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

**Meeting Minutes**

**June 2, 2017**

The regular meeting of the Nebraska Supreme Court Commission on Children in the Courts was called to order at 9:05 am at the Judicial Branch Education Building, 5001 Central Park Dr., Suite 200, Lincoln, NE, with Honorable Everett Inbody and Honorable Douglas Johnson presiding.

Roll call was taken as follows.

MEMBERS PRESENT: Hon. Anne Paine, Dr. Ashley Harlow, Bob Goodwin, Carla Heathershaw-Risko, Carole McMahon-Boies, Chris Costantakos, Corrie Kielty, Dick Stafford, Doug Weinberg, Hon. Douglas Johnson, Elizabeth Waterman, Hon. Everett Inbody, Kim Hawekotte, Hon. Larry Gendler, Hon. Linda Caster Senff, Hon. Linda Porter, Liz Neeley, Lynnette Boyle, Marsha Fangmeyer, Mary Jo Pankoke, Hon. Michael Piccolo, Hon. Randin Roland, Rebecca harling, Sarah Helvey, Hon. Tom Harmon, Hon. Vernon Daniels, Sen. Patty Pansing Brooks, Chief Justice Michael Heavican, Corey Steel, Jeanne Brandner, Azar Webb III

MEMBERS NOT PRESENT: Alicia Henderson, Sen. Bob Krist, Ellen Brokofsky, Hon. Gary Randall, Hon. Jodi Nelson, Julie Rodgers, Juliet Summers, Kathy Olson, Hon. Michael Burns, Hon. Patrick Runge, Hon Rachel Daughtery, Hon. Stefanie Martinez, Milo Mumgaard, Commissioner Matt Blomstedt

OTHERS IN ATTENDANCE: Deb VanDyke-Ries, Kelly Engquist, Morgan Wilson, Matt Lewis, Mary Ann Harvey, Kari Rumbaugh, Eric Asboe, Alison Doerr, Aubrey Mancuso for Juliet Summers, Michelle Borg for Commissioner Matt Blomstedt, Chris Tribesch, Debora Denny

Minutes from the December 2016 meeting were reviewed. Family Pilot Court – (Hon. Johnson) – does contemplate dissolution. Motion to change and unanimous vote. Minutes will reflect this change. There was also a motion to reflect that Debora Denny was present, which passed unanimously.

The Chairs introduced New Members: Commissioner Matt Blomstedt, the Commissioner of the Nebraska Department of Education was added to the Commission. He could not be present at this meeting and Michelle Borg attended in his place.

1. UPDATES

**Court Improvement Project- Deb VanDyke-Ries, Director**

Katie Bass has moved to the Foster Care Review Office and we are in process of finding a new evaluator. Morgan Wilson is with us for the summer from Creighton Law School as a law clerk.

Education:

* Save the date for the Regional Conferences, October 3rd at UNO and October 4th at the Lincoln County Fairgrounds. Joyce James will be doing a three hour segment on racial equity and implicit bias. There will also be presentations on media and the courts, crossover statewide protocol, the culture of out of home care, and data reports for each teams.
* We are in initial planning on the 2019 Children’s Summit. It will be in Kearney for two days in September.
* Webinars – Legislative overview by Sarah Helvey and Juliet Summers, recap to be June 20th with, Sarah and Christine Henningsen, May 10 – Juvenile Justice Home Based Initiative with Kalissa Holdcraft, May 24 - ICWA with Judge Runge, and in June - ICWA mock trial with Judge Vampola. All will be available on our website.
* June 1st – presentation to providers regarding caregiver input at court proceedings
* June 30th – County Court Judges’ meeting

Through the Eyes of the Child Team Snapshots (out of 26 teams)

* Lancaster recently discussed issues at the detention center and lack of placements.
* Douglas has a new judge coming on soon, MST and JJHBI are making a roll out, and the Omaha Summer Family Picnic will be happening in June.
* Norfolk has been focusing on youth aging out and at risk youth and has been bringing together service providers for them at a single location.
* Hastings has been bringing people together to work on truancy issues.
* Holdrege has been gathering information on the Maryland Living Center. They have also discussed the shortage of service providers and concerns about out of state placement.
* Lexington recently discussed out of home care per capita data and are looking into why they have so many children out of home.
* McCook has discussed the lack of service providers and the delays that creates for services. They are also working to develop curriculum for high school to try and prevent youth from entering the system.

Funding: Our federal funding was delayed, but we are receiving full funding for one year, our federal partners are working on a five-year reauthorization grant.

Joint Project with DHHS: We are working with DHHS administration on increasing the rate of reunification within 12 months for youth in foster care. Our goal is that at least 44% of youth reunified would be reunified within 12 months. We are currently choosing pilot sites, but know that we will have one in Lancaster, as Jundge Porter has agreed to participate.

Crossover: – DHHS and the AOP are working on writing some policy which will be implemented in December. This policy will explain how the two entities will work together to serve youth touched by both systems.

Native Connections: We continue our work with the Nebraska ICWA Coalition and are providing education on ICWA through a variety of ways.

Connection with stakeholders: We meet regularly with DHHS, AOP, NCFF, Appleseed, and FCRO.

**Juvenile Court Defense Standards Subcommittee- Hon. Linda Senff & Sarah Helvey**

The Unicameral has required guidelines for attorneys practicing in juvenile court to be submitted to the Supreme Court for consideration. This Subcommittee has met for the last several months and has submitted a final draft to the Court. The Supreme Court then put them out for comment on June 1. Comment cut off is July 5, 2017.

Sarah Helvey reported that the production time was short and the group was geographically diverse, so all work was done by phone. As a result the subcommittee feels they could have benefited from some more time and face to face meeting, but submits the guidelines regardless. The mandate for the production of these guidelines stems from LB 894 by Sen. Pansing Brooks and requires setting forth guidelines for all attorneys practicing in a Juvenile Court setting.

Initially, the subcommittee sought to clarify the scope and determined that the intent was to provide practice guidelines for all attorneys in Juvenile Court such as attorneys for juveniles, parents, agencies, county attorneys.

Judge Senff highlighted the sources of practice guidelines and models used, the committee’s use of the GAL standards adopted prior to guide this drafting process, a report created by a subcommittee from 2006 with a similar goal, a 2009 report on access to counsel by NJDC, model guidelines from NJDC, model prosecution standards, the juvenile code, and individual experiences. There was a lot of discussion and a lot of compromise requiring votes to decide issues.

After a reading by the group, a line was suggested for removal: under A: “These standards acknowledge that practice in the juvenile court is a specialized practice requiring specialized skills.”

Sen. Pansing Brooks then began a discussion about the related right to counsel as a priority and LB 158. She highlights an interest in prosecutorial responsibility and asked if there was any discussion about judicial responsibility. The judges present responded that they handle appointment of counsel well. In response, the Chief Justice set up a meeting to discuss the issue with judges. There are currently ten counties where judges provide counsel always in every case. Sen. Pansing-Brooks responded that she was discouraged that judges are talking to other senators in opposition to LB 158 and effectively preventing counsel from being appointed.

Overall, the subcommittee chairs responded to this discussion by reiterating that it stuck to the assignment of guidelines for attorneys. There was, however, a discussion in the subcommittee about early appointment of counsel and it was not considered to be appropriate to be addressed by the group in the proposed guidelines.

It is remarked that there will be discussion at the judges meetings on the appointment of counsel.

Discussion on appointment of counsel continues. A 2012 NACC report was then discussed on the variety of ways that children are waiving right to counsel, intentionally or unintentionally, and the way judges advise juveniles of their rights. There was also a discussion about how parents often misunderstand the right to counsel and may encourage their child to admit.

Voices for Children will provide reports about particular judicial districts. This started an anecdotal conversation about attorney coverage in certain rural areas. It is remarked that, overall there are not enough attorneys in the west and that mandatory appointment will result in large caseloads. The Bar is working with these areas to ensure adequate coverage. Seemingly, there is enough GAL coverage on 3A cases, but some judges are appointing GALs in juvenile justice cases.

Lancaster has mandatory appointment now and it is popular, made more so that counsel is appointed at the first hearing because many parents were waiving because they did not want to come back for another hearing. The group then discusses the merits of a statewide public defender network.

It is asked whether the subcommittee can meet again to continue making changes to the document. This request is denied, but the subcommittee can draft a comment to this document. Also, because this is a rule, it can be revisited for change in the future for amendments.

There is a motion for the subcommittee to be authorized to meet again and make recommendations to the comment. A second discussion follows to solicit feedback. Judge Paine, Judge Senff, and Kim Hawekotte vote nay, all others aye, and the motion carries.

A final discussion takes places about individual edits the group would like to see, including: page 3 section (C)(j) that the attorney should discuss offers with the client; section (D)(3)(e) on page 9 that including parents may not provide protections of privilege, clarity is needed; and, changing “shall” language to “should.”

**BREAK**

**Racial Equity Presentation- Joyce James**

Judge Inbodyintroduced Joyce. Joyce James began her professional career as a Child Protective Services (CPS) caseworker and later served as the Assistant Commissioner of Texas CPS, Associate Deputy Executive Commissioner of the Center for Elimination of Disproportionality and Disparities and worked for the Texas State Office of Minority Health at the Texas Health and Human Services Commission.

Ms. James is currently President and CEO of Joyce James Consulting, LLC (JJC) where she is the lead racial equity consultant, providing technical assistance, support, training, and leadership development, using a “ground water” analysis to introduce and help systems implement the original Texas Model that has proven effective in moving systems towards a racial equity lens, reducing disproportionality and disparities for vulnerable populations, and improving overall outcomes for all. She will the morning speaker at the 2017 CIP Regional Conferences in October.

Due to a weather problem she was unable to attend in person and began her presentation remotely**.** Joyce shared the practice of “groundwater analysis” which is used in Texas and geared toward understanding institutional and structural racism in a system and baseline commonalities about its effects**.**

She instructed that by “turning the mirror inward” at critical levels and systems of our institutions we can change internal policy and reflect change outward. This analysis ignores the few bad apples or bad actors, instead focusing on how racism has pervaded and shaped our system over time**.** This analysis also involves moving away from “fixing broken people” to instead creating change within the system that can prevent, reduce, and resolve those problems from occurring**.**

The overall theory of change is that as system gets better for those most disadvantaged by the systemic problems, others will be swept up in the net of change as well. Also, rather than placing blame squarely on individuals, there needs to be a system of mutual accountability that acknowledges facts, studies, research and understanding. This is especially difficult given the design of systems which originated prior to the civil rights act, child welfare interaction with native culture is a good example of how the child welfare system was designed to mainly serve white communities at first, and ill-equipped to handle child welfare cross-culturally.

Due to time constraints the rest of Ms. James presentation was cut short.

**LUNCH**

1. **UPDATES (cont.)**

**Nebraska Department of Health and Human Services– Courtney Phillips**

Calder Lynch has moved to a new Federal position, a replacement is being recruited currently. With regard to behavioral health and the system of care, crisis response has received grant funding for $12 million over 4 years. Additionally, the central data system is adding the capability to do electronic billing. Another priority is to look at the backlog of cases in order to determine faults and fixes that can be gleaned from the process, as well as ensure nothing has fallen through the cracks.

Ms. Phillips also addressed Medicaid waivers and described the current state transition plan of utilizing home and community-based services. The final federal rule goes into effect 2019 and initial approval to adjust to the change has been received. Developmentally disabled waivers are following in a similar direction but this is proving to be a very long process.

The Beatrice State Development System developmental disability report and next steps are to be released imminently. This plan will look at the individuals who are currently system involved there and looking to transition them to the community if they choose and it would be in their interests. However, community resource restrictions have limited the scope and applicability of this option for affected individuals.

DHHS is going to begin work on a joint project with CIP. This project is intended to look at what recommendations and actions could be recommended to judges and court staff in order to increase the number of successful outcomes for court involved families and youth.

Next week is the Child and Family Services Review and thirty representatives from the federal government will be conducting case reviews and interviews of stakeholders. This is intended as a review of the entire child welfare system. No state has ever passed, but DHHS is anticipating a positive outcome due to being above the national average on the focus points. However, even if a state is passing every factor that does not mean it will pass the CFSR. Sharing the federal practice model will help DHHS meet or pass the CFSR, but represents an obstacle via the requisite culture change.

DHHS is also working closely with Nebraska Children and Families Foundation on Community Response and ten sites across Nebraska that are Community Response collaboratives. This represents a community-based approach to highlight community solutions but all tend to look a little different. DHHS will be meeting with stakeholders to break down silos of action and information and create a more collaborative environment. This effort has received considerable attention from the First Lady’s office and she is the face of this expansion. York, the eleventh county, will launch on July 14th. On September 25th there will be an event at the Rotunda with the Governor and First Lady highlighting this effort and to create a buzz in other communities to stoke interest in adopting a similar approach. In the near future, it is hoped that there will have been an evaluation of this initiative in the existing ten collaboratives.

Overall, there is a greater collaboration between Economic Assistance (EA) and Child and Family Services (CFS) in doing poverty screening, launching family-focused case management, and partnering EA and CFS caseworkers for families on ADC in Omaha and North Platte.

DHHS will also be undertaking an effort to enhance their service array. New Intensive Family Preservation (IFP) services have been launched and while caseloads are going up, IFP is helping to cope with the increase. Additional services like Family Centered Treatment (FCT) (a longer term intervention for families with children in care) and parental substance abuse programs as recommended by a consultant project will add to the treatment options available.

Other developments include building a new Medicaid management information system; long-term care review and redesign; a public health performance improvement plan; developmental disability rates study; and tally of five Multi-Systemic Therapy (MST) teams running with forty-two youth receiving that service now.

**Administrative Office of Probation– Jeanne Brandner and Kari Rumbaugh**

LB 894 will be going into effect on July 1 establishing a minimum age for delinquency/status youth of 11 or older and prohibiting them being taken into temporary custody by law enforcement. There are only two youth in probation that this currently applies to, but law will be applied to all youth going forward. Probation is currently focused on out-of-home placement numbers and has seen recent incline in out-of-home numbers, but overall decrease from previous year. MST and BoysTown, as well as other in-home services will be alternatives out-of-home placements that will hopefully reduce those out-of-home numbers. This is coupled with a decrease in capacity for out-of-home numbers in resources such as congregate care, staff secure wings shutting down, etc. This necessitates different options for kids.

Probation will be bringing in the RFK center for a probation system review of Lancaster County starting this summer and lasting about nine months. This study will also look at court order language.

LB 8 has necessitated a draft of policy change for stakeholder input to reflect the change that this law will create.

Probation will also be undertaking collaborative efforts such as training opportunities for YRTC staff to partner in that effort and CIP to discuss youth development and seek out education opportunities that could affect juvenile time on probation.

**Legislative Update- Mary Ann Harvey & Matt Lewis**

Matt Lewis and Mary Ann Harvey highlighted LB 8, LB 158, LB 11, LB 180, LB 225, LB 226, and LR 198. There was further discussion by the group on LB 225.

1. **SUBCOMMITTEE REPORTS**

**Case Progression Standards- Hon. Linda Porter**

No report at this time.

**Unified Family Court Pilot- Hon. Douglas Johnson**

Members of the subcommittee will be working with Professor Barbara Babb on an assessment of Nebraska’s system and develop recommendations. Those recommendations will then go to the Supreme Court. Multiple partners are engaged and excited about this project and Deb VanDyke-Ries is staffing the group. A University of Baltimore law school article was recently released that highlights the services for children and families through a Unified Family Court system. There was further discussion by the group about Maryland’s model and if it was practical for Nebraska, specifically because of the unique geography that Nebraska has. Judge Johnson noted that he would send a copy of the study to all members of the Commission.

**Sen. Pansing Brooks – Legislative Update**

Sen. Pansing Brooks spoke of some of the interim studies that were introduced in the last legislation session; specifically the sealing of records for children and youth, LR 216 and children with incarcerated parents, LR 198. Sen. Pansing Brooks also mentioned that there have been updates to trafficking laws over the last three years.

There was further discussion amongst the group on the sealing of records and expungement; particularly because different models are used across the state. Legal Aid in Lincoln has a fellow working on effects of a juvenile record. Their fellow is working with the National Juvenile Defender Center. There were presentations in Lincoln and Omaha on the collateral consequences of a record including negative effects on a person’s ability to obtain education, employment, housing and other opportunities that would lead to a successful transition to adulthood.

**BREAK**

**Education Subcommittee- Hon. Larry Gendler**

There have been changes made to the Education Court Report based on the Every Student Succeeds Act (ESSA). Commission members were provided a brief on ESSA.

Michele Borg from Nebraska Department of Education also provided an update: ESSA took the language from Fostering Connections and adds that schools are required to look at school stability collaboratively with the child welfare agency. Each school district has to designate a point of contact for other systems. NDE is working to find a person in each district.

J. Gendler is planning to reconstitute the Subcommittee to address ongoing issues for court involved youth and sought permission from the Commission for this change; approval was granted.

**Tribal Court Collaboration- Mary Ann Harvey for Hon. Patrick Runge**

In January, the three tribal court judges agreed to be part of the Subcommittee and met to talk about a direction moving forward and to identify state court partners. The Subcommittee will meet again to work on a direction in July.

**Children in District Court and Temporary Custody in District Court- Hon. Gary Randall, Hon. Michael Piccolo, & Debora Denny**

Hon. Piccolo acknowledge Chris Johnson who was a part of this Subcommittee. Chris Johnson was an advocate for children’s rights and he battled cancer for several years and still managed to practice. He passed away in May.

Hon. Piccolo provided some background on this Subcommittee. Two years ago, the Supreme Court laid out the need to work on temporary hearings in Nebraska. Judge Inbody took the lead across the state. Now this Subcommittee is working together to provide proposals to the Supreme Court on how to make these temporary hearings and orders work efficiently. The Subcommittee is working on parenting education and mediation. They are also looking to find a way to triage cases and the Office of Dispute Resolution has been a partner in researching and coming up with ideas. They are working with IT from the AOC to make reporting more automatic and also looking to implement something similar to a triage program that is used by Colorado.

**Guardianship- Hon. Thomas Harmon**

No report at this time. The Subcommittee will be adding more membership and moving forward with some projects.

**Juvenile Judges Curriculum & June Judges Meeting- Carole McMahon-Boise**

This outline is currently in front of the Supreme Court for approval. The Subcommittee was chaired Committee by J. Johnson and the curriculum provides what a Judge should know to do juvenile work.

At the upcoming county judge meeting there will be information shared about bills that passed this year, ICWA, and a probation update.

**Next meetings: Dec. 1, 2017 at CIP/JBE**

The meeting was adjourned at 3:30 pm.