

CHILD FATALITY AND NEAR FATALITY EXTERNAL REVIEW PANEL
January 28, 2013
KY Domestic Violence Association Building

Members Present: Judge Roger Crittenden, Chair; Senator Julie Denton; Detective Kevin Calhoon, Kentucky State Police (KSP); Dr. Tracey Corey, State Medical Examiner; Sharon Currens, Kentucky Domestic Violence Association; Dr. Melissa Currie, U of L Division of Forensic Medicine; Joel Griffith, Prevent Child Abuse Kentucky; Commissioner Teresa James, Department for Community Based Services, Cabinet for Health and Family Services (CHFS); Jenny Oldham, Hardin County Attorney; Maxine Reid, Family Youth and Resource Centers, CHFS; Dr. Ruth Shepherd, State Child Fatality Review Team, CHFS; Robert Walker, Social Work Clinicians, University of Kentucky; Dr. Carmel Wallace, University of Kentucky Department of Pediatrics' Medical Home Clinic; Dr. Camella Yates, Chrysalis House, Inc.; Andrea Goin, Court Appointed Special Advocate (CASA).

Members Absent: Representative Tom Burch, Judge Brent Hall

The meeting was called to order by Judge Roger Crittenden, Chair. The minutes were approved. Judge Crittenden asked Joel Griffith to bring the panel up to date on the status of proposed legislation. Mr. Griffith stated he had met with Kentucky Children's Alliance, Dr. Currie, Kentucky Youth Advocates and others and would have a draft within the next few days. Senator Denton commented that it was likely the bill could be filed quickly and was hopeful that Representative Burch would file the bill in the House.

Judge Crittenden began discussion on the cases reviewed to date. He noted the Cabinet for Health & Family Services (CHFS) identified items removed from the cases as psychological reports, family court documents, out of state reports acquired after fatality, paperwork regarding social services and benefits as well as unrelated case files. Judge Crittenden remarked that some of those documents might be important to review. Senator Denton commented that some of the cases were difficult to follow due to numerous parties involved and the system used for identification. She remarked that if someone knew those involved, they could figure out the names redacted from the case and that the redactions were not consistent. Senator Denton also commented that the psychological reports would be important. Mr. Griffith stated it was difficult to read the cases the way they are formatted. He remarked that it is important for the Panel to have complete closed access to the cases due to issues such as psychological records and HIPPA. He also noted it would be easier to read the cases if you had all the information completely unredacted. Dr. Yates noted there were unknown abbreviations. Commissioner James stated she would supply a list of known acronyms to the Panel.

Judge Crittenden asked the Panel if it would be necessary to have full hospital records for each child. Dr. Corey commented that every member would not need the nursing notes and Judge Crittenden agreed. Senator Denton suggested having the narrative would be sufficient. Dr. Corey suggested the admission history and physical, progress notes and discharge summary would be needed by the Panel although she and Dr. Currie would like

additional documents. Dr. Currie commented that she would add nursing notes and social work notes.

Dr. Yates noted the inconsistency in documentation of investigations. Mr. Griffith commented there were a number of cases with missing documentation of investigations. Judge Crittenden remarked about the lack of police reports and other documents that were referenced but not contained within the case. He also noted the perceived conflict between local authorities and the workers involved in a particular case. Detective Calhoon noted the lack of police reports within cases. He also commented on the different standards for DCBS and law enforcement and the need to narrow the gap between the two. Judge Crittenden questioned what standards are used to substantiate or unsubstantiate basic negligence. He noted cases with similar facts but different outcomes. Commissioner James stated CHFS would provide the statutes, regulations and policies at the next meeting.

Mr. Griffith noted the wide variation from region to region in terms of what law enforcement aggressively investigated for criminal prosecution. Jenny Oldham stated the lack of joint investigation is an issue. She commented that it is required in Kentucky; however, there is no measure of whether or not it is being done. Dr. Currie stated that multi-disciplinary teams are potentially a solution to some of the communication issues. Detective Calhoon noted there are cases that cannot be prosecuted due to lack of proof but DCBS can substantiate and put into place safety protection plans to protect children. He also noted that each county is statutorily obligated to hold multidisciplinary team meetings at least once a month to discuss local cases.

Mr. Walker commented that he was disturbed by the lack of evidence in the cases of any formal assessment tools regarding risk assessment. He stated he noticed an abundance of conclusory statements but no data or examples to support them. He also stated he did not see a defined investigative procedure or evidence of consistence follow-ups and he commented on the lack of use of photo evidence. Mr. Walker remarked that there was an overreliance of the validity of urine tests to conclude substance abuse. He noted there was no evidence of clinical supervision of cases. He also commented that he did not see formal reports to the courts with recommendations supported by observations. Dr. Corey asked Mr. Walker about algorithms available for risk assessment. Commissioner James stated that solution based case work is the practice model but expressed concern that it is not as imbedded as it has been in years past. She noted the Cabinet is looking into how to improve the model with an enhancement on risk assessment. Mr. Walker commented that Dr. Ruth Huebner developed a tool that the CHFS decided not to use some years ago. He stated it was a comprehensive tool that integrated the substance abuse issue with other violence issues. Mr. Walker commented that he is familiar with the Cabinet's quality assessment but he did not recall seeing formalized, validated or closely structured risk assessment tools embedded within it. Commissioner James stated the cabinet is moving towards that.

Commissioner James noted staffing issues within DCBS. Mr. Walker remarked Kentucky has one of the best in the nation of ratio of workers to cases at one worker to

thirty-two cases according to a national report that the Administration for Children and Families publishes every year. Commissioner James commented that the types of cases are the challenge now. She noted the lack of substance abuse treatment and the epidemic of substance abuse in Kentucky. She stated that eighty-five to ninety percent of the cases had high risk indicators for substance abuse and many had high risk indicators for domestic violence. Commissioner James stated that those types of cases cannot be worked quickly. She also noted that in a nine month period of time last year, DCBS hired 350 staff and lost the same number of experienced staff.

Dr. Currie commented that social workers need to be allowed and encouraged to reach out to law enforcement and medical experts for input. Mr. Griffith commented that caseloads need to be reduced to accommodate the number of new staff. Dr. Currie noted the importance of having records from all disciplines that have a stake in the cases to see where training needs are within other areas such as the medical community. Sharon Currens stated her concern that there was not a sense of any protocol when reviewing the cases. Commissioner James stated they could do an overview at the next meeting of how an investigation is worked, what the policies are and how staff is guided. She noted the younger staff is not asking enough questions during investigations and they are looking at how to train them to get the right information before making a final assessment. Detective Calhoon noted that law enforcement is sometimes notified late on cases and an interview has been conducted prior to their arrival which can interfere in their ability to conduct another interview depending on how the initial interview was conducted.

Ms. Oldham inquired about protocol for response time on a high risk physical abuse referral. Commissioner James stated a worker would need to respond within an hour. Detective Calhoon noted delays in getting referrals in a timely manner. Mr. Walker noted Kentucky's response time was good in national report. Dr. Griffith agreed the response time was good but expressed that DCBS could really improve in terms of their internal review process. Commissioner James stated that is now in place and if found to be outside of policy, they are taking personnel action.

Judge Crittenden acknowledged the need to discuss how to proceed with reviewing cases. Dr. Currie suggested having a secure shared document site that panel members could add into a timeline as they're reviewing records. She noted this would allow the exchange of questions and comments and would also allow the Panel to operate and do reviews in closed session with unredacted records. Judge Crittenden stated the codes used by DCBS to refer to cases could be used in open meetings without identifying persons. Senator Denton inquired if the CHFS would agree to give the Panel unredacted cases. Judge Crittenden commented that legislation would permit them to do so. Senator Denton stated she didn't know if legislation would be required. Commissioner James stated the Cabinet's stand would continue to be that as long as this is an open meeting, they will utilize the governor's protocol for redaction. Senator Denton commented if the Panel would only be referring to cases by number, it should not be an issue. Mr. Griffith remarked that once the entire case is in your hands, it is no longer a closed case and that you cannot have a HIPPA protected case without the client's permission. Mr. Walker

commented that there is a waiver of authorization which is done in research. Senator Denton stated that governor could issue a new executive order to give the Panel the ability to have the cases unredacted. Mr. Walker stated that if it were set up as a research project, the Panel could get a HIPPA waiver. Mr. Griffith suggested a group look at the ideas as a plan b to legislation. Dr. Corey noted the need to remember that these are still active open criminal investigations. Dr. Currie asked if a vote could be taken to proceed in doing reviews in closed session and having discussion verbally redacted at meetings. Ms. Oldham noted Panel members would need to sign a confidentiality agreement. Dana Nickles, CHFS, commented that this would be a problem with the open meetings act having a closed meeting without an exception in statute. Ms. Oldham noted the exception for law enforcement action and Ms. Nickles suggested the panel could ask for an opinion from the Attorney General's Office. Ms. Oldham commented that it would be quicker to get an executive order that spells out that the Panel is an exception; however, Ms. Nickles remarked that an executive order cannot change an existing statute. Judge Crittenden stated Panel members can review individually and communicate individually and that would not be considered a meeting. Senator Denton inquired if it would be considered a meeting by virtue of doing the secure site. Dr. Currie clarified that it would not be sharing a site but rather a secure document.

Judge Crittenden remarked that the Panel's general findings after reviewing cases may be inconsistency among workers in various regions. Mr. Walker commented about the under availability of substance abuse assessment and treatment and mental health assessment and treatment. He noted there are areas in the state where a DCBS worker cannot get a client assessed for treatment. Mr. Walker also noted that Kentucky has not raised substance abuse treatment by the amount of patients for sixteen years, in spite of the huge increase in prescription opioid use across the state. He stated that if you look at other states, the linkage between child protective service agencies and the substance abuse provider system and mental health provider system is essential. Mr. Griffith commented that he hopes to get legislation passed so the Panel can get full access but he noted there are issues that the Panel can be looking at now such as root causes of why an investigation didn't happen sooner and whether or not there was access to treatment and services. Detective Calhoon noted that substance abuse definitely needs to be in the equation. Dr. Yates noted that finding the treatment is a problem and you need be able to hold them accountable for going to treatment. Dr. Currie commented that if we cannot provide the services, we cannot hold them accountable.

Senator Denton addressed the issue of cases of accidental deaths with findings of neglect. She commented on the need to continue reviewing such cases but to have an outcome other than substantiation of neglect. Mr. Griffith noted that these people will never be able to work in daycare centers. Senator Denton noted that from reviewing the case, they did not have any indication that the same type of thing would ever happen again or that they would ever be abusive to children. Senator Denton commented that while they were not charged, CHFS still has a finding of neglect and they cannot work in their church nursery or a daycare. Mr. Griffith stated that Florida changed their regulations around that issue adding an intent element to neglect.

Senator Denton inquired about what it would take to get a secured shared document as proposed by Dr. Currie. Detective Calhoon suggested a phone call to the Commonwealth Office of Technology (COT). Judge Crittenden asked Tom Cannady if Secretary Brown would be the person that would need to contact COT to inquire about cost. Commissioner James stated that CHFS could work jointly with the Justice & Public Safety Cabinet on this issue. Judge Crittenden said that he would speak with the commissioners to get information from COT on the cost and setup.

Senator Denton inquired about the cases the Panel would start to discuss at the next meeting and suggested beginning with the fatalities with CHFS involvement. Mr. Griffith suggested started with a couple of each. Dr. Currie stated she felt it important the Panel not limit themselves to reviewing only cases with CHFS involvement. Dr. Corey suggested looking at the same number of cases with and without CHFS involvement for the next meeting and limiting to a number that could be adequately reviewed in the time frame. Judge Crittenden suggested reviewing four cases for the next meeting in March in order to hear discussion on each case. Mr. Griffith suggested reviewing two fatalities with CHFS involvement and two fatalities without CHFS involvement. Dr. Currie suggested starting at the beginning with cases #1 and #2. Judge Crittenden stated the Panel should review cases FC1, FC2, FNC1 and FNC2 for the next meeting.

The next meeting will be held on March 11th at 10AM. Additional meetings dates were also set for May 13th, July 22nd, and September 9th. The meetings will take place at 10AM at Kentucky Domestic Violence Building with the exception of the September 9th meeting which may be held in Lexington.

With no further business to discuss, the meeting was adjourned.

Meeting summary submitted by Marlene Mundine.