

JUVENILE JUSTICE OVERSIGHT COUNCIL

January 12, 2016
Capitol Annex, Room 171

Members Present: Senator Whitney Westerfield; Secretary John Tilley, Justice & Public Safety Cabinet (JPSC); Commissioner Mary Begley, Department for Behavioral Health, Developmental and Intellectual Disabilities, Cabinet for Health and Family Services (CHFS); Commissioner Adria Johnson, Department for Community Based Services, CHFS; Commissioner Bob Hayter, Department for Juvenile Justice (DJJ), JPSC; Laurie Dudgeon, Director, Administrative Office of the Courts (AOC); Christina Weeter, Department of Education; Ed Monahan, Department of Public Advocacy (DPA); Paula Stafford, Rowan County Schools; Honorable Lisa Jones, Chief District Judge; Steven Gold, Henderson County Attorney; and Dr. John Sivley, Clinical Director, LifeSkills, Inc.

Members Absent: Lieutenant Shara Parks, Louisville Metro Police Department

Staff Present: Yvonne Board and Marlene Mundine

I. Welcome/Call to Order and Approval of Minutes

The meeting was called to order by Senator Westerfield who welcomed members and guests. Senator Westerfield then called for a motion to approve minutes from the November 17th meeting. Minutes were approved as submitted.

II. Presentations

A. SB 200 Performance Measurement Data

Pam Lachman, Crime and Justice Institute, Dr. Greg Finkbonner, DJJ, Shelley Perdue and James Hopson, AOC, presented pre- and post-SB 200 data along with key takeaways related to SB 200 policies. (Presentation available upon request.) Mr. Monahan asked Dr. Finkbonner to explain data presented relating to the decline in new commitments and probation dispositions. Dr. Finkbonner responded that the data is showing there are fewer black youth that are decreasing in population. He also stated the 71% noted with the Hispanic population reflects multiple misdemeanor offenses dropped leaving only felonies in the system. Mr. Monahan inquired why there is a lesser decline in black youth commitments and probation versus the white and Hispanic population. Ms. Stutler, DJJ, responded that charging disparities must be considered when looking at the data. She stated that the research she previously presented showed that youth of color are more likely to be charged with felony offenses versus misdemeanor offenses. She also noted that the sample of Hispanic/biracial youth only included a very small sample of twenty-one youth.

Dr. Finkbonner presented data on youth committed on sex offenses or sentenced as adults over the past three years. Commissioner Begley inquired if the data indicates a trend statewide versus some areas doing better than others. Dr. Finkbonner stated there are disparities in some counties and noted they would like to break down the data further to share that information in a future meeting.

Senator Westerfield commented that it would be interesting to see the data as SB 200 did not address sex offenders at all. Dr. Finkbonner noted the changes they are seeing relate to the lesser offenses that are being addressed through SB 200.

Ms. Lachman presented DCBS data as well as data relating to recidivism. Ms. Dudgeon inquired about the length of time the youth are followed and whether any of the data reflecting possibly any adult charges on recidivism. Ms. Lachman stated the data collected only captures juvenile complaints; therefore, it does not track youth into the adult system. However, for the one year outcome the majority of youth would still be captured in the juvenile system. She stated the other thing to keep in mind as more youth enter into diversion is whether the success rates stay the same. Senator Westerfield inquired about tracking adult offenses that follow. Ms. Lachman stated the adult offenses can be tracked and it was noted that DJJ and AOC are working on that issue. Ms. Lachman commented on the importance of looking at the characteristics of youth as related to recidivism also.

Mr. Gold inquired if the data presented by race could be broken down by the charge level at the time the probation or commitment has occurred as he would be interested to see if there is a disparity in the level of charge that is sought. Dr. Finkbonner stated that could be provided for the next meeting. Senator Westerfield inquired about what the offenses were on the FAIR team referrals and which were successful. Dr. Finkbonner stated that information could be provided as well.

B. Open Juvenile Court Proceedings

Ms. Beth McMahon, Chief of the Juvenile Division, Louisville Metro Public Defender's Office, began with the statement that they are not taking a position on opening dependency, neglect and abuse proceedings or termination of parental rights; however, they are opposed to opening the delinquency proceedings. She stated that the law currently allows for a juvenile case to be open as anyone can petition the court and the court has the authority to do so. She stated they are presumptively closed but there is a method for interested parties to seek access. Ms. McMahon commented that opening the courts would, in many cases, increase the pressure for more punitive sanctions for delinquency cases. She stated that it is inconsistent with goal of rehabilitation and the goal of SB 200 which is focused on increasing services and opportunities for juveniles rather than using detention or out of home placement. She noted that a positive approach for studying this issue would be to limit any opening of courts to dependency, abuse and neglect cases and study the effects before considering it for delinquency courts.

Ms. Rebecca DiLoreto, Kentucky Association of Criminal Defense Lawyers (KADCL) Legislative Agent, commented on juvenile proceedings and stated that aside from the facts of the case itself, there are many sources of confidential information that are discussed openly in a juvenile proceeding that must be protected such as educational records and medical records about the child as well as their family members. Ms. DiLoreto also stated that she provided a letter to panel members from the National Juvenile Defender Center. She noted the center opposes opening the proceedings for concern about the shaming effects and harm on rehabilitation. She noted the letter reflects that this is not transparency and across the nation there continues to be support for confidentiality with respect to juvenile courts.

Mr. Damon Preston, Deputy Public Advocate, noted the shaming effect Ms. DiLoreto spoke of would be more prevalent in rural communities in Kentucky. He commented that opening the courts would lead to leaking of information on social media, cyberbullying, and a permanent online record of what happened in juvenile court which can impact education and employment opportunities. Mr. Preston also stated that DPA has no position on dependency, neglect and abuse cases but agreed that would be a good place to start if the legislature chooses to do so. He noted that the Child Fatality Near Fatality External Review Panel's 2015 Annual Report includes a recommendation regarding opening dependency, neglect and abuse cases and made the distinction to not take a position on opening delinquency proceedings.

Judge Lisa Jones stated that members of the task force and oversight council have gone through the process of looking at what makes juveniles and the juvenile court process different. She noted the focus has been on rehabilitation and family issues, learning about brain development, the harmful effects of detention and the impact of the court process and court records on a child's future. Judge Jones also noted the focus on expungement at national events that have been attended by members of the council. She commented that opening the juvenile court delinquency process takes a step backward and goes against the intent of SB 200. Judge Jones also noted that studies show that most of the youth outgrow delinquent behaviors by the age of twenty-five. She stated that opening courts will have an impact on candor in the courtroom as public defenders will be less likely to mention issues such as sexual abuse of their clients, substance abuse or mental health issues within the family. She noted the purpose is to break down barriers and improve communication to get to the root of the issue and address it at the family level and if proceedings were open, that information would be shared with the public. Judge Jones stated that the data is now available to know what is happening in court and what decisions are being made; there is no need to sacrifice the child and their privacy.

Senator Westerfield inquired about the rationale for opening a proceeding. Judge Jones stated that she has never been asked to open a proceeding. Ms. McMahan responded that there are statutes that address the victim being able to discuss the matter outside of court and certain records being able to be disclosed to specific members of the public such as schools and the victim. Senator Westerfield inquired about how often this happens and Ms. DiLoreto said she has been involved in a few cases over the years but it is rare. Senator Westerfield expressed concern about litigation that could occur as a result of opening proceedings. Ms. DiLoreto noted that she has reviewed juvenile justice systems in approximately twenty states, some of which are presumptively open and noted that the advocacy does not occur at the same level in that setting. Dr. Sivley commented that he has practiced with juveniles in delinquency court for twenty-five years, primarily sexual abuse victims and offenders, and has had cases where information has been leaked into the community. He stated that every time this happens it has had a profoundly negative impact on every person involved. He stated that he has had children attempt suicide, run away, assault others or be assaulted and could not imagine anything worse than opening juvenile proceedings to the general public.

Mr. Mike O'Connell, Jefferson County Attorney, spoke in favor of opening juvenile court proceedings. He noted that SB 40 would establish a four-year pilot project to open juvenile and family court proceedings in at least three diverse judicial districts. He noted that there are no misdemeanor cases involved, only felony. He stated that they would be presumed open but the judge could close the court on a motion under the specific guidelines outlined in the bill. He noted it also does not include sex offense cases. He stated in 2008 the National Council of Juvenile and

Family Court Judges passed a resolution in favor of opening juvenile and family courts. He commented that the public has a legitimate interest in the work of juvenile and family courts. He stated that by opening courts it will increase public aware of problems faced by courts, child welfare agencies and increase accountability. Mr. O'Connell stated that Kentucky is one of only eleven states that are presumptively closed. He also noted that there has never been any action to close court proceedings in these cases once states decide to open them.

Dr. Sivley asked how opening the proceedings will benefit the juvenile. Mr. O'Connell stated that it would ensure that those involved with the process do their job properly. Dr. Sivley inquired how allowing the general public access protects the child's rights more than having a public advocate. Mr. O'Connell stated that if the courts are able to be observed, he believes the best side of things will happen rather than the bad side. Judge Jones asked to clarify that not commenting on opening dependency, neglect and abuse court does not mean there is unanimity on opening those courts but rather that this is not the forum for that issue. Mr. O'Connell commented that his understanding was that DPA was taking no stand on the issue also and confirmed that with Mr. Monahan. Senator Westerfield asked if the bill provides for the judge to make findings in a confidential environment. Mr. O'Connell responded that he believes a judge could consider information presented and close the proceedings. Judge Jones noted that at a detention hearing there is not time available to allow these things to occur. She also stated that she is in disagreement with Mr. O'Connell's statement that only eleven states have closed courtrooms. She stated that forty-seven states including Kentucky allow for disclosure for some reasons for certain aspects of juvenile court. Mr. O'Connell responded that Kentucky is one of a few of presumptively closed courts but the majority are open with the ability to close.

III. Agency Updates

Commissioner Hayter updated the council on data relating to a decrease in costs associated with psychotropic medications. Ms. Dudgeon inquired about the status of recommendations regarding revisions for suspected runaway language. Senator Westerfield responded that it should be ready to go but has not yet been filed. Ms. Dudgeon stated she would email the information to Ms. Board to be distributed to members of the council. Mr. Monahan noted the DPA has been awarded a grant from the Department of Justice to evaluate the provision of the agency's representation of juveniles. He noted they would be approaching members of the council to give their evaluation of the services provided by DPA. Mr. Monahan asked Commissioner Hayter if it would be possible to provide some data on the DJJ population. Commissioner Hayter responded that they can provide that information. Commissioner Begley noted they hope to have a report regarding financial mapping available around March.

III. Adjourn

The next meeting will be held on Tuesday, February 9, 2016. With no further business to discuss, the meeting was adjourned.