

**COMMISSION ON CHILDREN'S JUSTICE**  
**FEBRUARY 10, 2003**  
**MEETING MINUTES**

Members Present: Judges John Holstein, Chair, Glenn Norton, Vice Chair, Susan Block, Thomas Frawley, Nancy Rahmeyer, and Roy Richter; Commissioner John Payne; Senators Pat Dougherty, Bill Foster, and Anita Yeckel (attended for Peter Kinder); Representatives Catherine Hanaway, Bryan Stevenson, Yvonne Wilson; Julie Cole-Agee, Beth Dessem, Deanna Gallagher, Patrick Lynn, Frank Martin, Denise Cross (attended for Steve Renne), Melanie Scheetz, and Betty Sims

Members Not Present: Judge James Welsh, Charles Caisley, and Andrea Whitfield

Commission Staff Present: Shawn McCarver and Lynette Ricks; Norma Rahm (attended for Gary Gary Wait)

**I. CALL TO ORDER/INTRODUCTIONS/APPROVAL OF MINUTES**

The Commission on Children's Justice was called to order by the Honorable John C. Holstein, Chair, in the Division II Courtroom, Missouri Supreme Court, Jefferson City, Missouri at 10:00 a.m.

The Chair announced that the next meeting would be held at House Hearing Room 6 in the Missouri State Capitol.

The Chair called for approval of the minutes from the meeting of February 3, 2003. Judge Frawley requested a correction to the minutes. Judge Frawley advised that Section VI entitled Judicial Initiatives, paragraph 2, first sentence should read, "The Best Practices Work Group has completed its work on the first installment of the *Resource Guide* for judges with bench cards to assist judges in timely, efficient and consistent handling of abuse/neglect cases."

The minutes of the February 3, 2003, meeting were approved as corrected above.

**II. CONTINUATION OF JUDICIAL INITIATIVES**

Judge Frawley continued his presentation related to Judicial Initiatives. The Commission was advised that the Best Practices Work Group is working on the second installment of the bench cards. The second installment of the bench cards will be available shortly.

Judge Frawley stated that in compliance with the request of Chief Justice Stephen N. Limbaugh, Jr., there will be seven sessions of cross training at five locations throughout the state during May and June 2003. Chief Justice Limbaugh has made attendance mandatory for all judges unless the Chief Justice specifically excuses a judge. In addition to judges and commissioners, juvenile office's, DFS personnel, attorneys, Guardians Ad Litem, and Court Appointed Special Advocates should also attend the training.

The Family Court Committee was continuing its discussion of time standards. The next meeting of the Committee is scheduled for February 28, 2003. The Committee is carefully studying time standards as they would apply to Missouri courts, both urban and rural. Judge Frawley pointed out that an urban court with one judge sitting full time on abuse/neglect or juvenile cases in general might be able to meet time standards easier than a judge in a rural, multi-county circuit who hears many other types of cases in addition to abuse/neglect cases.

Judge Frawley stressed that the Family Court Committee was continuing its discussions and had not yet approved any particular time standards recommendations. It was envisioned that the time standards would be guidelines as opposed to hard deadlines. He emphasized that different time standards may apply to different types of cases.

Judge Frawley also reported that the Committee had not yet discussed the issues of opening juvenile abuse/neglect hearings or of opening juvenile court records. He predicts that the discussion would take place at several levels. For example, the Committee would discuss whether opening abuse/neglect hearings to the press only or to the public and the press would be most desirable. The Committee would also discuss the question of opening juvenile court records, and to what extent.

Judge Block, who is a member of the Family Court Committee, stated that the Committee has been working on permanency, time standards and related issues for several years. She stressed that the work of the Committee in these areas was ongoing and not a reaction to recent tragedies including the death of a foster child in Greene County, Missouri.

Judge Norton confirmed that the imposition of time standards in civil matters were initially met with some reluctance from judges, but he feels that judges around the state are willing and able to implement time standards in juvenile abuse/neglect cases.

The Chair emphasized that the time standards being discussed were more likely to be characterized as guidelines for case disposition in the same manner that the time standards applicable to civil cases now are guidelines and not hard and fast deadlines.

Judge Frawley clarified this by giving a percentage example. Judge Frawley stressed that this example had not been adopted by the Committee, but gave it for illustrative purposes only. He noted that one example would be to establish a time standard guideline that 70% of protective custody hearings would be held within three days, 90% within four days, and so forth. Judge Frawley stated that the Family Court Committee had discussed whether or not any exceptions to the time standards should be allowed. He also indicated that the Committee had discussed reporting requirements and what help or sanctions should be recommended or adopted in the event time standards were not being followed.

The Chair advised that with present time standard guidelines in place in civil cases, reports of a judge falling behind are given to the Chief Justice of the Supreme Court and to the Commission on Retirement, Removal and Discipline. These reports have been successful in the very few cases where it has been a problem and that the system of discipline already in place has worked effectively. Time standard reporting has been in place since approximately 1990.

Senator Foster explained that the DFS operations manual is on the Internet and asked Judge Frawley whether the Best Practices bench cards could also be available on the Internet. Judge Frawley responded that the question is under consideration.

Judge Norton observed that one problem with the DFS manual being on the Internet is that unrepresented litigants take small parts of the DFS manual out of context in hearings.

Speaker Hanaway asked Judge Frawley when the Family Court Committee would consider the question of opening abuse/neglect hearings to the public. Judge Frawley responded that the next meeting of the Committee is February 28, 2003. Judge Frawley advised that the Committee would probably not have recommendations ready by the end of the 2003 legislative session. Judge Frawley advised that the Committee meets approximately every five weeks, but would meet more often if requested.

The Chair asked Judge Frawley what would be a realistic time line for adopting time standards. Judge Frawley advised that he was doing the majority of the work on the remaining bench cards and that perhaps by May or June 2003, more extensive work could be done related to time standards. Judge Frawley stressed that he could not speak for the Committee, but he felt that, although there would be a great deal of discussion related to opening abuse/neglect hearings, he did not foresee much opposition to opening those hearings to some degree.

Commissioner Payne stated that opening abuse/neglect hearings would probably result in initially higher attendance, with a subsequent reduction of attendance except for sensational cases.

Ms. Gallagher asked Judge Frawley why the Best Practices training is needed and why the National Council of Juvenile and Family Court Judges recommendations could not simply be adopted. Judge Frawley explained that they are generic recommendations and the Missouri Best Practices bench cards will be Missouri specific with citations to specific Missouri statutes and Supreme Court Rules. Missouri's time standards will have to reflect realistically the ability of judges in Missouri to do their jobs properly. The bench cards are intended to serve as a resource guide both for experienced judges and for judges who rarely hear abuse/neglect cases and are designed to help make handling abuse/neglect matters more consistent.

The Chair thanked Judge Frawley for his presentation.

### **III. PENDING LEGISLATION**

Representative Mark Wright gave a presentation on House Bill 396. Representative Wright advised that he represents the northwest Springfield, Missouri area. The number one complaint received at Representative Wright's office is about the Division of Family Services. Representative Wright stated he was moved when he attended the funeral of a foster child and that he was committed to seeing that there are no more such cases in Missouri.

Representative Wright advised that House Bill 396 was designed to do the following:

1. Give legislative oversight of DFS policy manual to a ten-member committee consisting of five Senators and five Representatives. The proposal would require

DFS to submit for approval any changes to the DFS policy manual to this committee.

2. End abuse of the child abuse/neglect hotline by no longer permitting anonymous hotline calls.
3. Make any officer or employee of DFS who intentionally or through gross negligence violates any stated or written policy of DFS or any rule promulgated by DFS, or any state law relating to activities of DFS to be personally held civilly and criminally liable for damages. The bill creates a Class A Misdemeanor, unless the violation results in serious physical injury or death, in which case the violation is a Class D Felony. The Representative had been advised by the prosecuting attorney that there was no way to prosecute any DFS employee for violation of DFS policy or state law in the existing case in Greene County, Missouri.
4. Make meetings and hearings related to the removal of a child more open and would allow and require that those hearings at the DFS office be recorded on either audiotape or videotape. The bill would permit parents to record such meetings or hearings. The bill would also prohibit the requirement by DFS of requiring participants in such meetings to sign confidentiality agreements. The bill would allow a confidentiality agreement by mutual consent.
5. Prohibit DFS from issuing a foster care license to an applicant, or would require suspension or revocation of a foster care license to an applicant, where the applicant has been found guilty of or entered a plea of guilty or nolo contendere to any offense involving an act of violence. Representative Wright indicated that his intent was to provide better screening mechanisms for foster parents.

Representative Stevenson questioned whether unsubstantiated anonymous hot lines or adult abuse ex parte orders would forbid the issuance of a foster care license.

Judge Frawley questions whether the same rules should apply to relatives, to which Representative Wright responded “yes.”

Judge Norton observed that anonymous calls that are unsubstantiated should not necessarily disqualify a person from serving as a foster parent.

Ms. Scheetz observed that statistics reveal that foster parents are 40% more likely than the general public to have a hotline made on them. Ms. Scheetz observed that angry foster children, parents who have been aggrieved by decisions of the juvenile court or DFS frequently misuse the anonymous hotline. Ms. Scheetz expressed reservation as to whether foster parents should be denied a license because of the fact that they are subjected to more hot lines.

Mr. Martin asked Representative Wright whether there should be prosecution if there has been psychological harm to a child in addition to the bill’s language of physical injury. Representative Wright indicated that that would be a Class D felony.

Senator Sims stated that she had been involved in writing the existing hot line law, which allows for anonymous hot lines and expressed concerns that without the provision allowing anonymity, many cases of child abuse/neglect would not be reported and children could die.

Representative Wright proposed that a determination be made as to whether the hot line call was true or false. If it were false, then there would be no anonymity and should result in prosecution. If true, anonymity could be maintained. Representative Wright offered that compromises in several of the areas of concern could be made to the language in the bill.

Senator Sims expressed concerns about holding DFS workers liable both civilly and criminally and instead proposed that DFS be relieved of the current cumbersome system of the personnel merit-system. This would allow quicker action by the agency to discipline or terminate the employment of problem employees.

Judge Block observed that an attempt to screen out inappropriate foster parents is a good idea, but that the last paragraph of House Bill 396 did not include sufficient language to include civil ex parte orders under the Adult Abuse Act.

Ms. Gallagher likes the bill and would like to remove the anonymous provision of the current hot line law. She believes that current foster parents should be held to a higher standard than natural parents.

Judge Rahmeyer observed that consent orders under the adult abuse act are frequently made without hearings and that consent orders are frequently agreed to even when a parent does not admit any wrong doing. Judge Rahmeyer suggested that if consent orders disqualify a foster parent, many cases now handled by consent orders would require full hearings, thus clogging the court system.

Senator Dougherty stated that he did not see the need for legislative oversight related to the DFS policy manual. He regards the manual as an excellent resource and pointed out that the Greene County study felt that the manual was also an excellent resource. The "intent" language in the statute related to holding workers criminally and civilly liable also bothered him. He stated that he had been employed by DFS, and frequently had been unable to do everything required in all cases because of caseload overload. Thus, on occasion he had to select one case over another to do all of the tasks required of the DFS policy manual. Senator Dougherty recommended including some protective language to protect workers related to situations beyond their control.

Judge Norton advised that he was generally opposed to the creation of new crimes, but felt that judges should have available to them real sanctions for DFS failure to follow court orders. Judge Norton also expressed that legislative oversight of the DFS policy manual could pose problems related to separation of powers.

Ms. Scheetz suggested that the issue should be to look at how well the policy manual is put into practice, not how to change the manual. Ms. Scheetz also suggested that part of the solution is to focus on the private providers who are contracted to provide child welfare services in some parts of the state.

Judge Frawley suggested that the reference to social security number be taken out of the bill.

Representative Wright summed up his presentation by stating he would be willing to compromise on the language in several areas, but that whatever bill was passed should be named after Dominic James.

The Chair thanked Representative Wright for his presentation.

#### **IV. MINNESOTA OPEN HEARING REPORT BY THE NCSC**

Norma Rahm of the Office of State Courts Administrator briefed the Commission on the Minnesota program to open up some portion of the juvenile abuse/neglect protection proceedings.

On February 6, 1998, the Minnesota Supreme Court issued an order authorizing each of Minnesota's ten judicial districts to identify one or more counties in which to conduct a three year pilot project where child protection hearings and records (with some exceptions) would be opened to the public. The order also established an Advisory Committee on Open Juvenile Protection Hearings and charged it with recommending rules regarding public access to records relating to open juvenile protection hearings. Twelve counties agreed to participate and a three year pilot project started on June 22, 1998. An evaluation of the pilot project was conducted by the National Center For State Courts.

Hearings and records were opened in the following cases: children in need of protection or services (dependency, child abuse/neglect cases, foster care cases), including permanent placement proceedings, termination of parental rights, proceedings, and subsequent state ward (foster care) reviews. Adoption cases were not included. Also, this project did not address the child welfare agency's records or meetings.

Proceedings could be closed or partially closed only by the presiding judge and only in exceptional circumstances.

On July 1, 2002, Open Hearings and Records Procedures in child protection matters were implemented in Minnesota's juvenile court. The program has since been expanded statewide. Minnesota is now one of sixteen states that have opened abuse/neglect proceedings and/or records to the public to some extent.

The results of the Minnesota experience seem to be that the general public has declined to participate in open hearings and that there have been generally few public requests for court documents. Open hearings initially attracted attention of the media, but media interest has declined over time. The media continues to focus on sensational cases.

Minnesota was unable to document more than a handful of cases that possibly involved harm to the children and families as a result of having privacy compromised because of open hearings/records. The study did acknowledge that many professionals, especially those with a "client oriented" perspective, such as public defenders, maintained that the potential still exists for harm to occur to children and families from opening abuse/neglect proceedings.

Judge Norton observed that there should be a procedure to allow closure upon a motion filed by the Guardian Ad Litem, or some other procedure to allow in camera testimony.

Judge Richter noted that in cases where the juvenile is the victim and appearing as a witness to describe acts of abuse committed upon the juvenile victim, the witness would have no representative such as a Guardian Ad Litem to assert confidentiality. Judge Norton responded that such cases would be in the delinquency side and a certain number of those cases are already open to the public.

Judge Frawley inquired as to whether the Commission could obtain a copy of the Minnesota Supreme Court order opening the proceedings. Ms. Rahm agreed to provide a copy.

The Chair suggested that any amendments to rules or statutes be consistent with one another. Specifically discussed were Operating Rule number 2, Sections 211.171, 211.321, Supreme Court Rule 117.02, together with federal overlay of statutes which forbid release of certain types of medical or substance abuse information.

The Chair thanked Ms. Rahm for her presentation.

#### **V. MERGING DFS CHILDREN SERVICES/PROTECTION WORKERS WITH JUVENILE OFFICE**

Commission member Frank Martin brought up the idea of merging Division of Family Services with the juvenile office. Mr. Martin essentially proposed that DFS workers could also be juvenile officers.

Judges Block and Norton asked for additional clarification on this item.

Ms. Dessem stated that she likes the idea of the separation of functions and that DFS cannot remove a child in its role as the investigating agency. An independent decision for removal must be made by the juvenile officer which provides an additional check and balance to the system.

Representative Stevenson again brought up the issue that the legislature needs to revisit the issue of revising DFS ability to make employment decisions in a more timely manner.

#### **VI. PRIVATIZATION**

Representative Roy W. Holand, District 135, made a presentation on how other states have privatized portions of their child welfare system. He advised the Commission that in Missouri approximately 10% of DFS services are presently privatized, one-third of those in the St. Louis area. Private agencies have certain strengths and should be brought into the mix. Representative Holand urges the exploration of privatization of certain DFS services and described privatization efforts in Illinois.

In Illinois the centralized hot line unit and investigations are retained by the state. Payment formulas to private providers for other services encourage efficiency and reductions in caseload.

Representative Holand also discussed Kansas, which attempted to privatize its DFS system.

In states, including Illinois, that have privatized part of the child welfare system, the initial cost is higher, but overall cost ultimately stabilizes. The benefits of privatization are increased public trust in government, full time employees are moved from state payroll to private payroll, and the system is improved in general.

Illinois began privatization in urban areas where private services already existed. It follows, therefore, that in Missouri, larger urban areas such as Kansas City and St. Louis would be the starting point. Representative Holand stated that privatization should begin in those areas of the system in which there are identified problems. For example, in Illinois, problems were identified at the intake and at the exit areas and this is where services were initially privatized.

The Chair observed that the daughter of a Missouri Circuit Judge is employed as a caseworker for a private agency in Tennessee. That system seems to be working well. However, the Chair noted that there appears to be less ability in Tennessee to privatize services in rural areas, due to lack of private resources.

Representative Stevenson questioned whether there is a way to move quicker on employee discipline thereby relieving DFS of the cumbersome personnel merit system of the State of Missouri. Representative Holand advised that private agencies seemed to have an easier time of terminating the employment of problem employees.

Representative Holand advised that Illinois is also one of only two states in the United States that are now accredited.

Senator Yeckel advised that the experience of Illinois in privatization had resulted in a 50% reduction in case load numbers in a four to five year period.

Ms. Scheetz advised that safety of children in care had been increased and that there are 50% less children in the system. Ms. Scheetz also advised that front door services in Illinois have resulted in a reduction of children being placed in foster care in the first place. Ms. Scheetz also advised that performance based contracting had been very successful.

Commissioner Payne observed that many of the better DFS workers moved to private agencies for better pay and better benefits and the state has difficulty competing.

Representative Holand acknowledged that private agencies have better pay, less burn out and therefore attract qualified employees.

Senator Dougherty questioned whether every child's case had to be privatized. Representative Holand said that implementation of some privatization will have a positive effect on the rest of the system and that it is not necessary that the entire system be privatized.

The Chair will be inviting Judge Nancy Sayers of Cook County, Illinois, to speak at an upcoming meeting of the Commission concerning privatization in Illinois.

Judge Block observed that any privatization needs to be done with good evaluation tools in place

so that performance can be measured and the results used to improve the performance of DFS workers.

Ms. Gallagher asked Representative Holand what urgent needs Illinois had addressed first. Representative Holand advised that the entry and exit areas had been the problems and thus the contract incentives had been put forth in those areas with great success.

Ms. Gallagher also stated that she felt that the court system should be looked at to address problems in the Missouri child welfare system.

Speaker Hanaway asked Representative Holand whether Illinois was currently doing better on the front end as far as placement of numbers of children in foster care. Representative Holand advised that they were experiencing success and that there was earlier court involvement, experienced people with manageable case loads were making decisions about whether children should be placed in foster care initially or not and there was a focus on family preservation or prevention efforts to avoid foster care entirely.

Mr. Lynn observed that in Illinois workers know up-front what treatment services are available for in-home treatment. Mr. Lynn observed that the caseload spiked in Illinois after privatization was put into effect because of some budget cuts. Mr. Lynn observed that Missouri should not cut the budget. Mr. Lynn reported that while privatization would not reduce the cost, it would improve services.

Betty Sims and Senator Dougherty wanted to make sure that the same standards were in place for evaluating the performance of both public and private workers. Judge Frawley noted that private organizations have greater ease in getting rid of bad workers and it would be difficult to compare state performance with private performance because the state's performance might be hampered by bad workers that the state could not terminate.

Senator Dougherty and Judge Frawley both addressed issues related to the Children's Treatment Services (CTS) funds. Senator Dougherty suggested a presentation be made on CTS monies at the next meeting.

Judge Frawley also noted that there is presently a family preservation screening that is required and there needs to be additional ways to implement the same to make sure it is available.

Judge Frawley advised that the system is not "administratively friendly" to parents. CTS funds are a "terrible problem." Judge Frawley gave the example that if children are removed, the children can be covered by Medicaid thus allowing Medicaid payment for evaluations and treatment plans, but the parents would no longer be covered and therefore financing psychological evaluations and related matters becomes a problem.

Judge Frawley also observed that the Department of Mental Health does not help as often as is needed or necessary.

The Chair thanked Representative Holand for his presentation.

Senator Dougherty then advised the Commission that he had filed the Ombudsman bill in December 2002 and would like to talk about the bill at the next meeting, specifically as it pertained to establishing a task force to review and evaluate statewide child welfare practices. The Chair advised that Senator Dougherty would be placed on the agenda for the next meeting to discuss the Ombudsman bill.

#### **VII. SUGGESTED AGENDA ITEMS BY MEMBERS**

The Chair advised that any new agenda items should be submitted to Gary Waint at the Office of State Courts Administrator by the end of business each Thursday for inclusion on the agenda for the following meeting.

Judge Block advised that the Missouri Coalition of Domestic Violence wants to make a presentation. The Chair advised that any presenters should focus on solutions to problems rather than recitation of problem areas.

Ms. Gallagher advised that she had a presenter from Alexandria, Virginia who would like to make a presentation at the March 17, 2003, meeting. The Chair will look into what, if any, funds are available to pay any portion of the expenses for a presenter from Alexandria, Virginia.

Ms. Scheetz suggested that any future discussions related to funding should include Title IV-E waivers, and Ms. Cross, Director of DFS, advised that a member of her agency could address those questions.

Ms. Sims clarified that citizen members of a Commission who are not members of agencies should submit their expenses to Gary Waint of OSCA for reimbursement.

Julie Cole-Agee of the Missouri Juvenile Justice Association advised that the Association had provided complimentary copies of the Supreme Court Rules and statutes for each member of the Commission.

#### **VIII. NEXT MEETING/ADJOURNMENT**

The Chair advised that the next meeting would be Monday, February 17, 2003, from 10:00 a.m. to 11:45 a.m. in House Hearing Room 6 in the Missouri State Capitol.

The meeting was adjourned at 12:10 p.m.