

**Nebraska Supreme Court Commission on Children in the Courts
Meeting Summary**

December 6, 2013

The December 2013 meeting of the Nebraska Supreme Court Commission on Children in the Courts was held by conference call with Co-chairman Hon. Everett O. Inbody and Hon. Douglas F. Johnson presiding.

Members present by telephone

Lynnette Boyle, Hon. Vernon Daniels, Hon. Curtis Evans, Hon. Lawrence Gendler, Hon. Thomas Harmon, Hon. Everett Inbody (Co-chair), Hon. Douglas Johnson (Co-chair), Hon. Paul Korslund, Hon. Anne Paine, Hon. Linda Porter, Hon. Randin Roland, Hon. Patrick Runge, Robert Goodwin, Rebecca Harling, Thomas Harling, Kim Hawekotte, Carla Heathershaw-Risko, Sarah Helvey, Alicia Henderson, Corrie KIELTY Carole McMahon-Boies, Kathy Olson, Mary Jo Pankoke, David Pantos, Julie Rogers, Carolyn Rooker, Richard Stafford, Kerry Winterer

Members not present

Hon. Michael Heavican, Hon. Michael Piccolo, Hon. Linda Senff, Hon. Kenneth Vampola, Sen. Brad Ashford, Sen. Kathy Campbell, Sen. Bob Krist, Chris Costantakos, Vicki Maca, Marsha Fangmeyer, Liz Neeley, Amy Peters, Janice Walker, Elizabeth Waterman

Others present by telephone

Ellen Brokofsky [Probation], Debora Brownyard [AOC], Sheryl Connelly [AOC], Shannon Jo Hamilton [Voices for Children], Kelli Hauptman [Court Improvement Project], Christine Henningsen [Court Improvement Project], Kathy Moore [former child advocate], Jenn Piatt [Nebraska Legislature], Thomas Pristow [DHHS], Corey Steel [Probation], Melissa Townsend [Court Improvement Project], Vicky Weisz [Court Improvement Project]

I. Preliminary Matters

- **Introduce new members: Judge Mike Piccolo and Liz Neeley – not present; Christine Henningsen on JJCIP, Jen Piatt LC for Judiciary Committee**

- **The minutes of the June 14, 2013 of the Commission were conditionally approved with the following correction: Lynnette Boyle would be noted as the second to the motion at the top of page 5. Bob Goodwin moved to approve the minutes with this correction. Judge Runge seconded.**

II. Update on LB 561 (Juvenile Justice Reform) Implementation (Corey Steel)

Corey reported that 561 was a complex bill with many pieces including an eventual transition of all cases other than in YRTC from the NDHHS Office of Juvenile Services to Probation; Judicial and Probation oversight of re-entry from the YRTC, Probation oversight of pre-adjudication services and pre-disposition services; a requirement of evaluations completed and to the court within 21 days. These changes were either all new for Probation or new for full implementation.

Corey reported that the first priority has been getting the staff on board. Over 170 new positions were placed in the field. Of those, about 100 were new probation officer positions. There have been about 20 new administrative positions. All existing staff had 2 week mandatory training for foundational best practices. New staff have 16 weeks of training before taking new cases. **Corey** anticipated that by February all staff will be hired, trained, and working in their districts. The coming year will involve booster training.

As of Oct. 1, all new law violations have come to Probation and they are working to solidify needed services across the state. There have been questions/concerns regarding pre-adjudication services and those will likely be addressed in upcoming legislation. There are also questions about the re-entry process and re-entry hearing. Probation has put in place the capacity for video conferencing between both YRTC institutions, Courts, and local probation offices so that hearings can be held before the youth leaves the facility and so that monthly team meetings can include family and youth participation as well as Probation and YRTC staff. Probation has been generally meeting the 21-day evaluation time frame; they have used telehealth to the UNMC Center for psychiatric consultations to make those more timely, although understanding that remote consultations are not ideal.

Corey reports that the coming year will focus on enhancing the system. The Probation staff will be a hybrid model- skilled in the rehabilitative approach with the young person, but also serving as a case-manager and skilled in getting services in place.

There was a question and answer period. To briefly summarize: **Corey** will check on the timeliness of psychological evaluations in Omaha because of expressed concerns. **Jen Piatt**, in Senator Ashford's office can provide the UNMC study of the pilot project by request. Probation is finalizing a Probation Review Hearing report adapted from the HHS Case Plan/Court Report. There have been some issues with the on-call probation officer's availability in some places. **Corey** asked that people contact him with any of these problems. Issues regarding payment for placements, transportation, etc. at various stages of the process are confusing to local communities. Probation is developing a "cheat sheet" to clarify and there will likely be more clarification in upcoming legislation. Voices for Children is holding community meetings around the state to discuss transition issues. Probation has a statewide committee looking at effective ways to deal with truancy. They are researching best practice assessments, reports, and interventions. They have started piloting some evidence based practices. It was recommended that truancy programs

also be available to law violators because many of them are also truant. A small group of judges is working on some of the legal issues in the transition and Judge Johnson is open to questions and communication on behalf of that group. The PALS program is available for independent living services in those parts of the state where it operates. Probation is committed to doing more work in transition planning for older youth.

III. Subcommittee Reports and Updates

➤ Guardian ad Litem Sub-committee Report (Judge Anne Paine)

The proposed new Guardian ad Litem form has been piloted in the courts of Judge Paine, Judge Senff, Judge Johnson and Judge Daniels. The follow-up survey has not yet been analyzed. Judges Paine, Johnson, and Inbody all reported hearing positive reports about the new reports.

➤ Tribal and State Court Collaboration Sub-committee Report (Judge Inbody)

Judge Inbody announced that **Judge Patrick Runge** has replaced **Judge Orr** in chairing the committee.

➤ Children in District Court Sub-committee Report (Judge Korslund)

The subcommittee requested and received an opinion from the Supreme Court's Lawyer's Advisory Committee regarding any ethical issues in the Best Interests Attorney Definitions and Duties in the Proposed Standards for Attorneys and Court Appointed Investigators for Children in District Court. **Judge Korslund** reported that the sub-committee discussed the opinion which is available to Commission members. He reported the findings of the Advisory Committee as follows:

1. Is it unethical for an attorney to meet with and question a child when the child may have a limited or incorrect understanding of what the role of the best interests attorney is?
 - a. No, but they did caution that the Best Interests attorney should be aware of the ability of the client to comprehend and the greater the disability the more that will require additional efforts.
2. Is it unethical for a Best Interests attorney to advocate for one child's best interests when that child's best interests may be contrary to the best interests of another child they are representing.
 - a. Yes, and they said that separate counsel should be appointed if it appears that there may be conflicting interests of siblings.
3. Does the Best Interests attorney have an attorney-client relationship with the child?
 - a. Yes, there is a lawyer-client relationship but it is a hybrid relationship and it is complex and there are potential conflicts.
4. To whom does the Best Interests attorney owe a duty to file an appeal?

- a. To the client and if the client is a child the duty would continue even if there is a guardian appointed.

There was a discussion as to whether the standards should be revised or whether that is now a matter for the Supreme Court. **Judge Inbody** reported that the Supreme Court did not have a timeline for review. There was a discussion and a plan was put forth to have Judges Inbody, Johnson, and Korslund and Vicky Weisz meet with Chief Justice Heavican to discuss next steps.

This subcommittee is also beginning to explore the judicial interviewing of children in custody disputes. The subcommittee decided to propose guidelines or best practices suggestions rather than court rules. The subcommittee is going to recommend some educational opportunities for judges regarding this topic. Further, Judge Pat Lamberty and Vicky Weisz are working on survey of District Judges regarding their current practices when they interview children. The survey results will inform the work of the sub-committee.

➤ **Guardianships Sub-committee Report (Judge Harmon)**

Judge Harmon is in the preliminary stages of trying to put together an agenda and direction for this committee to go. He is also waiting to see the some of the work of the Supreme Court Commission on Guardianships and Conservatorships (Judges Riedman and Bazis, co-chairs) because that will need to be taken into consideration by this subcommittee. He plans to have a proposal about how the subcommittee will proceed and the issues it will address by the June Commission meeting.

➤ **Improving Educational Outcomes Sub-Committee Report (Judge Gendler)**

A number of judges are involved in a pilot project using an Education Court Report. Kristin Kelly from the American Bar Association Center on Children and the Law and Michele Borg from the Nebraska Department of Education developed a pre-survey for judges and other stakeholders in the pilot areas and that will be followed up in a few months. The findings of the pre-survey suggested that roughly half the people thought judges “sometimes get all the info they need” and outlined a number of other concerns about information regarding children’s education. The next thing the subcommittee is working out is including educational best interests information on the change in placement form. The department is now planning to roll something out soon. **Carla Heathershaw-Risko** noted that the department wants to standardize their change in placement forms and will include educational best interests as part of that process. Probation has also been training staff on educational court forms so those outside of pilot may see it.

IV. LB 216 Implementation Update (Sarah Helvey).

LB 216, providing extended services and support for young people aging out of foster care up until age 21 under federal Fostering Connections Act, was passed by the Nebraska Legislature last June.

Sarah provided the following updates on the implementation:

- 1) The State plan was submitted to the federal agency on Oct. 15, 2013. The program is set to begin within 60 days of federal approval. There was still no federal approval and no beginning date yet set.
- 2) Bridge to Independence Program is the name of the program.
- 3) Caseworkers will be called Independence Coordinators
- 4) The department drafted regulations and held a public hearing. The regulations will be promulgated by Jan. 1, 2014.
- 5) The legislation established an advisory committee to make recommendations regarding implementation and to provide ongoing oversight. Mary Jo Pankoke is the Chair. From this Commission, Judge Johnson, Amy Peters, Vicky Weisz, and Sarah Helvey serve on the committee. The advisory committee has subcommittees that worked on:
 - Policy
 - Outreach/Communication
 - Case Management
 - Case Oversight
 - Evaluation
 - Fiscal monitoring/state funded guardianship program

There was a great deal of stakeholder involvement and the advisory committee made these recommendations:

1) Recommendations regarding the current former ward program. The department decided that effective Jan. 1, 2014 no young person will enter into the former ward program or be able to receive services from former ward. However, if they were in former ward program, they will be able to transition into Bridge program if they are eligible. Those who were in former ward program but are not eligible for Bridge program will be grandfathered in and can continue in former ward until age 21. The advisory committee recommended that the former ward program be continued.

- One gap is that the current Former Ward program will end on Dec. 31, 2013 and we don't know when the new program will begin. Those young people who age out after Jan. 1, 2014 will not have an available program. Sarah has heard that there may be coverage for these young people from a private funder but doesn't know more. Director Pristow was asked about what will happen to young people who age out between January 1 and the start of the new program. He replied that there are no state funds for those young people.

- 2) The guardianship side of this program is available to kinship guardians. LB 216 created a capped fund with state funds for other guardians. The recommendation was to have a public-private partnership through Right Turn to provide the guardianship program.
- 3) Six-month case reviews. The law requires that in addition to annual court permanency reviews there be six-month case reviews. The case oversight workgroup recommended that the reviews be conducted by mediation centers in a format similar to pre-hearing conferences. The rationale for the recommendation was that trained mediators could facilitate and encourage the young adult voice. Another option was the FCRO, but the committee recommended mediation centers. Director Pristow updated that the department decided that because of the state statute they believe the FCRO is required to do all the case reviews. The Department gave a legal opinion that they had to use the FCRO. There was a discussion. There was a proposal to form a subcommittee to look at this issue. Judge Johnson, Judge Evans, Sarah Helvey and Mary Jo Pankoke volunteered.
- 4) The advisory committee developed and outreach and marketing plan and an evaluation plan.

6) Issues going forward:

- There will be a clean up bill this session. We may need to extend guardianship itself and this raises issues.
- There needs to be education for this new program. A Bench-Bar guide on the basics of the program for judges and attorneys is being developed.
- Nebraska Appleseed is developing some sample orders to be helpful. Sarah thinks that a best interests finding within 180 days is definitely required. It is less clear as to whether reasonable efforts findings are necessary, prudent or best practices at permanency hearings. Sarah has asked the department to get confirmation from the federal agency
- The Advisory committee recommended that the youth court questionnaire be revised to be used for input from the young people in this program. Sarah asked permission to circulate drafts of such a questionnaire to the Commission for review and comments when a draft is ready.

Lynnette Boyle moved to adjourn. **Kathy Moore** seconded.