



King County

Metropolitan King County Council
Operating Budget, Fiscal Management, and Select Issues

Agenda Item No.: 6

Date: July 9, 2008

Proposed No.: 2008-B0168

Prepared By: Wendy Soo Hoo

Staff Report

Subject: A BRIEFING on the U.S. Department of Justice's findings related to the King County Correctional Facility.

Summary:

Today's briefing will provide the committee with an update on matters pertaining to the U.S. Department of Justice's findings related to the King County Correctional Facility.

Background:

In 2007, the Civil Rights Division of the U.S. Department of Justice (DOJ) conducted an investigation of the King County Correctional Facility (KCCF). DOJ's investigation was comprised of two site-visits to the facility on March 6-8 and August 1-2, 2007. In November 2007, DOJ reported their findings to the County and alleged that "certain conditions at the KCCF violate the constitutional rights of inmates." Specifically, DOJ alleged that inmates' rights were violated in three areas:

- 1) Inmates are not adequately protected from harm.
- 2) Inmates are not adequately protected from self-harm.
- 3) Inmates do not receive adequate medical care.

This committee has received a series of briefings on DOJ's investigation and the County's response to the allegations. On January 16, 2008, the committee discussed the issue at length and received a detailed report on DOJ's alleged findings and the County's preliminary response [see Attachment 1].

Subsequent briefings were held on February 20, March 26, April 9, June 11, and June 25, 2008.

Update:

The likely process for resolving the allegations made by DOJ is a series of settlement negotiations between DOJ and King County representatives. During these negotiations, King County has the opportunity to respond to the alleged findings and to any settlement terms proposed by DOJ.

Negotiations will likely lead to a settlement agreement signed by both parties. Following such an agreement, the County would implement its terms with progress monitored by a mutually-agreed upon set of consultants. The consultants would report to DOJ at regular intervals. Once DOJ determines the settlement agreement's terms have been successfully met, the matter would likely be resolved.

In February 2008, the County received a settlement proposal from DOJ. This proposal marked the beginning of negotiations, which may last between six and nine months based on other jurisdictions' experiences.

Today, negotiations remain underway. As they continue, the content of the settlement proposal and all settlement communications will be confidential. Should a settlement agreement be reached between the parties, the agreement and its contents will be made public and reported to this committee.

Invited:

David Eldred, Prosecuting Attorney's Office
Claudia Balducci, Regional Jail System Coordinator, Department of Adult and Juvenile Detention

Reed Holtgeerts, Director, Department of Adult and Juvenile Detention
David Fleming, Director, Department of Public Health

Attachment:

1. 2008-B0008 Staff Report to the Operating Budget, Fiscal Management and Select Issues Committee, dated January 16, 2008.



King County
Metropolitan King County Council
Operating Budget, Fiscal Management, and Select Issues

Agenda Item No.: 6

Date: January 16, 2008

Briefing No.: 2008-B0008

Prepared By: Mamie Marcuss

Staff Report

Subject: A BRIEFING on the U.S. Department of Justice's findings related to the King County Correctional Facility.

Summary:

In November 2007, the U.S. Department of Justice sent a letter to King County reporting the findings of its Civil Rights Division's investigation of conditions at the King County Correctional Facility (KCCF). As described in the letter, the investigation's findings allege that "certain conditions at the KCCF violate the constitutional rights of inmates." Specifically, inmates' eighth and fourteenth amendment¹ rights were allegedly violated in three major areas:

- 1) Inmates are not adequately protected from harm.
- 2) Inmates are not adequately protected from self-harm.
- 3) Inmates do not receive adequate medical care.

This staff report will outline the DOJ's findings, describe the anticipated process for responding to these findings, and outline the efforts currently being undertaken by the Department of Adult and Juvenile Detention (DAJD) and Jail Health Services (JHS) in response to the findings.

On December 6, 2007, the Law, Justice, and Human Services Committee held an initial briefing on DOJ's findings. That briefing included extensive background on the KCCF, and the staff report from that meeting is attached for reference [Attachment 1].

¹ Eighth Amendment: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Fourteenth Amendment: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

U.S. Department of Justice's Findings:

Under the Civil Rights of Institutionalized Persons Act (CRIPA), the U.S. Attorney General can seek injunctive relief when he or she believes a jurisdiction has violated the constitutional rights of inmates. The U.S. Supreme Court has held that under the eighth and fourteenth amendments, jurisdictions must take "reasonable steps" to guarantee inmate safety and "humane conditions" of confinement. These steps include:

- Satisfying basic needs, including safety, medical care, food, clothing, and shelter.
- Protecting inmates from physical abuse, sexual abuse, and the use of excessive force.
- Providing adequate medical care.
- Protecting an inmate from self-injurious behavior, including suicide.

On October 30, 2006, the U.S. Department of Justice notified the County that pursuant to CRIPA, its Civil Rights Division would be investigating the KCCF. This investigation was conducted through two on-site visits on March 6-8 and August 1-2, 2007. DOJ brought in corrections and medical experts who interviewed staff and inmates and reviewed policies, procedures, incident reports, and other documents. During the investigation, DOJ noted that it received complete cooperation, transparency, and responsiveness from KCCF staff.

Following the August visit, DOJ alerted the County via letter of what it alleged were "life-threatening deficiencies in medical care for certain inmates." The concerns centered on the system being used to prioritize inmate requests for medical care. The County responded within two days, describing actions being implemented to address these concerns [Attachments 2 & 3].

On November 13, 2007, DOJ sent a letter to the County reporting the findings of its CRIPA investigation [Attachment 4]. The DOJ alleged that "certain conditions at KCCF violate the constitutional rights of inmates." Specifically, the DOJ alleged that rights were violated in three areas:

1) *Inadequate protection from harm and serious risk of harm by staff.*

The DOJ alleged a pattern of unnecessary use of force at KCCF. Specifically, they believed that serious physical force, pepper spray, and the "hair-hold technique" were used frequently—at times, against passive inmates. The DOJ concluded that the inappropriate use of force stemmed from a lack of staff training in defensive tactics and an outdated set of policies and procedures.

After reviewing the internal investigations unit (IIU), DOJ alleged that there was a "pattern of sex-related staff misconduct" at KCCF. The internal investigation system was alleged to be inadequate, lacking both a comprehensive investigation manual and adequately trained investigators. DOJ stated that internal investigations were "inadequate, poorly documented, and often disorganized" and some incidents were never investigated.

2) Inadequate protection from self harm.

The DOJ alleged that the KCCF “fails to take reasonable measures” to prevent and manage the risk of inmate suicide. Specifically, DOJ believed KCCF fails to provide adequate suicide prevention training and does not adequately supervise suicidal inmates.

3) Inadequate medical care.

The DOJ alleged that inmate medical care “falls below the constitutionally required standards of care” and called out six major deficiencies:

- Inadequate assessment of acute conditions, resulting in treatment delays.
- Inadequate monitoring and follow-up care for chronic conditions and diseases.
- Inadequate emergency care, with procedures slowing response time in medical emergencies.
- Inadequate medication management, including inconsistent processing of prescriptions, delays in administering medications, and inappropriate “standing orders” for nurses to administer drugs outside the scope of their nursing licenses.
- Inadequate prevention and treatment of communicable diseases, particularly skin infections and MRSA,² including insufficient laundering of underwear and uniforms, improper sanitization of mattress and cells, and inadequate treatment of skin infections.
- Inadequate intake screening due to a lack of training and supervision for intake staff, resulting in treatment delays.

U.S. Department of Justice’s Initial Remedies:

DOJ’s letter presented a list of remedial actions that KCCF should implement to correct the alleged problems and ensure constitutional rights are protected. In the areas of protection from harm and self harm, DOJ advised creating comprehensive policies and providing sufficient training in:

- “Use of force” and defensive tactics,
- Internal investigations, and
- Suicide prevention.

On the medical side, DOJ stated that KCCF must provide adequate and timely medical care for all inmates and improve procedures for intake, medication management, skin infections, and chronic conditions care. Additionally, DOJ proposed several specific remedial actions, including:

- Develop a system to track emergency room visits and hospitalizations.
- Provide staff training on medical emergency response.
- Provide sanitary mattresses and laundry services.
- Develop skin infection care guidelines.
- Collect and analyze data on infections to identify sources of transmission.
- Eliminate nurses’ “standing orders” to administer antibiotics.

² Methicillan-resistant staphylococcus aureus.

The letter concluded with DOJ stating that it prefers to resolve these issues in a cooperative manner with the County and is confident that a resolution can be reached. However, the letter noted that in the unlikely event that the County is unable to address DOJ's concerns, the U.S. Attorney General may pursue a CRIPA lawsuit against King County.

Settlement Process:

With the findings of the investigation reported, the County must now work with DOJ to correct any issues and ensure that the constitutional rights of KCCF inmates are protected.

DOJ has affirmed that the next step in responding to the findings will be for DOJ to propose a settlement agreement and begin settlement negotiations. There is no established process or timeline for these negotiations. However, based on conversations with DOJ and a review of similar investigations in other jurisdictions, the County's best estimate of a possible settlement procedure is summarized in Table 1 below. Of note, the timeline in the table is approximate, with jurisdictions' past experiences varying widely.

Table 1: Estimated Settlement Process

Steps Taken to Date	Timeline
1) DOJ sends County a "findings" letter.	November 13, 2007
2) County sends DOJ a "preliminary response" letter.	December 31, 2007
3) DOJ acknowledges receipt of response letter.	January 3, 2007

Next Steps	Estimated Timeline
4) DOJ sends County a proposed settlement agreement.	January 2008
5) DOJ and County initiate negotiations on the proposed settlement agreement.	February 2008
6) DOJ and County negotiate a mutually agreed upon settlement agreement.	~ 6 to 9 months
7) DOJ and County negotiate a mutually agreed upon consultant to monitor implementation of the settlement agreement.	
8) DOJ and County sign the settlement agreement.	
9) County develops and implements an internal "action plan" to carry out the elements of the settlement agreement. The final action plan may require DOJ review or approval.	~ Within 120 days of signing settlement agreement
10) Consultant reviews implementation of the settlement agreement, reporting back to DOJ at agreed upon intervals.	~ 24 to 36 months
11) Settlement agreement successfully carried out; matter closed.	~ Fall 2010 - 2011

As Table 1 illustrates, several steps have already occurred. Following DOJ's findings letter, the Executive sent a letter to DOJ presenting a set of preliminary responsive actions and articulating the County's desire to work with DOJ towards a settlement agreement [Attachment 5]. DOJ subsequently responded with a letter appreciating the County's "positive corrective actions" and indicating that a settlement letter would be sent in the near future [Attachment 6].

DOJ's settlement proposal is the next major step in the process. Expected by the end of January, this letter will propose a set of corrective actions to address DOJ's findings. Several weeks after receiving the settlement proposal, representatives from DOJ will come to King County to initiate negotiations about the specific terms of the settlement. At that time, King County will present its case and respond specifically to both the findings letter and the elements of the settlement proposal.

The negotiations with DOJ will likely continue after this initial meeting and based on other jurisdictions' experiences, may take several months to complete. Ultimately, a settlement agreement for correcting any issues at the KCCF will likely be negotiated and signed by both parties. As part of this agreement, DOJ will likely require the County to hire one or more mutually-agreed upon private consultants to monitor the County's progress on implementing the settlement agreement. Multiple consultants may be chosen to provide a full range of correctional and medical monitoring expertise.

Once the agreement is signed, the County will develop and initiate an action plan to implement the elements of the settlement agreement. Based on the experience of other jurisdictions, satisfying the settlement agreement can take between 24 and 36 months to complete. The hired consultants will monitor progress on a regular interval, perhaps every three to six months, and report back to DOJ. Once DOJ determines the settlement agreement has been successfully carried out, DOJ will consider the matter resolved.

Of note, DOJ's findings letter indicated that a lawsuit may be initiated within 49 days if a settlement agreement with the County cannot be reached. Subsequent discussions with DOJ have confirmed that this statement was included to reserve the right to file a lawsuit at some point in the future. However, DOJ expects that a settlement will be reached through the upcoming negotiations and does not intend to file a lawsuit in the near term.

County's Response to Date:

While not required, the County has taken a number of proactive actions to respond to DOJ's findings letter. These actions were outlined in the "preliminary response" letter to DOJ, dated December 31, 2007. The letter was not intended to be a comprehensive response, but rather a brief summary of the primary actions taken to date. The letter states that the County intends to come forward with additional operations and training proposals and to provide additional information to help clarify a number of the incidents raised in DOJ's findings. Finally, the letter stated the County's intent to continue to work openly and cooperatively with DOJ.

The actions outlined in the letter include:

1) Protection from Harm:

- a. DAJD adopted a comprehensive "use of force" policy in July 2007.
- b. DAJD created a "Use of Force Review Board" to review all cases involving significant injury and to monitor "use of force" trends.
- c. DAJD is drafting an internal investigations policy and training curriculum.

2) Protection from Self Harm:

- a. Television and phone cord dangers have been ameliorated.
- b. Medication administration has been improved to allow nurses to better monitor whether inmates properly ingest medications.
- c. DAJD and JHS implemented a joint "shift report" meeting for the psychiatric unit to improve coordination and continuity of care.

3) Medical Care:

- a. The Electronic Health Record System (EHR) went online for all clinical functions in July 2007, improving care administration, monitoring, and infectious disease tracking. The final "pharmacy operations" module of EHR will be implemented by fall 2008.
- b. King County's Community Health Services conducted a quality assurance review of JHS's medical care request prioritization system. 90 percent of the cases reviewed were found to be sufficiently prioritized.
- c. JHS drafted updated policies for dealing with asthma, diabetes, and seizure disorders, and is currently drafting an updated policy related to antiepileptic drugs.
- d. DAJD replaced all cracked or torn mattress and improved sanitization procedures.
- e. JHS issued an updated policy to treat skin and soft tissue infections.
- f. JHS created a "Wound Care Clinic" to centralize and improve wound care management and treatment.
- g. In 2006 and 2007, DAJD and JHS redesigned intake procedures to ensure all entering inmates are screened by nurses for medical conditions.

DOJ responded to this letter on January 3, 2008 expressing its appreciation of these corrective actions and stating that DOJ looks forward to working with the County to resolve its investigation.

In addition to the actions listed in the "preliminary response" letter, DAJD and JHS are investigating all of the incidents cited in DOJ's findings letter and have requested more information from DOJ about its observations. In this information exchange, several inaccuracies have been identified. For example, the number of inmates who have committed suicide in the past three years was redacted by the DOJ after conversations with the KCCF determined that this number was not three, but two suicides.

Representatives from both DAJD and JHS are available to today to discuss these actions in greater detail.

Attendees:

- Reed Holtgeerts, Director, Department of Adult and Juvenile Detention
- David Fleming, Director, Department of Public Health
- John Gerberding, Prosecuting Attorney's Office
- Claudia Balducci, Regional Jail System Coordinator, Department of Adult and Juvenile Detention

Attachments:

1. 2007-B0219 Staff Report to the Law, Justice and Human Services Committee, dated December 6, 2007
2. August 8, 2007 letter from Shanetta Cutlar, U.S. Department of Justice to John Gerberding, Office of the Prosecuting Attorney
3. August 10, 2007 letter from John Gerberding, Office of the Prosecuting Attorney to Shanetta Cutlar, U.S. Department of Justice
4. November 13, 2007 letter from Rena Comisac, U.S. Department of Justice, to Ron Sims, King County Executive
5. December 31, 2007, King County Executive Ron Sims, letter to U.S. Department of Justice, Civil Rights Division
6. January 3, 2008, U.S. Department of Justice, Civil Rights Division letter to John Gerberding, Office of the King County Prosecuting Attorney