

PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

Minutes 2017 Interim

November 9, 2017

Call to Order and Roll Call

The Program Review and Investigations Committee met on Thursday, November 9, 2017, at 10:00 AM, in Room 131 of the Capitol Annex. Senator Danny Carroll, Chair, called the meeting to order and led the audience in a prayer and the Pledge of Allegiance. The secretary called the roll.

Present were:

Members: Senator Danny Carroll, Co-Chair; Representative Lynn Bechler, Co-Chair; Senators Dan “Malano” Seum, Reginald Thomas, and Stephen West; Representatives Chris Fugate, Ruth Ann Palumbo, Rob Rothenburger, Arnold Simpson, and Walker Thomas.

Guests: Adria Johnson, Commissioner, Elizabeth Caywood, Executive Advisor, Department for Community Based Services, Cabinet for Health and Family Services; Kelly Stephens, Manager, Court Services, Administrative Office of the Courts; and Patricia Walker-FitzGerald, Retired Jefferson County Family Court Judge.

LRC Staff: Greg Hager, Committee Staff Administrator; Chris Hall, Colleen Kennedy, Van Knowles, Jean Ann Myatt, Brandi Norton, William Spears, Shane Stevens, Joel Thomas; Dexter Horne and Eve Wallingford, Graduate Fellows; and Kate Talley, Committee Assistant.

Minutes for October 12, 2017

Upon motion by Representative Simpson and second by Representative Rothenburger, the minutes for October 12, 2017, were approved by voice vote.

Staff Report: *Kentucky’s Foster Care System*

Mr. Hall noted that as of September 2017 there were nearly 8,500 children in Kentucky’s foster care system, which is administered by the Department for Community Based Services (DCBS). Most children enter the system when an investigator substantiates claims of dependency, neglect, or abuse, and files a court petition to remove the child. He described the steps in the court proceedings for such cases, which include a temporary custody order, which can give custody of the child to the cabinet for 45 days, and a dispositional hearing, at which the court determines what action to take. If the court orders the child to remain in state custody at the conclusion of the dispositional hearing, the case

remains open and is reviewed after 6 months. A permanency review is held every 12 months thereafter. Program Review staff heard from several sources that the 45-day period for the temporary custody order is often not long enough. Recommendation 1.1 is that DCBS and the Administrative Office of the Courts (AOC) should cooperate to determine a reasonable period for the temporary custody order and propose legislation to the General Assembly.

DCBS and AOC were unable to provide reliable data that would allow for an analysis of whether foster care hearings were meeting the statutory time frame. Recommendation 1.2 is that they should cooperate to ensure the collection of the date of any foster care court action, the type of hearing, and the result. These data should be analyzed regularly to identify potential problems. Recommendation 1.3 is that AOC should encourage any court hearing foster care cases to use all appropriate AOC forms.

DCBS publishes a monthly Diligent Recruitment Report, which is used to help regional and county DCBS officials recruit new foster families. A calculation in the report is potentially inaccurate. Recommendation 1.4 is that DCBS should use existing data to calculate a more accurate “percent of need met” figure in the report.

DCBS reports the average number of times foster children moved while in state custody. Over the period of time analyzed, more than half of the moves were either neutral or represented progress. Recommendation 1.5 is that DCBS should indicate disruptive, neutral, and positive reasons for placement changes in its reports.

The most frequent reasons children left the foster care system last year were to be reunited with their families (35 percent), placed in permanent custody of a relative (28 percent), or adopted (24 percent).

Ms. Kennedy said that court proceedings consist of three broad steps: terminating parental rights; establishing adoption as the permanency goal, and ruling on a petition for adoption. An order for termination of parental rights may be appealed, resulting in long delays in an adoption. Neither AOC nor DCBS tracks all delays in the adoption process. DCBS plans to document court proceedings when its computer system upgrades at the end of 2017.

Potential adoptive parents may file a petition to adopt if they are Kentucky residents or have lived in Kentucky at least 12 consecutive months, are at least 21 years old, and have sufficient income to meet household expenses.

From 2012 to 2016, the number of Kentucky children foster available for adoption increased each year except one. Over this period, 2,257 children were adopted. The percentage of adoptable children carried over from the previous year ranged from 55 percent in 2013 to 39.5 percent in 2015.

Mr. Stevens noted that from 2011 to 2015 the number of children living in foster care increased by nearly 8 percent nationally. As of July 2017, there were more than 8,500 children in Kentucky's foster care system, which represents a nearly 25 percent increase since 2011. Over this period, the number of caseworkers assigned to these children increased by only 7 percent, which has resulted in unmanageable caseloads and could lead to jeopardizing agency funding, an increase in employee turnover, class action litigation, and negative outcomes for children and their families.

The Child Welfare League of America recommends a caseload of no more than 12 cases; the Council on Accreditation recommends no more than 15. DCBS reports that they are currently targeting a statewide caseload average of 18 cases. As of May 2017, Kentucky caseloads were reported to be 32.

DCBS recently changed how it calculates caseloads. The new method includes past due cases and but not noncapacity staff. The new method results in higher statewide caseload averages overall. This new method could be improved. Recommendation 3.1 is that DCBS should develop a method for calculating or estimating the number of cases assigned to staff not currently carrying full caseloads and the contributions of such staff to state, regional, and county workloads. The workloads of these staff should be included in the calculations of average caseloads along with past due cases.

Caseloads vary significantly across regions in Kentucky, but all regions reported averages above 18. Only 14 counties met national standards and only 24 met DCBS's target. Recommendation 3.2 is that the General Assembly may wish to consider revising KRS 199.461 to require reporting of monthly regional and county caseload averages in addition to monthly statewide caseload averages.

In order to reduce statewide caseload averages to the current DCBS target of 18, 420 additional caseworkers would need to be hired. Bringing Kentucky's caseload average in line with the Council on Accreditation would require 731 new caseworkers. Bringing averages in line with the Child Welfare League of America would require nearly 1,200 new caseworkers, more than twice the current staffing level.

Program Review staff surveyed Kentucky's child welfare caseworkers. Ninety-five percent of respondents reported that their caseloads were currently unmanageable within a normal work week. Respondents listed documenting work and entering case information into computer systems as two of their most time-consuming tasks. Recommendation 3.3 is that DCBS should develop a strategy to lessen the administrative burden of caseworkers so that they can spend more time working with foster children and their families.

Recommendation 3.4 is that DCBS should develop a method for determining caseloads that is based on an analysis of its workforce and workloads. This information

should be used to determine what the appropriate caseload standard for Kentucky child welfare caseworkers should be and the strategies needed in order to meet this standard. The standard that is developed should be aligned with the principles established by current national standards and should focus on ensuring that as few child welfare caseworkers as possible are assigned caseloads that exceed the standard.

Mr. Knowles noted that turnover is a challenge for most state child welfare agencies. Kentucky's caseworker turnover peaked at 28 percent in 2015. A rate of 25 percent means that an average caseworker stays on the job for 4 years and is fully productive for only 3 years. Turnover reduces the overall level of experience and causes frequent vacancies, increasing workloads and stress and leading to lower quality of work and poorer outcomes for children. Most caseworker turnover was a result of individuals leaving DCBS for another agency or for the private sector. Dissatisfaction with salaries is one reason. Higher demand for social workers in some parts of the state results in a greater salary gap.

Several improvements could help offset dissatisfaction with salaries. These include advancement opportunities, involvement in setting policies, recognition of caseworkers' dedication and hard work, and ways to deal with the emotional trauma of seeing neglect and abuse. DCBS reported that some employee recognition programs and other measures had been curtailed for lack of funds.

For several years, entry-level caseworker job applications were always accepted whether there were openings or not. Attempting to address some problems, the Personnel Cabinet began to advertise entry-level caseworker jobs as they came open, but with an expedited hiring process. Neither the Personnel Cabinet nor DCBS was able to provide information on how long it took to fill vacancies.

The Public Child Welfare Certification Program pays tuition and a stipend for social work juniors and seniors who agree to work 2 years for DCBS after graduation. While in school, they receive the same training as new caseworkers and work as interns at DCBS. However, enrollment has been below expectations for a variety of reasons.

There is some evidence that there just are not enough social workers with bachelor's degrees to meet the demand in the private and public sectors.

Recommendation 3.5 is that DCBS should request funding and authorization to increase caseworker salaries to a competitive level; to increase the number of caseworkers; to offer geographic salary differentials and flexible scheduling; to expand employee recruitment, development, and recognition programs; and to develop further improvements in the hiring process. The agency should also promote expansion of undergraduate social work programs.

In response to questions from Representative Rothenburger, Mr. Stevens said increasing the number of support staff and improving technology would help lessen the burden on caseworkers. More than 51 percent of caseworkers said they are unable to complete their caseloads even by working more than the standard 37.5 hours a week.

Representative Rothenburger commented that those who work in DCBS are stressed and overworked. The recommendations in this study are to be commended.

In response to questions from Representative Palumbo, Ms. Kennedy said the sufficient income requirement to adopt a child refers to having the means to cover household expenses like food and clothing. If a child has special needs, state funding is available. Federal funding is available under Title 4E. Program Review staff did not know of a required baseline income, but DCBS may be able to provide more information. Mr. Stevens said overtime begins after 37.5 hours have been worked in 1 week.

In response to a question from Senator Carroll, Ms. Kennedy said many of the delays in the adoption process occur in the court system. Often, biological parents participate in substance abuse treatment plans, experience setbacks, and return to treatment. Many adoptions are determined on a case-by-case basis. Mr. Stevens said according to the study survey, caseworkers reported the adoption process was too complicated and time consuming. Mr. Hall said that there was not enough information or data to determine where improvement to the process was needed.

In response to questions from Representative Bechler, Mr. Stevens said the slide referring to the number of children in foster care and the number of caseworkers shows the data for Kentucky only. Mr. Hall said DCBS may know the percentage of children who are initially reunited with their families and subsequently removed. AOC developed the forms mentioned in Recommendation 1.3. The Court Rules document, which was recently changed by the Kentucky Supreme Court, does not require that AOC forms be completed but does require all the information on the forms be provided. By law, a decision must be made in the child's best interest regarding placement. Reunification is the primary goal according to department policy.

Representative Bechler commented that in many cases, he understands why reunification is the primary goal, but it is troubling that the primary goal is not stated as what is in the best interest of the child. This often leads to adoption cases that last 7 to 10 years. Ms. Kennedy clarified that the standard in law says that what is in the best interest of the child is the goal.

Ms. Johnson said that this was the first review of this nature of the agency and the system in 11 years. The report reinforces much of the work and internal review that the cabinet has been doing. The reviews and recommendations align with the charge from

Governor Bevin and First Lady Bevin, who want to reform the foster care system to be a model for the nation.

The report has three themes: closer alignment with the courts and looking at how the agency is faring in achieving permanency outcomes for children, reviewing data, and being more transparent. The cabinet is very receptive to continuing to work with the courts to look at policies and to work on legislation that may be needed. Currently, the cabinet partners with the courts in many ways. There is a bimonthly meeting with the Chief Justice and cabinet secretary about the outcomes being reported for children in care, what is happening in the court process, and DCBS practices. It is a collaborative process to develop a performance improvement plan and response to the required periodic child and family services review. The courts also help the cabinet look at how children and families are being served in the system and what should be done to improve outcomes. Kentucky was one of a few states chosen for a three branch institute. The state interagency council is a multidisciplinary group that addresses issues that children face in Kentucky. The issues that have been presented in this report have been discussed at length with the courts.

The cabinet continues to refine the new methodology that was put in place to capture caseload numbers to be even more accurate. These data are currently available by county and region. The statewide report is used as a management tool by the regions for staffing issues. Workforce stabilization and support is a top priority as it impacts all outcomes within the foster care system. The cabinet revamped performance evaluation criteria for staff so that they are being more fairly evaluated on performance sensitive to their caseloads. The cabinet supports Recommendation 3.1 on the Diligent Recruitment Report and will work to refine the calculation method. The cabinet has worked hard to determine which supports are needed for foster families, including refining and expediting the process to become a foster parent. Work to streamline and improve the initial training requirements is underway. The DCBS management team has become very data driven. It has developed key performance indicators across all divisions and is developing ways to track retention. The cabinet continues to partner with Pastor DeForest Soaries Jr., keynote speaker at the Open Hearts, Open Homes event, to help recruit families. The cabinet has started sharing its diligent recruitment report with the contracted private childcare and placing agencies, which will allow them to be more effective at recruiting families.

The cabinet is developing its budgetary request, which will include a segment for workforce. Some of the recommendations in the report are already being addressed, such as staff workload and developing a more efficient process. The cabinet's chief information officer and the executive director of Administration and Technology Services and his team are exploring software and workforce solutions to help staff in doing their jobs. An RFP should be issued soon for software to allow field staff to gather information more effectively. By December, each region should have a rapid response team to address caseload concerns. The cabinet has met with a group of county attorneys to reinforce the best practice methodology across the state. In some areas, workers have a strong

relationship with the county attorney. Alternative work schedules in some areas are being considered to attract and retain staff and reduce the need for overtime. Retired law enforcement officers have been hired for a small pilot project to help with investigative work. Initial reports are encouraging. The department has worked with the Kentucky Employment Assistance Program to bring resources to staff. In Jefferson County, an onsite resource in the L&N Building for staff provides mindfulness exercises that are sensitive to the vicarious trauma that many staff experience. The cabinet is also looking into a better system to allow staff to have some administrative downtime. The cabinet plans to submit a reorganization plan, which will depend on the budget the cabinet receives. The reorganization plan would lift some of the administrative burden and add support service aides for caseworkers. The cabinet is also reviewing the Public Child Welfare Certification Program with universities across the state. The cabinet continues to look at enhancing training and has worked with Eastern Kentucky University to revamp and streamline the process. Through the Labor Cabinet, two new job classifications are being developed for apprenticeship opportunities. In order to get to the recommended standard caseloads of 17 or 18 per caseworker, the cabinet has looked at different ways to add staff while being sensitive to the fiscal constraints of the state. There may be some opportunity to have some geographical differences in pay to better manage the marketplace competition that is prevalent in certain urban areas.

In response to questions from Senator Carroll, Ms. Johnson said the cabinet is closely following a court case headed to the U.S. Supreme Court regarding Kinship Care. The Office of Legal Services in the secretary's office is analyzing the ruling and learning to which population it applies. The ruling treats relative caregivers as foster parents if the cabinet placed the child in the custody of the relative, retained custody of the child, or transferred temporary custody to the relative. The ruling does not apply to every relative caregiver. The cabinet is working to distribute clarifying information to staff for the public. Kinship care is up nationally and in Kentucky.

In response to questions from Senator Thomas, Ms. Caywood said the report determined 420 additional staff were necessary to attain the recommended caseload of 18 to every one caseworker. Mr. Stevens said 420 additional staff would cost approximately \$28 million. Ms. Johnson said that not every caseworker has a social work degree, but they are required to have a bachelor's degree.

In response to questions from Representative Palumbo, Ms. Johnson said there are approximately 1,800 caseworkers in the state. Noncapacity staff includes staff who are new and in training, on desk duty, or on family leave.

In response to questions from Senator Carroll, Ms. Johnson said adoptions are handled on case by case. Grandparents do not have legal rights in Kentucky. The cabinet is working to do more to support kinship caregivers.

In response to questions from Representative Bechler, Ms. Johnson said parent progress is determined on a case-by-case basis. Case plans are structured differently and the parents have different requirements they must meet. Caseworkers recommend whether a parent is or is not meeting the requirements. Ms. Caywood said the courts usually follow the caseworker's recommendation. Mr. Hall said a neutral move discussed in the staff presentation refers to a move that is court ordered. Ms. Johnson said the percentage of children who return to foster care after reunification with the family fails, which is a federal outcome measure, is 14.77. Ms. Johnson was said she was hesitant to say how much it would cost to implement all the report recommendations. Ms. Caywood said the Public Child Welfare Certification Program has existed for 20 years. Not every slot is filled in the program, though retention is stronger for participants. Ms. Johnson will provide the number of how many enroll and complete the program. There is recoupment of tuition and a stipend for those who do not complete the program, though interest is not charged. Ms. Johnson said much of the turnover the cabinet has is due to the workload and lack of support for staff. These issues are being addressed with the development of rapid response teams and the reorganization plan.

Ms. Stevens introduced Rachel Bingham, the executive officer of the Family and Juvenile Services Department. Ms. Stevens said that the current case management system was not set up to collect statistical data. In October, a pilot program began in Trimble County with a new case management system. The goal is to create an all-electronic court record. It will allow images to be accessed and allow orders to be indexed and searchable. Electronic filing is now statewide for adoption, termination, and parental rights cases and dependency, neglect, and abuse cases. This will give cabinet attorneys the ability to file in cases without traveling to the clerk's office. As part of a pilot project in the Jefferson County Court of Appeals, once a termination appeal has been filed, the clerk's office is scanning the data to transmit to the court. This will eliminate 30 to 60 days of paper moving back and forth. Utilizing the new case management system, work is being done on judicial dashboards, which will allow judges to view their own data.

The dependency, neglect, and abuse forms are developed by AOC and the cabinet. As of October 17, 2017, the Supreme Court entered an update to the Family Court Rules of Practice and Procedure that those forms will be mandatory statewide effective January 1.

Ms. Walker-FitzGerald said that since 2014 only seven states have seen a decline in the number of children in foster care, mostly due to funding being put into services. The lack of ability to gain accurate information has been a problem for years. Information is needed to know if what the courts are doing is working and whether the courts are complying with state and federal laws.

She said that she disagrees with Recommendation 1.1 of the report, which is that the period of temporary custody by the cabinet after a child has been removed from their

parents due to allegations of abuse and neglect be extended beyond 45 days. The length of time appropriate for adjudication and disposition has been studied extensively for more than 20 years. Studies have shown a direct correlation between timely court hearings and timely permanency for children. The National Council of Juvenile and Family Court Judges' 1995 resource guidelines, endorsed by entities such as the National Council of Chief Justices, the National Center for State Courts, and the American Bar Association, recommended that adjudication and disposition should occur within 60 days of the date of removal. It is not required that all issues be fixed within that time, but that an appropriate plan to do so is implemented.

She echoed the report's recommendation that the workforce of social services be increased. When fields are added to court forms, new duties are added to clerk's offices, many of which are understaffed.

If the court system is to work properly, quality representation for both parents and children is essential. The fee structure established in 1985 to pay district court attorneys \$250 per case has not changed. Family court attorneys are paid \$500 per case. The pay for these attorneys affects who is willing to accept these cases.

Counsel should be appointed for the first hearing, which studies indicate is the most important or at least one of the most important. Studies show that where an attorney is involved at the first hearing, the number of removals goes down, and that when children are removed from their parents they achieve permanency more quickly. This is easier to achieve in urban areas.

Salaries for judges also should be reviewed. Kentucky's judges are among the lowest paid in the country. Salary will have an increasing effect on whether qualified attorneys consider judicial careers. Judicial pensions have also been reduced.

She supports the Chief Justice's redistricting plan to provide family court to more areas. The permanency goal "emancipation" should be removed from the cabinet's regulations. It is not an approved permanency goal under the Adoption and Safe Families Act and it is not an acceptable goal for any child.

A judicial task force was formed in response to a request by the House Adoption Working Group for recommendations from AOC. The work group developed three recommendations for statutory changes. First, the number one issue raised by surveyed judges was the delays caused by concurrent criminal charges. Currently, adjudication of many cases is delayed due to criminal cases so that parents can testify in their of child dependency, neglect and abuse neglect cases. It was recommended that testimony by a parent accused of abuse or neglect shall not be admissible in any criminal proceeding for charges arising from the same occurrence, thus permitting the court hearing in the child protection case to move forward in a timely manner while permitting the parent to

participate fully in the child dependency, neglect, and abuse proceedings. Second, the judges would like to modify the current statute governing venue for dependency cases to add that a petition may be filed in the county where the child ordinarily resides or will reside. Third, the judges would like to modify the current statutes on service of parents to be consistent with each other to lessen confusion, increase uniform application across the state, and ensure service efforts are made in the manner most likely to provide expeditious and actual notice of the proceedings to parents.

The judges made several systemic recommendations: implement the judicial redistricting plan; increase funding for intensive in-home services and programs such as family preservation and family reunification; enforce the DCBS operating procedure for family service workers to complete the presentation summary packet no later than 10 working days following a judgement of termination of parental rights; have more concurrent planning; and continue working with the community to develop resources that allow parents to spend time with their children.

In response to a question asked earlier by Senator Carroll, Ms. Walker-FitzGerald said parents are sometimes given too many chances at redemption. This is often due to training and retention of both social workers and judges. A new social worker or judge is more likely to remove a child just to be safe. There is also more reluctance to terminate, even when the evidence is clear to do so. Retention affects the quality of decisions made.

In response to a question from about Representative Bechler about parents having an attorney at the first meeting leading to fewer children being removed, Ms. Walker-FitzGerald said the system has checks and balances. There is a social worker making a recommendation, the child's attorney, the county attorney, and a judge. Children are often removed when they do not need to be. If the parent's attorney can have services put in place immediately, the child may not need to be removed.

Senator Carroll commented that this is a growing issue. Hopefully the efforts being undertaken can make the system better. Resources are needed; it is a dilemma faced at every level of government. Due to the loss of a quorum, a vote will not be taken to adopt the report at this time.

He said that the investigation into the Perdue Pharma settlement has been postponed due to a lawsuit that was filed. The committee will not meet in December.

The meeting adjourned at 12:12 PM.