

DAVIDSON COUNTY GRAND JURY FINAL REPORT

October Session 2011

Presented to Judge Mark Fishburn

Division II Criminal Court

Davidson County, Tennessee

December 16, 2011

The October 2011 session of the Davidson County Grand Jury for the 20th Judicial District of Tennessee has completed its charge and concluded its deliberations. The Grand Jury was impaneled by Judge Mark Fishburn on September 19, 2011, and met on 31 occasions, beginning on October 3 and ending on December 16, 2011. This final report to the court documents the activities and deliberations of the Grand Jury during its term.

The Grand Jury benefited greatly from the experience and assistance of its foreperson, R. Stan Fossick. The Grand Jury considered proposed criminal indictments drafted by the staff of Attorney General Torry Johnson. As part of its obligation to independently examine the operations of the Metro government the members of the Grand Jury reviewed the operations of the Metropolitan Nashville Police Department (MNPd), the MNPd's Academy where all police officers are trained, the MNPd's COMPSTAT weekly precinct updates, the Riverbend Maximum Security Prison and its death chamber, and the Juvenile Justice Center. The Grand Jury also met with Mayor Karl Dean, Police Chief Steve Anderson, Captain Harmon Hunsicker who commands the MNPd Training Division and Academy, Sheriff Darren Hall, Davidson County Attorney General Torry Johnson, and Juvenile Court Judge Betty Adams Green.

During its term the Grand Jury reviewed 866 proposed true bills, at a rate of between 25 and 56 matters per day. Many of the cases involved multiple counts or multiple defendants, or both. Every proposed count was examined by the members of the Grand Jury to determine whether sufficient probable cause existed to support continuing the matter as a criminal case. When the Grand Jury found insufficient probable cause, the matter was rejected and no true bill was returned. When some, but not all counts were supported, the Grand Jury voted to accept only the counts for which there was sufficient support. In some cases the Grand Jury asked for additional counts. In cases for which sufficient grounds existed, the Grand Jury returned true bills, which resulted in indictments. On its own initiative the Grand Jury also obtained documents and summoned witnesses to testify regarding possible criminal conduct.

Every member of the Grand Jury felt a solemn obligation to the community to serve as a protection against any person being subjected to the criminal process without probable cause. The members of the Grand Jury were committed to giving every matter all the time and deliberation it needed.

In addition to reviewing proposed cases, the Grand Jury is charged with submitting a report to the court outlining any areas of concern to Grand Jurors about the operations and priorities of the criminal justice system of Davidson County and with making recommendations for improvements. The members of the Grand Jury were particularly troubled by two types of cases – prescription drug abuse and child abuse.

PRESCRIPTION DRUG ABUSE

Nashville is facing an epidemic of prescription drug abuse. The Grand Jury was not surprised to hear cases involving street drugs, including heroin, cocaine, marijuana, and methamphetamine. What was not expected was the large volume of cases in which prescription drugs, consisting of controlled substances, were being abused. These cases ranged from driving under the influence of controlled substances (on many occasions made worse by the consumption of alcohol), accidents involving serious bodily injuries and property damage, burglaries to obtain controlled substances, forgeries such as false signatures on stolen prescription pads, robberies and attempted robberies of pharmacies, fraudulent calls to pharmacies for prescriptions, theft from medical facilities by addicted or felonious employees, unlawful possession of controlled substances, and illegal sales. It is our understanding that until last year Tennessee ranked 26 percent above the national average for controlled substance prescriptions. Tennessee was at the top of the list of states ranked by prescription use, until another state finally displaced us.

All of the controlled substances in these cases originated with a legal pharmaceutical company. Most were obtained from a pharmacy or a clinic by the use of a prescription from a health care prescriber. While controlled substances undoubtedly are being prescribed properly by most physicians to treat serious medical conditions, it was readily apparent from the volume of cases the Grand Jury heard that far too little has been done to monitor the rapid escalation of highly addictive medications. The numbers of prescriptions for controlled substances are multiplying at a disturbing rate. Criminals are switching from street drugs to prescription drugs for several reasons. For a start prescription drugs are manufactured in pharmaceutical laboratories, so their quality control and purity is much easier to determine than those factors for street drugs. Controlled substances often are obtained directly from a pharmacy, which is a safer location than a street drug dealer's hangout. The chain of possession for controlled substance pharmaceuticals can be much shorter than the import network associated with street drugs, which means less opportunity exists for law enforcement to intervene. Controlled substances also are less susceptible to interdiction by drug sniffing dogs. Perhaps best of all for abusers, in some cases the cost of controlled substances is covered by insurance or TennCare.

"Pill shopping" is an ongoing problem, and "pill mills" have become big business. A patient obtains a prescription for a controlled substance on day one from one prescriber and within a day or a few days then goes to another prescriber to obtain a second prescription for the same or a similar controlled substance. Some prescribers are dispensing controlled substances with little or no documentation of the medical condition that they supposedly are treating, in some cases issuing prescriptions to people who have travelled long distances and crossed one or more state lines to obtain these prescriptions.

As of January 1, 2012, Tennessee will have a new law aimed at regulating pain management clinics, some of which are prescribing large quantities of highly abused controlled substances. Facilities covered by the law will be required to register with the State regulatory board, which is a step towards better regulation of prescriptions for controlled substances. In addition, the Tennessee Controlled Substance Database will be expanded in the near future. A coordinated approach will be implemented with data added from several surrounding states. Unfortunately, there is a time lag of two weeks or more before new information appears in the database. More should be done to reduce the time lag.

The Grand Jury is concerned about situations in which an individual pharmacy or a drug store chain fills multiple prescriptions for controlled substances for the same person within a short period of time. Responsible pharmacies check their computers and the government controlled substance database before dispensing these medications, but some pharmacies are either not checking the information or are unwilling to refuse to sell to these customers.

Although limited positive steps have been taken to implement changes in the laws, it is the opinion of the Grand Jury that prescribers and pharmacists who knowingly facilitate controlled substance abuse should face criminal prosecution. The health care regulatory boards should take a more aggressive role in referring matters for criminal prosecution and should revoke the licenses of prescribers and pharmacists who are found to have improperly dispensed controlled substances. The Davidson County Attorney General and his staff should focus more attention on developing cases in this area. If new laws are needed, we urge the responsible authorities to address the problem with the legislature. Deterrence is most likely if more cases are prosecuted and if prosecutors press for stronger sentences, including greater fines and in appropriate cases incarceration.

CHILD ABUSE AND NEGLECT

The most chilling matters presented to the Grand Jury were cases of child abuse and neglect, with instances of children as young as a few weeks old who had been burned, beaten, bruised, sexually abused, and neglected. It was difficult to view the pictures of the victims. Because of the age and trauma of the victims, the investigation of these cases often takes more time and effort than many other matters, and specialized training and skills are required for the officers who handle these cases. Many victims of abuse are afraid to tell their stories, especially when it is a loved and trusted one who has hurt them. The police officers who deal with these cases deserve the thanks of the community for the extremely thorough work they do under emotionally trying circumstances. While the members of the Grand Jury understand that the Police Chief regularly monitors the workload and the number of officers assigned to every aspect of police work, it is the hope of the Grand Jury that reviewing the sufficiency of the number of detectives assigned to handle child abuse and neglect cases will be a high priority for the MNPD.

The Grand Jury also heard cases in which parents took children and infants along with them while committing dangerous crimes. We understand that Tennessee, unlike some other states, lacks an effective child endangerment statute. It is the opinion of the Grand Jury that more needs

to be done to provide a criminal penalty for parents and other people who intentionally place children in harm's way.

Finally, the District Attorney's office is prosecuting people who become aware of child abuse and fail to report it. We commend this effort.

OTHER RECOMMENDATIONS

A number of cases were presented involving merchants with beer licenses who failed to pay sales taxes. If merchants are found guilty, the practice constitutes sales tax fraud, and the State of Tennessee is the victim.

The law and regulations under which the Metropolitan Beer Permit Board issues permits to sell beer provides that "Neither the person engaged in such business nor persons employed by that person shall be a person who has been convicted of any violation of the laws against possession, sale, manufacture and transportation of intoxicating liquor or any crime involving moral turpitude within the last ten (10) years." The Board's Beer Permit Application Form defines "moral turpitude" to include "crimes of fraud."

The Grand Jury recommends that the Tennessee Department of Revenue coordinate with the Office of Davidson County Attorney General to alert the Metropolitan Beer Permit Board whenever the holder of a beer permit is convicted of sales tax fraud. Sales tax violators should be subject to revocation of their beer permits.

WHAT NASHVILLE IS DOING WELL

In our overview of the criminal justice system the Grand Jury noted areas in which Metro has excelled. In particular the citizens of Metro have reason to be proud of the work done by the MNPd, its leadership, and the approximately 1,300 officers who make up the force. Metro is also getting the benefit from excellent work that is done at the Juvenile Justice Center.

MNPd

In many areas of society, the police are the initial contact point for the community. The officers must be trained to deal with every type of human behavior, including sexual abuse, domestic violence, neighborhood altercations, drugs, gangs, burglaries, frauds, and murders. The police must be trained to be part law enforcement officers, part social workers, part mediators, part community organizers, part cool heads, and part many more roles. In doing all these jobs, they put their lives and health on the line to serve the community. These officers have a tough job, and the Grand Jury is grateful that they are doing that job in a professional and caring way.

The MNPd Police Academy is an impressive facility. The rigorous training offered there has produced an outstanding corps of highly skilled law enforcement personnel. We saw the results

in the presentations made by the officers who brought proposed cases to the Grand Jury. Almost without exception, those presentations were concise, thorough, and well organized. We were pleased to find that the officers did not become advocates, stuck to the facts, and did not try to oversell their cases. When a fact was not present, the officers readily acknowledged the flaw.

The Grand Jury benefitted from the patience and good humor of the officers who responded to our questions. Every officer took the time to explain the situation, recognizing that the Grand Jury often had not previously encountered the terms and situations that were in issue.

The Grand Jury wants to express its appreciation for the fine work done by the Homicide, Domestic Violence, Sex Crimes, and Child Abuse and Neglect officers. We especially want to acknowledge and thank Sergeants David Liles and Robert Bandish, who presented large numbers of cases with clarity and precision. Both of them were outstanding representatives of the MNPD.

JUVENILE JUSTICE CENTER

Nashville has the only fully accredited juvenile justice facility in Tennessee. The mission of the Juvenile Justice Center is to provide judicial decisions, safety, support, and guidance to children and families who come in contact with the Court so they can become productive members of this community.

Judge Betty Adams Green, the magistrates, and the staff of the Juvenile Justice Center dispense tough love to a difficult population. In our meeting with them we found them to be reasonable, caring, and thoughtful. They are focused on getting through to juveniles before time runs out and on rehabilitation, trying to prevent juveniles from becoming adult criminals who will spend their lives in and out of prisons.

In addition to delinquency matters involving juveniles, a family treatment court, and a juvenile drug court, the judge, magistrates, and staff of the Juvenile Justice Center deal with large numbers of parentage, visitation, and child support cases; Orders of Protection and case management services for victims of domestic violence; dependency, physical neglect, and abuse cases; truancy and educational neglect problems; family treatment and guided reunishment for children who have been taken from their parents by the Department of Children's Services; pretrial diversion, supervised probation; foster care review; and mediation services. In 2010 alone the Juvenile Justice Center dealt with more than 11,000 juveniles. When the charges are serious enough and the Court concludes that the juvenile justice system is not the best way to handle the situation, juveniles can be and are transferred to be tried as adults.

Despite a building that was inadequate for its intended purpose from its inception, the staff of the Juvenile Justice Center provides services to youth who usually are going back to their communities in a relatively short time. The facility has an impressive education program, with a well credentialed staff.

One obvious need for the Juvenile Justice Center is space for exercise. The building has two small fully enclosed exercise yards, but both of the yards have open roofs; therefore, neither can be used in bad weather. The Grand Jury believes that the cost of putting louvered or covered

roofs over the two exercise yards would solve the problem without major expense. We recommend that the change be made.

Davidson County residents can be proud of the work that has been done at the Juvenile Justice Center.

RIVERBEND MAXIMUM SECURITY INSTITUTION

Riverbend Maximum Security Institution is one of the state's most high-tech facilities with a designated capacity of 714 offenders. It houses approximately 600 maximum and medium security inmates, of which 480 are classified as high risk. The majority of the state's male death row inmates are at Riverbend.

The overall mission of the institution is to ensure the safety of the public, departmental employees, and inmates while providing rehabilitative programs. Programs at the prison include GED, adult basic education, and vocational classes. Inmates who are not in classes are required to work in support services for the facility.

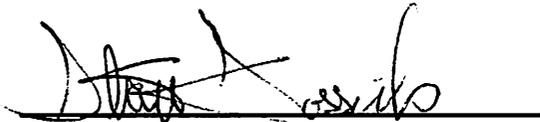
The physical facility at Riverbend was clean and well lit. The inmates we saw were treated with respect. The members of the staff we met were articulate in their explanations of what the prison is trying to accomplish.

Recognizing the difficulty of its mission, the members of the Grand Jury found the approach used by Riverbend in dealing with its inmates to be well thought out and organized. Although differences in security clearly must exist between high and medium risk inmates, within each of those categories every inmate starts with a low level of privileges and slowly may earn additional privileges. Infractions lead to a complete loss of privileges, putting the inmate back at the lowest level.

CONCLUSION

Serving on a Grand Jury is a worthwhile experience. While the members learned about some parts of life in Metro that are horrible, there also were many positives. Overall everyone who served felt that they had gained a much better understanding of the community. In the end, it turned out to be the kind of community that is doing many things right, and the experience convinced us that Metro has a bright future.

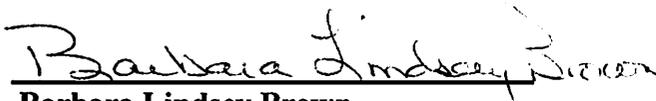
Submitted this 16th day of December, 2011, by the members of the Grand Jury, as follows:

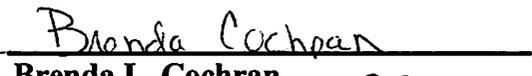

Stan Fossick, Foreperson

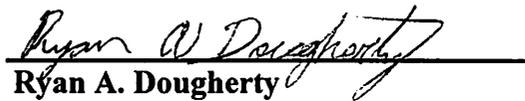

Donna M. Vaughn


Alan L. Marx, Deputy Foreperson

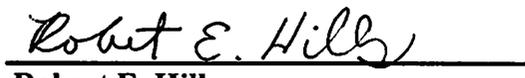

Joyce B. Carrere

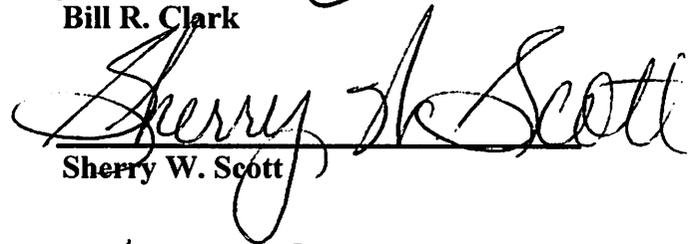

Barbara Lindsey Brown

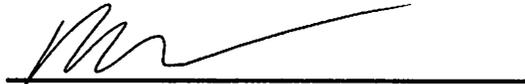

Brenda L. Cochran

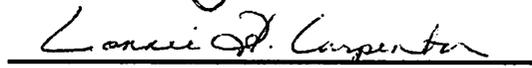

Ryan A. Dougherty

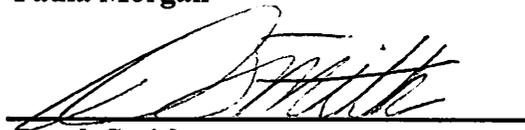

Bill R. Clark

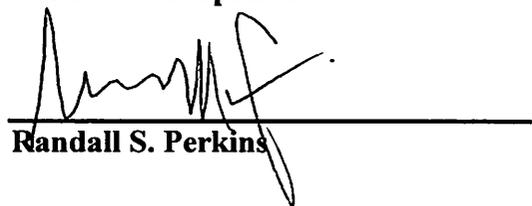

Robert E. Hills


Sherry W. Scott


Paula Morgan


Connie H. Carpenter


Derek Smith


Randall S. Perkins