

MARION COUNTY PUBLIC SAFETY COORDINATING COUNCIL (MCPSCC)
Full Council Meeting Minutes
January 24, 2023, 4:00 p.m.
Commissioners Boardroom, Courthouse Square, Salem, Oregon

MCPSCC: Colm Willis, Jayne Downing, Paige Clarkson, Courtland Geyer, Tim Murphy, Joe Kast, Christina McCollum, Ryan Matthews, Elizabeth Infante, Trevor Womack, Tracy Prall, Don Frederickson, Joe Budge, Robert Carney, Cari Sessums, Todd McCann, and Shaney Starr.

Guests: Jeff Wood, Evelyn Centeno, Jessica Stanton and Kevin Cameron.

Commissioner Willis called the meeting to order at 4:01 p.m.

1. ADMINISTRATIVE (INFORMATION/ACTION)

Approve the October 11, 2022, MCPSCC Meeting Minutes

MOTION: Don Frederickson moved to approve the October 11, 2022, MCPSCC meeting minutes. Seconded by Jayne Downing. Motion passed unanimously.

Membership

- There are membership positions coming open including the city councilor or mayor position:
 - The county would like the individual chosen to have a relationship with other cities within the county, and the individual would represent the shared concerns of all of the cities within the county; and
 - The Board of Commissioners will send out a request to the cities within Marion County asking for input on who they think would be a good person to fill the city councilor or mayor position.
- There are other positions opening July 31, 2023, and there will be a general request for applications for these positions.

December 13, 2022, Legislative Delegation Breakfast Meeting Debrief

- The breakfast is important for in-person relationship building; and
- It would be good to have a follow up meeting mid-way through the session to keep the conversation going:
 - Ms. Stanton will work on finding the best date for a follow up meeting; and
 - A local police chief should be included in the conversation.

2. BEHAVIORAL HEALTH UPDATE

Oregon State Hospital

-Evelyn Centeno and Paige Clarkson, District Attorney's Office

Summary of presentation:

- 370 is the statute that governs aid and assist:

- Aid and assist refers to an individual who has been charged with a crime and they have a qualifying mental health disorder, and because of the disorder they are unable to understand what is happening in the courtroom, and they are unable to engage with their attorney and participate in their own defense.
- If an individual is unable to aid and assist, they will be assigned to the Oregon State Hospital (OSH) or to community restoration:
 - OSH is used for the most dangerous and the sickest individuals:
 - Individuals charged with a felony can stay in the hospital for up to three years; and
 - Individuals charged with a misdemeanor can stay in the hospital for up to one year, or up to whatever their maximum penalty could be.
 - An individual who can be treated in the community is assigned to community restoration:
 - There are currently 27 individuals in community restoration; and
 - There is no statutory limit to how long an individual can be in community restoration.
 - Individuals who are doing well at the hospital may be transferred into community restoration; and
 - Individuals assigned to the hospital must be admitted within seven days of the court order:
 - OSH has struggled to be in compliance with this; and
 - During the pandemic there were individuals waiting in jail for four to six weeks before being admitted to the hospital.
- The September 2022 Mosman Order was issued to get individuals into the state hospital in a timely manner, and it accomplishes this by releasing current patients earlier than they were previously being released:
 - Individuals charged with a misdemeanor will be released within 90 days;
 - Individuals charged with a felony will be released within 6 months; and
 - Individuals charged with a Ballot Measure 11 crime will be released within 1 year:
 - Prior to the Mosman Order individuals charged with a Ballot Measure 11 crime were released within 3 years.
- While individuals are in the hospital the county is supposed to receive evaluations every 90 days to every 6 months, with the frequency being dependent on how the individual is doing:
 - Under the Mosman Order the hospital is not required to provide an updated evaluation, so individuals are returning to jail without an evaluation having been done for months:
 - The jail has no idea if these individuals are on involuntary medications, if they have improved under care, or if they could aid and assist in their own defense; and
 - The District Attorney's Office cannot proceed with a case without an opinion that the individual is able to aid and assist.
- Individuals being released from the hospital could potentially be placed in a secure residential treatment facility (SRTF):

- There are SRTFs who do not take individuals charged with Ballot Measure 11 crimes;
- The hospital is only giving 30 days notice before releasing individuals, and it is hard to find appropriate housing within that short timeframe; and
- Most individuals being released are very ill or very dangerous, so some providers will not allow them into their facilities.
- Another option is civil commitment, but it is very difficult to get:
 - On the day the individual is in court it has to be proved that they are a danger to themselves or others; and
 - Pursuant to the Mosman Order OSH is not taking civil commitments.
- Another option is extremely dangerous civil commitment:
 - This is not a good option because it only applies to a very small number of cases, including those involving the following:
 - Murder, arson, and select sex abuse charges.
 - It does not apply to all individuals who are considered very dangerous;
 - It has to be proved that the individual is resistant to treatment, yet the District Attorney is not receiving updated evaluations; and
 - These civil commitments have to be renewed every two years.
- The statute around civil commitments was created for those individuals who are very ill and who will never be able to face their charges:
 - The individuals need help; and
 - The statute was not created to deal with the fact that the hospital is releasing individuals before all treatment options have been tried.
- Following are current Marion County cases:
 - There are 18 cases that are eligible for release from OSH;
 - There are 7 individuals scheduled to return to the jail; and
 - There have been 10 individuals returned under the Mossman Order:
 - 4 were misdemeanor cases:
 - 1 was placed in a foster home; and
 - 3 were assigned to community restoration and they have been engaging.
 - 6 were felony cases:
 - 1 is in jail and refuses to engage;
 - 1 was released to his mother's home; and
 - 4 had housing arranged:
 - 1 never showed up at the facility he was assigned to; and
 - 1 of the individuals assigned to a group home is barely engaged.
- Some of the individuals released from OSH will soon be monitored through the county's pre-trial release program:
 - Once the community restoration monitor is in place the individuals who need it most will be placed in the program:
 - Ankle monitors will be used on some of these individuals.
 - The goal is to have a community restoration monitor in place in February.

- Current status of the Mosman Order and the federal lawsuit:
 - Plaintiffs to the lawsuit include Disability Rights Oregon and the Metropolitan Public Defender office;
 - The defendant in the lawsuit is the Oregon Health Authority which runs the Oregon State Hospital;
 - Both the plaintiffs and the defendant have agreed with the Mosman Order:
 - Other stakeholders were not consulted regarding the impact this has on their communities, including public safety and the impact on jails.
 - Various stakeholders including county district attorneys, judges, counties, and hospitals have intervened in the lawsuit by filing to be part of the lawsuit:
 - There have been a couple of unsuccessful hearings;
 - Judge Mosman says that he needs time to see how his reduced timelines work out; and
 - There is a briefing scheduled in the spring.
 - Stakeholders are working together to come up with alternatives, but there are no good options:
 - One solution being looked at is having a safety valve on releases of serious cases:
 - A list of charges would be created where the district attorney would ask for a safety valve from the federal court that would make the Mosman timelines not applicable.
- The state has ignored public health problems including addiction and mental illness, and these underlying conditions need to be addressed:
 - Individuals need to receive help before they commit a crime.

Summary of discussion:

- A possible solution would be for OSH to increase staff and open the closed units to increase capacity;
- There is also the question of where to send juvenile defendants who have mental illness:
 - Juveniles are not seen in the aid and assist process;
 - The juvenile would have to be placed in a home or care facility; and
 - These juveniles often become repeat offenders.
- There is an issue with having enough jail capacity because there are individuals in jail who should be in the state hospital;
- This issue is a very significant challenge for the community;
- The Mosman Order prioritizes getting individuals into the state hospital, but not enough time is being spent on getting these individuals healthy before they are released:
 - There are issues with capacity, resources, funding, and staffing.
- Another problem OSH has faced in the past is that they got in trouble for keeping individuals too long because they were not receiving treatment and getting better:
 - There was a push to get these individuals back into the community where they could receive treatment.
- The Mosman Order has not fixed the problem as individuals are still having to wait a long time to get into OSH.

3. Criminal Justice Advisory Council (CJAC)

Status of Defense Attorney Availability

-Judge Prall

Summary of presentation:

- The Public Defender of Marion County has done a good job of recruiting new lawyers, and they hired someone to train the new lawyers;
- The Marion County Association of Defenders does not have the capacity to take on new cases;
- There are multiple days every month where there is no lawyer available for felonies, and sometimes there is no lawyer available to take any type of case:
 - In these cases pleas are sent to every criminal lawyer in the county asking them to take on one case:
 - This requires a large amount of court staff time and it is not their job, it is the responsibility of the Office of Public Defense Services (OPDS).
 - OPDS has hired lawyers from other counties to take on cases due to Marion County's lack of capacity.
- The problem is due to the lack of defense attorneys in the state; and
- There are individuals waiting in jail for an attorney to be appointed to their case.

Summary of discussion:

- There is a bill that would allow paralegals more flexibility:
 - Attorneys are requesting more support staff, so if a paralegal was authorized to speak with clients and witnesses it would help decrease an attorney's burden:
 - The caseload capacity of attorneys would have to be increased for this to have any impact.
- There is also a bill that would turn indigent defense over to the counties:
 - Other states are being looked at for how this is handled:
 - Michigan has a system like the Department of Justice that is all defense attorneys, but it is a very expensive system.
- The Multnomah County District Attorney dropped a few hundred cases due to the lack of attorneys:
 - During the pandemic one of their public defender offices refused to take any more cases due to losing staff lawyers;
 - Marion County utilizes lawyers from other counties, and Multnomah County does not;
 - Marion County court staff also sends pleas to criminal lawyers within the county asking them to take cases; and
 - Multnomah County has a larger backlog of cases than Marion County.
- Cases have become more complex:
 - Marion County used to have more misdemeanors than felonies, and now there are more felonies than misdemeanors.
- House Bill 2140 would require counties to pay for indigent defense;
- There are currently eight different house and senate bills that talk about restructuring OPDS; and

- A lot of older, experienced attorneys left the field during the pandemic, and there are not as many individuals going into the field:
 - Attorney pay has been stagnant for a number of years, and for some attorneys their pay has actually gone down:
 - This makes it difficult to hire and retain attorneys.

Ramos Implications

-Judge Prall

Summary of presentation:

- In 2020 the U.S. Supreme Court ruled in the Ramos case that nonunanimous jury verdicts were not allowed:
 - At the time Oregon and Louisiana were the only states that allowed nonunanimous jury verdicts;
 - For federal cases Ramos was not retroactive;
 - The states were allowed to determine if the ruling was retroactive for state courts;
 - After the Ramos ruling Oregon stopped nonunanimous jury verdicts;
 - At the end of December 2022 the Oregon Supreme Court ruled that the Ramos ruling is retroactive in Oregon:
 - There are many questions regarding the ruling including the following:
 - When is it retroactive to;
 - How do you prove that a case was nonunanimous; and
 - What if a lawyer advised their client to plead guilty because nonunanimous jury verdicts were allowed.
 - Most cases are coming through post-conviction relief (PCR):
 - The defendant has filed for post-conviction relief claiming that their attorney made a mistake in their case including the following:
 - The attorney failed to ask for a unanimous verdict instruction:
 - The judge orders the jury to be unanimous in their decision.
 - The attorney asked for a unanimous verdict instruction, but they did not poll the jury to determine whether or not the decision was actually unanimous; and
 - The attorney made other types of mistakes.
 - In their decision the Oregon Supreme Court said that anyone who is pending post-conviction relief, who made a claim of a nonunanimous jury verdict and there is proof of this, that the verdict is void and the case will go back for retrial:
 - The problem is 80 to 85 percent of these individuals are in custody at the Department of Corrections (DOC), and once it is determined that their conviction is void the defendant comes back to the Marion County Jail;
 - There are approximately 77 individuals who could potentially come back to the jail:
 - The first individuals who will be released back to the county jail had cases with a nonunanimous verdict, and the Attorney General agreed that they were nonunanimous verdicts:

- 3 to 4 individuals will be released back to the jail by mid-February.
- Judge Prall is working with other stakeholders to determine what the process will be; and
- A defendant can have a unanimous and a nonunanimous verdict in their case:
 - What is being proposed to the Attorney General for these defendants is that they would be held in PCR, and they would stay at DOC:
 - The case would be looked at to see what the driver was for the conviction, was it the unanimous or the nonunanimous verdict:
 - The case would then be negotiated.
 - This would give the county more time before the defendant is potentially returned to the county jail.
- There are also defendants whose attorneys advised them to plead guilty because nonunanimous jury verdicts were allowed;
- There is also a question of when the statute of limitations starts:
 - Did it start in 2020 with the Ramos decision, or did it start in December 2022 with the Oregon Supreme Court decision:
 - At this point it appears that the Attorney General will say that it started in December 2022.
- There is no case law that says how to prove that a verdict was nonunanimous:
 - In some cases the only record is a recording of a judge asking the jury to raise their hand if it was their verdict, and there is no verbal or written record of which jurors raised their hand; and
 - These cases will remain in PCR until a determination is made, and the defendant will remain at DOC.

Summary of discussion:

- It will be difficult for the district attorney to determine if a case can be retried:
 - In many cases jurors, witnesses, and officers who were involved are deceased, or they cannot be located;
 - There are many cases where there is no evidence left because retention requirements were met; and
 - Only prior testimony under oath can be looked at.
- The entire process will be very hard on the victims.

4. LEGISLATIVE ROUND TABLE – 2023 LEGISLATIVE SESSION

Law Enforcement- City/County/State

- There is a subcommittee of police chiefs who are meeting weekly for legislative review, and they are working through approximately 500 bills to prioritize them.

District Attorney's Office

- District Attorneys are reviewing bills, but with so many bills on the table it is hard to know what will be moving forward in March; and
- District Attorney Clarkson will share more information at the next MCPSCC meeting.

Community Corrections

- The Department of Corrections is telling legislators that Community Corrections is fully funded, even though they are receiving significantly less:
 - DOC did not accept some costs that went into the last time study.

Health and Human Services Department

- There are four mobile crisis response teams in Marion County:
 - It is a partnership between the health department and law enforcement;
 - There has been a push over the last year to have a non law enforcement based response;
 - The Oregon Health Authority (OHA) says that law enforcement was never a part of the mobile crisis response funding:
 - Health staff is referring back to old 2013 grant proposals and showing OHA that law enforcement was included in the budgets.
 - OHA is pushing for a non law enforcement based response:
 - This would create problems for the county.

Other

Representative Lewis:

- There are four bills coming that are related to the Public Employees Retirement System (PERS):
 - Currently employees are able to retire and continue working, but there is a sunset clause that goes into effect in the next couple of years:
 - One of the bills would extend this out.
- Representative Lewis was appointed to the Joint Committee on Ways and Means, and the Joint Ways and Means Subcommittee on Public Safety.

Robert Carney:

- Each of their police officers carries a Narcan pen; and
- A lot of street drugs are so powerful that one Narcan pen is not effective and if the officer does not have a second pen available the individual can potentially relapse.

Summary of discussion:

- This item will be kept on the agenda;
- Maybe have Hank Crapser from the Law Enforcement Assisted Diversion (LEAD) program talk with legislators about the mobile crisis response teams;
- There appears to be an incentive problem with Measure 110:

- If an individual addicted to drugs knows that can go to prison in other states for possessing certain drugs, and they know that they will not go to prison in Oregon, it seems that there is a strong incentive for them to move to Oregon; and
- It would be good if the county collected information on how long an individual has been an Oregon resident for those who are booked in jail, arrested, or at trial:
 - It is not a question that is currently asked.
- The state does not know how the decriminalization of drugs under Measure 110 has impacted domestic violence, child abuse, the foster care system, mental health, and the homeless;
- The state also does not know how many individuals have moved into Oregon due to the decriminalizing of drugs under Measure 110; and
- The state does have statistics that show that Measure 110 is not working.

5. Emerging Issues/Other Business

- None.

Commissioner Willis adjourned the meeting.