

JUVENILE JUSTICE OVERSIGHT COUNCIL

November 29, 2016
Capitol Annex, Room 171

Members Present: Senator Whitney Westerfield; Secretary John Tilley, Justice & Public Safety Cabinet (JPSC); Acting Commissioner Wendy Morris, Department for Behavioral Health, Developmental and Intellectual Disabilities, Cabinet for Health and Family Services (CHFS); Commissioner Carey Cockerell, Department of 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); Major Shara Parks, Louisville Metro Police Department; Steven Gold, Henderson County Attorney; Dr. John Sivley, Behavioral Health Service Provider; Judge Lisa Jones, Chief District Judge; and Paula Stafford, Montgomery County Public Schools.

Members Absent: Representative Darryl Owens and Commissioner Adria Johnson

Staff Present: Marlene Mundine

I. Welcome/Call to Order and Approval of Minutes

The meeting was called to order by Secretary Tilley who welcomed members and guests. Secretary Tilley then called for a motion to approve the October 24th meeting minutes. The minutes were approved as submitted.

II. SB 200 Performance Measurement Data

Ms. Pamela Lachman, Senior Associate at the Crime and Justice Institute, presented SB 200 performance measurement data. (PowerPoint containing data available by request.) Ms. Lachman stated this was the first presentation that included a full year of data to review since the last effective date of July 2015. She noted that public complaints are down since reforms took effect but status offenses are showing a different trend with an increase of 7% in the last year. Racial disparities are larger for public offenses. School related public offenses remain stable over time but school related status offenses have grown. Disparities are larger for non-school related public offenses. She noted a substantial increase in the number of cases that have a diversion agreement. There is a substantial racial disparity in this area also. She noted the length of diversion declined in the last year. She pointed out an increase in judicial overrides for public offenses with a higher proportion of those being felonies. County attorney and judicial overrides for status offenses have declined. Judge Jones inquired about the increase in judicial overrides stating that as a district court judge she is contacted by court designated workers when an offense has been committed and asked whether or not to detain a child. If the child is detained, that becomes a court offense regardless of whether they were eligible for diversion. She noted that she is not aware of past history when making those decisions. She stated that she knows there is not a place for the child to go, the nature of the offense or that the family does not want the child in the home due to a domestic offense. Ms. Lachman confirmed that most of the overrides were detained. She noted that even though there has been a change in policy to allow the option of diversion, most of those youth do not receive diversion. Ms. Lachman noted that

41% of all overrides are black youth. Looking only at misdemeanor status or violation offenses, 35% are black youth. When compared to those who receive diversion agreements for similar offenses, there is an even larger disparity. Ms. Lachman stated this would indicate it is not all related to charging disparities.

Ms. Lachman noted the majority of FAIR team referrals are for those assessed as high needs which was the intent. However, the negative side is that some youth might have been successful with diversion but are sent to the FAIR team instead. While they are receiving more services, there is the potential for more opportunity to be unsuccessful. Ms. Lachman noted that more than half of FAIR team cases are sent to court. She stated that less than 5% of FAIR team cases result in DCBS referrals and some of those cases were already involved with DCBS. Senator Westerfield commented that some had been concerned that these numbers would be much higher. Ms. Lachman stated that DCBS and the family court in general is seeing more adolescents referred into the system but they are being referred due to neglect, abuse or dependency. She noted that trend precedes SB 200 by a number of years and does not appear to be related to juvenile justice reform. Secretary Tilley commented that he could not agree more.

Ms. Lachman stated that data indicates consistently high success rates for diverted youth since the effective date of SB 200. In reviewing all youth who received diversion, a higher proportion of black youth are represented among unsuccessful diversions. Senator Westerfield inquired about the cause. Ms. Lachman responded that there are many potential causes. Two primary contributors include what is within the youth/family's control and what staff is doing to assist the youth in completing diversion. Senator Westerfield inquired about accounting for consistency by staff in the terms of diversion in an effort to rule that out as a contributing factor. Ms. Dudgeon stated that additional training should be done with CDW's in some locations in addition to any policy recommendations. Ms. Weeter inquired about barriers outside of youth's control including poverty and lack of community resources. Ms. Lachman gave the example of a youth being required to complete a number of community service hours in an area where the opportunity to do so is very limited. This would be a barrier that is not in the youth's control for successful completion of diversion. Mr. Gold inquired about geographical correlation. Ms. Lachman responded that she did not have that data with her but noted that county level variation is seen in cases that are unsuccessful and can be reviewed to see if disparity is linked to geography. In reviewing recidivism data, Ms. Lachman stated that only a quarter of successfully diverted cases reoffend with one year. She also noted a decline in the rate of reoffending for cases referred to court and unsuccessful diversions.

Ms. Lachman stated that DJJ probation dispositions are down 36% in the last two years. There are a higher proportion of felony cases among probation dispositions. The number has increased to 46% in 2016, up from 27% in 2012. Probation declines are seen for misdemeanor and violation offenses. Racial disparities for probation dispositions have also increased. She noted that DJJ commitments are down 43% in the last two years and 75% of commitments are now felonies compared to 47% in 2012. There is a 14-percentage point increase in proportion of black youth among DJJ commitments from 2012 to 2016. While there has been a 55% decline in DJJ commitments for white youth since 2014, there has only been a 25% decline for black youth. There is a slightly lower level offense profile for white youth committed to DJJ. Ms. Lachman noted the majority of commitments on misdemeanors or Class D felonies are for the prior adjudication exception. Racial disparities vary based on type of exceptions. Black youth are disproportionately impacted by the weapons exception and the prior adjudications exception;

white youth are disproportionately impacted by the sex offense exception. Ms. Lachman stated that more than half of Class C felony commitments would have the weapons or sex offense exception. She noted that many weapons are included in that categorization. Ms. Lachman also noted that policy changes have not yet impacted the overall average length of stay for youth placed out of home but data is starting to show declines in average length of stay in YDC's.

Ms. Lachman noted some system indicators for areas of further reform. Declines in detention use have stopped over the last two years. There is a wide range in offenses resulting in detention including many misdemeanors, some of which are low-level assaults. A higher proportion of black youth are represented among youth detained. Within the population of youth detained, there is substantial charge variation as a higher proportion of black youth are detained for felony offenses. More than 80% of detained public complaints are felonies; for status complaints, 97% are runaways. She noted that there is a slight increase in youthful offender referrals in the last year and ¼ of youthful offender referrals are for Class D felonies or below. Senator Westerfield noted that one of the recommendations following the review of Jefferson County DMC data was to have the youthful offender only apply to crimes against people and perhaps making that change would address this issue. Ms. Lachman commented that if the youthful offender process should target youth who are a public safety risk, you would expect those youth to be detained. However, just over half of youthful offender referrals are detained. Senator Westerfield commented that he would like to identify a pattern for why some are not being detained. Ms. Lachman responded that if the criterion for youthful offender is that you only have one prior felony that could have an impact. She stated that black youth account for more than half of youthful offender referrals, the largest racial disparity in the system. Ms. Lachman also stated that while few youth get sentenced as youthful offenders, there has been a 25% increase in youthful offender confinements since 2014.

Ms. Lachman noted several key takeaways from the data presented. Status complaints increased in 2016, the first time in five years. Recidivism rates for youth in diversion are decreasing despite expanded diversion eligibility. She noted that improvements in diversion and an increase in lower risk complaints being referred to CDW's could contribute to that. Ms. Lachman commented that the increase in diversion overrides has limited the impact of expanded diversion eligibility. DJJ probation and commitment declines are driven almost entirely by misdemeanor offenses, not Class D felonies, which would indicate an issue at the front end. Overall, the reforms have had a disproportionately positive effect on white youth compared to black youth. Ms. Lachman also noted the following areas for further system reform. The largest racial disparities in the juvenile justice system are for youthful offender referrals. More than half of youthful offender referrals are detained at intake and ¼ of youthful offender referrals are for Class D felonies. Most youth get detained at intake for misdemeanor domestic assault complaints and nearly all status offenders detained at intake are runaways.

Mr. Monahan commented on the importance of the data presented and inquired about the disparity indicated in DJJ commitments on weapons exceptions. Ms. Lachman noted that some of the disparity is seen at the front end in charging and an even larger disparity is shown at the point of commitment. She pointed out that it is a small number (n=21) but a huge proportional disparity at 67%. She noted there are multiple decision points and multiple actors that impact why the weapons exception is disproportionately applied. Mr. Monahan inquired about ways to address the decision making if it is being inappropriately applied. Ms. Lachman noted there are many things that can be considered as deadly weapons and if highly discretionary, that is a point

where there is opportunity for bias. Mr. Monahan asked Ms. Lachman for suggestions to address racial disparity across the system. Ms. Lachman noted that this was outside of her area of expertise and acknowledged that many others in attendance have spoken much more in depth on the subject. She stated that many of the recommendations the council has received from stakeholders were about having more objective criteria both in statute and policy and practice to determine how youth are treated in the system. She noted there is much research that supports that this is a key way, in addition to training and education, to address racial disparity. She stated that points in the juvenile justice system where you see the largest racial disparity are a combination of both statutory allowance and discretion; both must be considered in addressing it.

Judge Jones inquired if the youthful offenders numbers represented charges or individuals. Ms. Lachman explained that the numbers represent complaints noting there could be multiple charges on one complaint. Ms. Weeter shared that they are hearing about children bringing weapons to school due to not feeling safe traveling to and from their neighborhoods and expressed the need to look at ways to address what is happening in the communities as well.

Secretary Tilley commented briefly on his visit to the Children's Home of Northern Kentucky and the excellent work being done there.

III. Restraint and Seclusion in Kentucky Schools and Juvenile Facilities

Ms. Amanda Bear, Children's Law Center, began by stating that restraint and seclusion has received national attention due to the physical and psychological harms that result and that it is often disproportionately used on youth of color and children with mental illness. She noted that organizations have created tools and mechanisms that can be used to address conditions including reduction in the practice of isolation in facilities. Ms. Bear commented that with SB 200, Kentucky recognized the need to reduce commitment and detention populations but stated that there is a need to examine conditions of confinement in facilities and schools.

Brian and Kim Long, Parent Advocates, were present to provide testimony regarding the near death of their son, Brennan Long. Mr. Long provided details of the incident that occurred on November 11, 2014, at the Binet School in Jefferson County. Brennan Long was 16 years old at the time of the incident and has autism. The Binet School is a school for special needs children. Mr. Long stated that his son endured an acute physical assault by a JPSC Binet School staff person resulting in bilateral spiral femur fractures requiring surgery. Mr. Long noted multiple complications during Brennan's hospital stay including a collapsed lung and the need for multiple blood transfusions. His son's injuries were deemed near fatal under statute and a review of the case was conducted by the Kentucky Child Fatality and Near Fatality External Review Panel, which resulted in a finding of physical abuse. Mr. Long stated that his son now attends the Bluegrass Center for Autism, a school that does not seek to apply physical restraint and seclusion to special needs children. He stated that Brennan has not been restrained at the Bluegrass Center nor was he ever restrained at the school he previously attended in Virginia prior to returning to Louisville, Kentucky. Mr. Long stated that our special needs children deserve to be treated with respect, dignity, and, most of all, have a safe and intimidation free environment in which to learn. He commented that this is where many institutions like the Binet School are failing noting that these environments are intimidating in some cases and can be toxic for special needs children. Mr. Long stated restraints are being used first in order to force compliance or as a means of discipline, both of which are against statute. He stated that there are

thousands of restraints every year in Jefferson County and it is clear that many schools choose to physically restrain children first versus applying scientifically based positive behavioral supports that are safer and have a greater impact on special needs children. Mr. Long shared 2014/15 school year data provided by the Jefferson County Public School System, which indicated there were 4,403 restraints with 80 injuries from those restraints, one of which resulted in the near fatality of Brennan. The following year there were 4,134 restraints in Jefferson County with 69 injuries as a result. Mr. Long stated that his family would like to challenge institutions and individuals to be proactive in having the difficult conversation regarding the use of restraints. Mr. Long stated that his son's injuries were totally preventable and he did not have to be restrained. He stated that there should never be another child in the state of Kentucky that is injured in this manner.

Senator Westerfield thanked Mr. and Mrs. Long for attending and sharing their story. He stated that hearing the details provided, it is appalling that it happened, maddening that it was not substantiated or prosecuted and that under no circumstances should femurs be broken. Senator Westerfield inquired about data specific to the Binet School. Ms. Lucy Heskins, Kentucky Protection and Advocacy, responded that data specific to the Binet School is included in the report provided to members which indicated 73 students enrolled for the year Brennan was injured, 297 reported restraints and 244 seclusions. She noted also included is comparison data for Churchill Park, a similar school, which shows a substantially lower number of restraints. Churchill Park had 92 students enrolled for the same year and reported 12 restraints and 9 seclusions.

Dr. Sivley stated that he has worked in the mental health field for over 30 years and for the last 20 years has been certified and provided and utilized safe crisis management. He stated that he has no idea how any of the procedures he has seen or implemented could result in broken femurs unless there was an accident or misuse of the procedures. He noted, however, that he has seen huge changes in the use of restraints and seclusions over the years but we are not where we need to be. Dr. Sivley stated that the first training he attended years ago included inpatient psychiatric hospital staff and residential facilities staff while the last training he attended was 75-80% school staff. He also noted that 75-80% of training received now is specifically focused on avoiding any type of physical intervention as opposed to how to implement physical interventions. Dr. Sivley commented that he did not know how the injuries could have occurred particularly if proper procedure was used which should have involved multiple staff in order to prevent such. Dr. Sivley thanked Mr. and Mrs. Long for sharing their story and ensuring conversations continue regarding this issue.

Ms. Dudgeon inquired about recommendations for addressing this issue. Ms. Heskins stated that she is in agreement with Dr. Sivley and has attended the same trainings he referred to and worked with the Department of Education to get a regulation passed in 2011. She noted that during that process she learned that there has to be leadership that recognizes the danger of restraints. She agreed with Dr. Sivley that the use of restraint might have a place in a dangerous situation but there should be a push, driven by policy, to avoid the using restraints until really needed. Dr. Sivley noted that Mr. Long indicated there was minimal review of actions taken by staff. He stated that every staff member involved should review every restraint procedure, specifically to look for ways it could have been avoided. Someone skilled in crisis management should then review it at an additional level. Ms. Heskins noted that the regulatory language for schools requires a debriefing session if the parents request it but the parents must know to do so.

Mr. Long commented that they requested a debriefing session which took five to six weeks before the county agreed to do it. He stated it should have happened within five days. Senator Westerfield asked if that was a routine length of time. Ms. Heskins stated that in her experience it varies district by district but that she had not found them to typically be very useful in determining what happened. Secretary Tilley asked if the debriefings are recorded in some manner and subject to open records. Ms. Heskins stated that they are generally not recorded and would not be subject to open records as it would become part of the child's education record. Secretary Tilley inquired about a regulatory change allowing a waiver so that there can be transparency in the debriefings. Ms. Heskins noted that was included in discussion when the regulatory language passed. Ms. Dudgeon inquired about cameras in schools, particularly the Binet School. Ms. Heskins stated that there were cameras but not in the classroom. She stated that the attorney for the Long family send a letter to the school and JCPS requesting that all video evidence be preserved. The detective in the case made a request for video cameras and was told there were none at the school. When he learned there were cameras, he was told he needed a subpoena from a grand jury. After getting a subpoena, the detective was told the video had been recorded over three days before. Ms. Dudgeon suggested adding language regarding the preservation of evidence to the regulation.

Ms. Bear provided statewide data on restraints. She stated that 58% of students who are restrained have a disability. Sixty percent of school restraints are students in the 3rd grade and below. In school year 2014/15, youth of color were involved in reported incidents of restraints at nearly five times the rate of their white peers and experienced 44.7% of all restraints while making up only 10.5% of the student population statewide. In 2014, 93 pre-kindergartners through first grade were treated as "law violators." A significant number of those referred to the court system were for terroristic threatening. In 2014, only 17% of 59 SRO's provided their reports to school officials. Senator Westerfield inquired about the low number of SRO's indicated in the data. Ms. Ava Crowe responded that the Center for School Safety conducted a voluntary survey of SRO's to which only 59 responded. Ms. Bear also provided recommendations for school districts, KDE and DJJ, which included external reviews of policies and procedures regarding restraint and seclusion as well as data collection.

IV. Agency Updates

Written updates were provided by the Administrative Office of the Courts and the Department for Behavioral Health, Developmental and Intellectual Disabilities.

V. Adjourn

The next meeting will be held on Monday, January 9th at 1PM. With no other business to discuss, the meeting was adjourned.