difficult situation because they had to be treated individually and fairly but this was a means to hold them accountable. He said it was important to know they made these decisions and reviewed each case individually. Historically the individuals were career criminals and making them accountable was part of the punishment. He said they consider their ability to pay and whether they are mentally ill or have a debilitating disease that would prevent them from paying.

Commissioner Delvin asked whether they have recommendations on fines by the defense attorney and prosecutor. Judge Burrowes said generally the recommendation by the prosecutor is what they use, however, sometimes it was also agreed to by the defendant. Commissioner Delvin also asked whether mental health issues were considered at the conviction time or determined later. Judge Burrowes indicated it could happen at the beginning or throughout the case and if they were provided third party evidence there was mental illness they would take that into consideration.

Commissioner Beaver said regarding the Resolution setting the rate for sitting out fines, he was not sure the State gave the Board authority to tell the judges what to do. He also discussed a letter from a judge that stated there was a separation of powers between the Judges and the Board of Commissioners.

Judge Burrowes said he was not there to interpret that Resolution but it was his job as a judge to run the courtroom and set the rules in his courtroom and he was more than happy to follow the rules set by the legislators (County Commissioners).

Chairman Small asked how the decision was made to have the defendants be incarcerated in lieu of fines.

Judge Burrowes described the process for setting fines and the amount of time given the defendants to pay their fines. He said if they had a public defender it was generally \$25.00 a month; it takes three months to become delinquent and then they were given a chance to say why they were not paying and the Court generally would re-start their fines. He said notwithstanding other issues, they automatically would get a re-start or be allowed to work off the fines on work crew. He said they could get a total of three times to pay their fines and generally if it went beyond that, they would issue a warrant.

Commissioner Delvin noted that Benton County was one of two counties that actually had this option and he wanted to know if they spoke to other judges about the process. Judge Burrowes indicated it came up a lot since the jail alternative system was unique and generally the fines were sent to collections. He said if the delinquencies were sent to collections, then District Court was relieved of its duty to collect that fine. It was stated that from a financial standpoint it was less burdensome on the courts if they were sent to collection because it would be just one less job duty, although not sure if it would lessen the budget.

Judge Tanner said the comment regarding separation of powers was appropriate. He said the legislative power set the rate for criminals to sit out their fines. He said if there was not a rate set, they could give more jail time, issue a warrant or look at other options. He said if the Resolution were rescinded, they would use other options.

Dee Willis, Chaplain at the jail, said he had studied this issue for three years by accruing data on jail inmates, specifically those incarcerated for failing to comply with court orders. He provided a written report and his own analysis regarding inmates and said on average, 112 inmates per day were behind bars to sit out fines and that worked out to \$2.8 million total a year to keep people locked up instead of forcing them to pay.

PA Andy Miller said at meetings like this they tend to emphasize their differences, but he wanted to say that they all agreed on justice, fairness, and accountability. He said this meeting was requested by the District Court Judges and he didn't believe it was up to the

Commissioners to tell the judges what to do, however, he knew that cost was an issue in District Court. He indicated he met with Sheriff Keane, Undersheriff Hatcher, Eric Hsu (OPD) and County Administrator David Sparks to discuss whether using a different approach would affect the jail rate. He said they then met with chiefs, sheriffs and city representatives to make sure this was a corroborative effort; the cities were looking at this from a cost respect. He said they decided to ask the judges to consider not imposing this process and they figured it was a decision for the district court judges to make, even though they were saying they did not advocate one way or the other.

Mr. Miller said to maximize accountability for criminals he would rather be involved in the front of this. He added that he was not sure if the figures quoted by Mr. Willis were correct about how much money would be saved, and it might take a while to save, but he agreed it was costing the taxpayers a lot of money. He said he would rather use that money for a gang prosecutor and agreed it cost money to have extra inmates in jail and that it would be better to spend that money elsewhere. He said there was a suggestion by Ms. Beaton, City of Kennewick, to have this practice and cap it at 30 days per individual per time but they did not hear back from the Court and it remained at status quo; however, it came up again after they were sued. He said there were also individuals across the state that believed the practice was unconstitutional and there was a question whether the County should hire an attorney to defend this practice and that power was up to the PA.

He said it was his position to have accountability because they want to change the offenders' behavior and the closer to the time of the criminal act, the better the accountability. He said the District Court Judges were making good decisions and a lot of these fines were set by the State as mandatory with more independent thought on jail and probation. He said in conclusion it appeared the District Court Judges seemed to be fine with either continuing or discontinuing the practice and it was his opinion from a sense of economics (and Mr. Willis' numbers may not be easily translated) but that it should be either eliminated or dramatically changed and it would be a good goal to modify or eliminate the practice of sitting out fines.

Sheriff Keane, along with Commander Law said as the Sheriff it was his job to keep everybody safe and to watch costs. He said he wanted to find a balance to hold individuals accountable and keep down the costs and one alternative would be using work crew. He said they currently had 47 people on work crew and in 2012 provided 68,000 man hours on a work crew to work off fines and save on bed days in the jail (over \$650,000 value). He said he liked the idea of modifying the program and setting a cap so they could still have work crew, hold people accountable and reduce costs. He said if they reduced they population it would save money, but he didn't believe it would be as much as initially thought and would take months to determine how much would be saved. He said he believed the judges went out of their way to have defendants meet their financial obligations but also believed there were certain defendants that just refused to pay.

Jon Law discussed the population numbers and inmates in the jail on fines and said if the program were eliminated, they would lose about 25 inmates. He discussed how the numbers fluctuated and in the high summer months they were operating at capacity, but said it was hard to determine the operational costs.

Chief Hohenberg and Lisa Beaton, city attorney for Kennewick, said it was brought to their attention by Mr. Willis how many defendants were just sitting out fines. Ms. Beaton said they were very cognizant of jail costs, district court costs, and public defender costs and were

trying to figure out if there was a balance between accountability at the appropriate level and cost. She said they would probably not be in favor of an all or nothing approach and believed they needed more accurate figures; additionally, wanted to review the rate for sitting out fines for credit and have it be in line with credit for work crew. Ms. Beaton indicated there would probably be a savings, but not as much as might be indicated by the study and it was not their intent for all or nothing but to have all the facts and figures and hold them accountable.

Chief Hohenberg stated that work release did bring back value to the community but he did not see the same value for someone sitting out a fine, additionally with the medical costs associated with keeping them in jail. He said he was also in favor of finding a balance and everybody was in agreement with accountability. He said that collection was only one avenue and some people have a problem getting a job when they are in jail.

Heather Kintzley, attorney for City of Richland, said they echoed the City of Kennewick and said their concern was costs associated with housing individuals versus the amount of money for fines and wanted to have it looked at.

Bronson Brown, attorney for the City of West Richland said they agreed and wanted to find a balance between accountability and costs.

West Richland Chief McElroy, said accountability was important and costs were a secondary factor. He said the current rate should be addressed and reset as more applicable. He indicted a determination at the time of the hearing if they had the ability to pay was important and he believed they had opportunity to make this a better program.

Commissioner Beaver reiterated that it did not seem the Board had any statutory authority to do anything besides set the rate and this was really the Judges' program.

Commissioner Delvin said he agreed the RCW gave authority to the Commissioners to set the rate but they could not set other limits.

Jacki Lahtinen, District Court Administrator, provided a comparative around the state from other counties regarding revenue and caseloads; she said they currently had \$17 million in collections.

Gordon Bopp, NAMI, provided a written report, and said they could make a case that a great proportion of the jail population consisted of people with a mental illness and many were on disability. He stated when they reached a state of crisis mode and had a medical condition they would find themselves in jail because typically the police were called. He provided recommendations by NAMI-WA that (1) asked Commissioners to oppose any policies that would lead to incarceration of people with mental illness and/or substance abuse as a way of working off legal financial obligations and (2) recommending judges adhere to the law and waive any fines assessed on individuals with diagnosed mental health disorders and that were on welfare support programs and unable to make such financial payments.

Judge Katie Butler said she currently presided over the failure to pay fine hearings and just this week received a large stack of papers on individuals for failing to show for work crew. She said they had options to restart their fines, options to pay and restart, pre-warrant hearings, fine hearings and then the option to do work crew and they still didn't show up for work crew so have clearly shown they do not want to pay their fines.

Commissioner Delvin asked if staff could take a stab at providing revenue numbers and costs in relation to housing people and revenue from fines. Additionally, asked if District Court could meet with the groups and decide how to proceed and then come back to suggest an amount for the Board to approve.

Commissioner Beaver said he wanted to see what the modified rate and or program looked like and that eliminating the practice would take a tool away from the judges. Additionally, he knew there was an issue with the inmates with mental illness and they were currently trying to solve that problem. He said that law enforcement, the community, prosecuting attorney, cities and district court needed to have the conversation and come back to the Commissioners with a proposal for a new rate.

Judge Ingvalson commented that if nothing was done, the rate would stay the same.

Chairman Small asked about the 37 other counties and their current practices and how the programs got started and Judge Ingvalson said it all started over time. He said if they eliminated this process, they would eliminate nine (9) dockets. Additionally, he said he agreed with everybody and that they all wanted what was best.

MOTION: Commissioner Beaver moved to instruct the Resolution be back in front of the Board of County Commissioners for a vote in the next month. Commissioner Delvin seconded and requested the time be allowed until January.

Discussion

Commissioner Delvin said he did not want to weigh in on the amount until the parties had a chance to get together and bring back a resolution to the issue so the Board could reassess the monetary amount on the resolution. Commissioner Beaver said he agreed.

Upon vote, the motion carried.

There being no further business before the Board, the meeting adjourned at approximately 3:20 p.m.

Clerk of the Board

Chairman