2017 Update On The Child Fatality And Near Fatality External Review Panel

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Program Review And Investigations Committee

Project Staff

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Acknowledgments

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Summary

The Program Review and Investigations Committee is required by statute to annually monitor the operations, procedures, and recommendations of the Child Fatality and Near Fatality External Review Panel. The panel, attached administratively to the Justice and Public Safety Cabinet, conducts comprehensive reviews of child fatalities and near fatalities resulting from abuse or neglect.

KRS 620.055 establishes requirements for filling membership vacancies, meeting at least quarterly, monitoring attendance of members, posting updates, issuing summary reports of meetings, publishing an annual report each December 1, and following records retention and destruction policies.

The panel has timely complied with all statutory requirements with two exceptions. Its 2017 annual report was published on December 8 rather than December 1. A membership vacancy went unfilled after numerous attempts to contact the responsible, but possibly inactive, association.

Recommendation

The General Assembly may wish to specify a procedure for filling the vacancy of a voting member when it cannot be filled in the same manner as the original appointment.

Three of the nine recommendations in the panel's 2016 annual report resulted in actions by the General Assembly, the Kentucky Hospital Association, or the Administrative Office of the Courts during 2017.

2017 Update On The Child Fatality And Near Fatality External Review Panel

According to KRS 620.055(16) and KRS 6.922, the Program Review and Investigations Committee shall annually "monitor the operations, procedures, and recommendations" of the Child Fatality and Near Fatality External Review Panel and report its findings to the General Assembly. The panel, which is attached administratively to the Justice and Public Safety Cabinet, conducts comprehensive reviews of child fatalities and near fatalities resulting from abuse or neglect.

In 2017, the panel reviewed 150 cases from fiscal year 2016, including three from the Department for Public Health. The cases comprised 59 fatalities and 91 near fatalities.¹

Conclusions

This report has two conclusions.

- The panel is in compliance with all but two of the statutory administrative requirements. First, the 2017 Annual Report was published on December 8 rather than December 1. Second, a panel seat has been vacant since June 30, 2017. Nominations must come from the Kentucky Association of Addiction Professionals, which has not responded to requests for nominations from the panel and the attorney general's office.
- Three of the nine recommendations in the panel's 2016 annual report resulted in actions by the General Assembly, the Kentucky Hospital Association, or the Administrative Office of the Courts during 2017.

Relationship Of Panel To Justice And Public Safety Cabinet

A 2014 memorandum of understanding describes the panel's administrative attachment to the Justice and Public Safety Cabinet. A copy is in Appendix A. According to the memorandum:

- The panel was established to be external to the Justice and Public Safety Cabinet and independent of the executive branch.
- The cabinet affirms the importance of the panel's work and that its work shall be carried out independently and without any interference by the cabinet.
- The cabinet pledges not to interfere in any way with the discretion, judgment, or operation of the panel or its members in the conduct of their duties.
- The panel authorizes the panel's chair to keep the cabinet secretary sufficiently apprised of the panel's administrative actions, including, but not limited to, budget requests and financial expenditures.

Compliance With Statutes

Membership

KRS 620.055(2) requires that the panel have five ex officio nonvoting members and 15 voting members. Three of the voting members are panel members based on their position, 10 are appointed by the attorney general, one is appointed by the chief justice of the Supreme Court, and one is appointed by the secretary of state.

The panel's membership is in compliance with one exception. The addiction specialist's term ended June 30, 2017. As of December 2017, a replacement had not been appointed. Three nominations must come from the Kentucky Association of Addiction Professionals, with final appointment by the attorney general (KRS 620.055(2)(p) and (3)(b)). The association has not nominated anyone to fill the vacancy.

The panel and the attorney general's office attempted to contact association officials numerous times to notify them of the vacancy but received no response.² At its July 2018 meeting, the panel noted that the association may be inactive. The panel member from the Kentucky Association of Regional Mental Health and Mental Retardation Programs has volunteered to find recommendations to submit to the attorney general's office because professionals in those fields overlap. However, KRS 620.055(3)(b) does not include language allowing the appointing authority to fill appointments if no nominations are made by the entity specified in statute. KRS 620.055(7) does give the panel authority to "seek the advice of experts," which could allow for an addiction specialist to advise the panel. This is different from having such a person as a panel member. An adviser would not be a voting member and would not be covered under KRS 620.055(5), which allows panel members to be reimbursed for expenses.

The recommendation below covers appointments to the panel, but the General Assembly may wish to consider applying it to other statutes that provide for nominations or appointments to be made by entities specified in statute.

Recommendation

The General Assembly may wish to specify a procedure for filling the vacancy of a voting member when it cannot be filled in the same manner as the original appointment.

Meeting Schedule

KRS 620.055(4) requires the panel to meet at least quarterly. It may also meet upon the call of the panel chair. The panel met this requirement by meeting eight times in 2017, including a 3-day session in April and a 2-day session in November.

Meeting Attendance

KRS 620.055(3)(d) requires that if a voting panel member is absent from two or more consecutive, regularly scheduled meetings, the member shall be considered to have resigned and shall be replaced. In practice, it is unclear how the voting members who are on the panel based on their position could be replaced. For this report, only the 12 appointed voting members were considered. The panel exempts excused absences, such as for illness or emergency schedule conflicts. Given this panel policy, all appointed panel members were in compliance.

Posting Updates

KRS 620.055(8) requires the panel to post updates on the Justice and Public Safety Cabinet's website after each meeting. These must include case reviews, findings, and recommendations. The posting of minutes was discontinued in 2016. Although statute does not specifically require that minutes be posted, such posting provides further transparency.

The Program Review and Investigation Committee's 2016 Update recommended that the panel reconsider posting all minutes to the website. In response, the panel has timely posted its 2016 and 2017 minutes.

Summary Reports

KRS 620.055(9) requires the panel to report a summary of its discussions, along with any proposed or actual recommendations, to the Interim Joint Committee on Health and Welfare and Family Services monthly or at least at the request of the committee co-chair. The committee co-chairs and the committee staff administrator have timely received reports via email when requested.³

Annual Report

KRS 620.055(10) requires the panel to publish an annual report by December 1 that recommends system and process improvements to help prevent child fatalities and near fatalities that are due to abuse or neglect. The report shall be submitted to the governor, the secretary of the Cabinet for Health and Family Services, the chief justice of the Supreme Court, the attorney general, and the director of the Legislative Research Commission for distribution to the Interim Joint Committee on Health and Welfare and Family Services and the Interim Joint Committee on Judiciary.^a The panel published its 2017 annual report on December 8, 2017. Copies were timely distributed, including to all members of the Interim Joint Committee on Health and Welfare and Family Services. The Interim Joint Committee on Judiciary prefers to access the report from the Legislative Research Commission website as needed.⁴

^a One of the committee names has changed. In the statute, it is the Interim Joint Committee on Health and Welfare.

Destruction Of Records

KRS 620.055(11) requires that, at the conclusion of the panel's examinations, all copies of information and records involving individual cases shall be destroyed by the Justice and Public Safety Cabinet.

The panel has adopted a 5-year retention schedule. The schedule mirrors the practice of other Kentucky agencies tracking similar data and the practice of similar panels in other states. The panel maintains in its SharePoint site the documents it has created for its own use, such as panel member electronic discussions.

The panel continues its established policy of shredding paper documents. Panel staff schedule with the state contractor a special pickup of documents to be shredded. The courier signs a form attesting to the pickup and shredding process.

Panel Staffing

In FY 2017, panel staff were one full-time staff attorney and one part-time executive staff adviser, whose salaries were paid from the panel's budget. Beginning in FY 2018, panel staff was one full-time executive staff adviser, paid from the panel's budget. An intern during the 2017 spring semester was paid a stipend through the Association of Independent Kentucky Colleges and Universities.⁵ The part-time assistant position, funded by the Justice and Public Safety Cabinet, will be filled once the position's responsibilities are revised.

The panel also uses part-time analysts who review all case records and prepare summaries to facilitate the panel review process. The analysts are

- three forensic medical case analysts provided through a contract with the University of Louisville, and
- two social work case analysts with whom the panel contracts directly as personal service contractors.

All contracts are paid through the Justice and Public Safety Cabinet's baseline funding.⁶

Funding And Expenditures

The panel receives its funding through the Justice and Public Safety Cabinet and does not have its own operating budget. Funding runs through the general fund baseline budget.⁷ The panel requested \$420,000 for FY 2017.⁸

The panel's expenditures were \$274,536.38 for FY 2017. Of this total, \$217,766—nearly 80 percent—was for compensation for panel staff, the case analysts provided though the University of Louisville contract, and the social work case analysts. The second largest expenditure, nearly \$41,000, was to the Commonwealth Office of Technology for development of the data tool described below.⁹

Case Review And Data Tool Categories

The panel's confidential, web-based SharePoint platform provides panel members access to case records and other relevant information. The Department for Community Based Services (DCBS) initiates case reviews by uploading its case records to the site. The panel's case analysts review the records and prepare case summaries.¹⁰ The analysts give oral case presentations at meetings, and the panel then conducts thorough discussions, using an evolving data tool that also facilitates data analysis. An overview of the data tool is in Appendix B.

The panel determines specific findings for each case by designating the type of case, identifying the risk factors, and making a final determination of whether abuse or neglect was involved. The panel's case volume is large, and in the past it could not review the entirety of a fiscal year's case data. It instituted an expedited case review process in which panel members were divided into four groups. Each group reviews a set of cases, makes a decision on each, and then presents them to the entire panel for final review and vote. This process enabled the panel to enter complete data for an entire fiscal year.

Two federal representatives observed the panel's 3-day meeting in April 2017 as part of Kentucky's participation in a national initiative for the prevention of child fatalities. The representatives suggested modifying the list of risk factors in the panel's data tool by determining which family characteristics rise to the level of a risk.¹¹ The panel modified its list accordingly. The representatives commented that many of the best practices they advocate were already part of the panel's process.¹²

Action In 2017 On The Panel's 2016 Recommendations

The panel's 2016 annual report contained nine recommendations, shown in Table 1. Three resulted in action taken in 2017, including one action taken by the General Assembly. KRS 199.466 now allows a parent or legal guardian to obtain a background check of a potential caregiver from the Cabinet for Health and Family Services' child abuse and neglect registry records.

Kentucky."

Status Of Recommendations From Panel's 2016 Annual Report		
2016 Recommendation	2017 Implementation	
Imple "Allow a parent or legal guardian to request background check of the child abuse and neglect registry records when employing a child care provider for a minor child."	mented KRS 199.466 allows a parent or legal guardian to obtain a background check from the Cabinet for Health and Family Services.	
Hospitals should be required/encouraged/ incentivized to model safe sleep and provide face- to-face education regarding safe sleep and abusive head trauma prevention education to parents of newborns.	The Kentucky Hospital Association (KHA) issued a letter to all Kentucky hospitals stating, "After thoughtful consideration the KHA Board of Trustees is proposing members review their current practices and implement the following recommendation. The Kentucky Hospital Association recommends Kentucky hospitals provide evidence informed education addressing abusive head trauma and safe sleep practices to the parents of newborns and recommends hospitals follow model safe sleep practices within birthing centers and NICU [neonatal intensive care] units."	
Judges who hear dependency, neglect and abuse (DNA) cases should use the Administrative Office of the Courts (AOC) mandated DNA series forms and should adhere to the statutory timeframes required in these cases. To the extent practicable, AOC should audit the judiciary's compliance in these cases and provide a reporting component to judges.	AOC has provided judges with additional training to encourage the use of the mandated DNA series forms.	
	lemented	
"Enhanced penalties for driving under the influence (DUI) with a minor in the vehicle. The Kentucky Department of Transportation and Kentucky State Police should collect data regarding the incidence of DUI with children in a vehicle and develop an awareness campaign regarding the outcomes and need for bystanders to intervene."	The panel is unaware of any steps taken related to these six recommendations.	
"The Kentucky Hospital Association and Kentucky Chapter of the American Academy of Pediatrics should promote awareness and use of the two Pediatric Forensic Medicine centers within		

Table 1 Status Of Recommendations From Panel's 2016 Annual Report

*A JC3 is a Justice and Public Safety Cabinet form used by law enforcement. Source: Kentucky. Child Fatality and Near Fatality External Review Panel. 2017 Annual Report. P. 19.

Panel's 2017 Annual Report Recommendations

The panel's 2017 annual report contains three recommendations, one of which has two subrecommendations:

I. Address the substance abuse epidemic affecting families across the state.

- A. ... vigorous enforcement (and clear sanctions) for all providers of MAT [Medication-Assisted Treatment] to ensure that the required counseling and behavioral therapy components are part of the treatment provided. ... MAT providers must be educated on monitoring and when and how to notify DCBS when they believe a child may be in danger. Further education must be disseminated regarding the grave effects of these medications in the hands of a small child.
- B. ... full implementation of Family Court Drug Courts throughout Kentucky.
- II. Provide additional funding to the Department for Public Health.

III. Provide additional funding for the Department for Community Based Services.¹³ Implementation of the above recommendations will be addressed in the panel's 2018 annual report.

¹ Kentucky. Child Fatality and Near Fatality External Review Panel. 2017 Annual Report. P. 2.

² Susan Rieber, Office of the Attorney General. Email to Elisha Mahoney. Oct. 9, 2017; Elisha Mahoney. Email to Steven Durkee. Aug. 4, 2017.

³ Lyn Bruckner. Email to Colleen Kennedy et al. April 20, 2017.

- ⁴ Katie Comstock. Email to Colleen Kennedy. June 7, 2018.
- ⁵ Elisha Mahoney. Email to Colleen Kennedy. June 13, 2018.

⁸ Roger Crittenden. Email to Colleen Kennedy. May 21, 2018.

⁹ Elisha Mahoney. Email to Colleen Kennedy. July 11, 2018.

¹⁰ Kentucky. Child Fatality and Near Fatality External Review Panel. 2017 Annual Report. P.4.

¹¹ Kentucky. Child Fatality and Near Fatality External Review Panel. Minutes of April 25, 2017 meeting.

¹² Colleen Kennedy. Notes from April 25, 2017 meeting of the Child Fatality and Near Fatality External Review

Panel; Kentucky. Child Fatality and Near Fatality External Review Panel. 2017 Annual Report. P. 4.

¹³ Kentucky. Child Fatality and Near Fatality External Review Panel. 2017 Annual Report. Pp. 5-8.

⁶ Ibid.

⁷ Miriam Fordham. Email to Colleen Kennedy. June 25, 2018.

Appendix A

Memorandum Of Understanding Between The Justice And Public Safety Cabinet And The Child Fatality And Near Fatality Review Panel



STEVEN L. BESHEAR GOVERNOR COMMONWEALTH OF KENTUCKY JUSTICE AND PUBLIC SAFETY CABINET OFFICE OF LEGAL SERVICES 125 HOLMES STREET, SECOND FLOOR FRANKFORT, KY 40601 (502)564-3279 FAX: 502-564-4840 www.justice.ky.gov J. MICHAEL BROWN SECRETARY

MEMORANDUM OF UNDERSTANDING BETWEEN THE JUSTICE AND PUBLIC SAFETY CABINET AND THE CHILD FATALITY AND NEAR FATALITY REVIEW PANEL

Pursuant to KRS 620.055, the Child Fatality and Near Fatality Review Panel (hereinafter "the Panel") is an external panel made up of 20 members that conducts comprehensive reviews of child fatalities and near fatalities and issues case reviews, findings, and recommendations for improvement to help prevent child fatalities and near fatalities due to abuse and neglect. The Panel operates as an independent entity attached to the Justice and Public Safety Cabinet (hereinafter "the Cabinet") solely "for staff and administrative purposes." The Cabinet recognizes that in order to effectively perform its functions, the Panel must operate independently. This Memorandum of Understanding sets forth the formal agreement governing the manner in which potential conflicts of interest and other problems that could arise within this structure will be avoided.

1. The need for the Panel to be able to conduct closed sessions effectively

There are several agencies within the Justice and Public Safety Cabinet that may have had involvement in cases that are reviewed by the Panel. The Panel is permitted to conduct closed sessions pursuant to KRS 620.055(12) to review and discuss individual cases. Because of the amount of work necessary to prepare for and conduct Panel meetings, individuals employed by the Cabinet perform tasks for the Panel and may be asked to attend closed sessions. Similarly, some Panel members are employees of the Cabinet and may be a part of closed session discussions. The Cabinet and Panel agree that any discussions that occur during closed sessions will not be divulged by Cabinet employees who were present during closed sessions except as outlined in KRS 620.055(12).

2. The need for an independent review function and how independence will be maintained

The Panel was established to be external to the Justice and Public Safety Cabinet and independent of the executive branch. It was assigned the tasks of reviewing cases, issuing



KentuckyUnbridledSpirit.com AN EQUAL OPPORTUNITY EMPLOYER M/F/D findings, and making recommendations for system and process improvements. The Panel's case reviews could involve scrutinizing the actions of employees of the Cabinet as well as other employees of state and local government. The Cabinet affirms the importance of the Panel's work and that its work shall be carried out independently and without any interference by the Cabinet.

The Panel's independence is guaranteed by KRS 620.055 and in the following ways:

- The Justice and Public Safety Cabinet affirms the importance of and guarantees the independence of the Panel's functions.
- The Panel is described in KRS 620.055 as "external" and "attached to the Justice and Public Safety Cabinet for staff and administrative purposes."
- The Panel is a multi-disciplinary group composed of individuals from each branch of state government, from local government, from private non-profits, from universities, and from the community, each of whom have experience in subject matter areas relevant and useful to the Panel.
- None of the Panel members are appointed by the Governor or Justice Cabinet Secretary, nor can they be removed by the Governor or Justice Cabinet Secretary.
- Neither the Panel nor its chairperson is made responsible to the Justice Cabinet Secretary in KRS 15A.020, 31.010, or 620.055. Rather, KRS 620.055 gives the Panel independent responsibilities and authority to carry out those responsibilities.
- The Cabinet pledges not to interfere in any way with the discretion, judgment, or operation of the Panel or its individual members in the conduct of their duties.
- Any employee of the Cabinet who is assigned to assist the Panel in carrying out its duties, whether that assignment is temporary or permanent, will perform his or her responsibilities relating to the Panel solely under the direction of the chair of the Panel. The Cabinet will not interfere in any way with the employee's performance of work for the Panel.
- The Panel will have control over its information technology equipment and use. The Panel will work directly with the Commonwealth Office of Technology to ensure that the Panel's information technology is in conformity with the requirements of state government. The Cabinet and the Panel will take all necessary steps to ensure that reasonable procedures are in place to maintain the confidentiality of all records that are confidential under state and federal law. The Cabinet will destroy all copies of information and records provided to the Panel in accordance with the requirements of KRS 620.055(11).
- The Cabinet will not require the use of letterhead that represents the Panel to be a part of the Cabinet. Rather, the Panel will use a suitable letterhead that reflects its position as an independent entity with independent authority and responsibilities.

3. Administrative relationship

The Panel is "attached to the Justice and Public Safety Cabinet for staff and administrative purposes." KRS 620.055(1). The Panel and Cabinet will work together to ensure a transparent, efficient, and accountable administrative process consistent with the provisions for confidentiality of case records pursuant to other state and federal law.

KRS 620.055 does not require the Panel to report to the Cabinet; however, the Cabinet and Panel agree that there is a need for administrative information to be provided to the Cabinet by the Panel. The Panel authorizes the Panel's Chair to keep the Cabinet Secretary or the Cabinet Secretary's designee sufficiently apprised of the Panel's administrative actions, including, but not limited to, budget requests and financial expenditures. Providing this information shall in no way be deemed to reduce the Panel's independence; rather, this reporting is necessary to allow the Cabinet to perform its fiscal responsibilities and other obligations owed to the citizens of the Commonwealth.

The Chair of the Panel will give advance notice to the Cabinet Secretary or the Cabinet Secretary's designee of any appearances by a representative of the Panel to testify before a legislative or other policy-creating body. The notice will be provided in a manner that will foster quick communication, but will not disturb the Panel's independence.

4. Budget matters

The Panel is attached to the Cabinet for staff and administrative purposes. The Panel's budget request will be provided to the Cabinet in the fall prior to the budget session of the General Assembly on a date and format to be required by the Cabinet. The Cabinet will operate as a pass-through and will submit the Panel's budget to the Office of State Budget Director without prioritization. The Cabinet recognizes that the Panel may have to demonstrate its budgetary needs to the executive branch and to members of the General Assembly.

5. The need to establish a good working relationship

The Cabinet recognizes the panel's need for independence and is fully dedicated to the mission of the Panel. The Panel members and Cabinet employees who are involved with or may appear before the panel agree to work together on various matters that may arise. At all times, efforts will be made to maintain a civil and professional working relationship between the Panel and the Cabinet.

23/2014 J. Michael Brown

A. Michael Brown Secretary Justice and Public Safety Cabinet

Roger Crittenden Date Chair Child Fatality and Near Fatality Review Panel

Appendix B

Data Tool

The detailed data tool has 22 elements, which are listed below. For each element, there are multiple items. The following table is intended to be illustrative; it does not cover everything included in the data tool.

	Element	Examples Of Items Included
1	Case Information	Year, fatality or nonfatality, associated cases, event synopsis
2	Child Information	Name, gender, age, ethnicity, county, date of injury or death
3	Prior History With DCBS*	Recent history details, number of investigations, prior removals from home
4	Case Review	Suspected perpetrator, caregiver, agencies involved, child risk factors (such as disability), substances that apply to baby's toxicology screen
5	Family/Household Information	Risks (criminal history, domestic violence + 8 others)
6	Healthcare Providers	Health care issues prior to event (11 listed), inconsistent care, medical symptoms of possible abuse (11 listed), medical provider suspected possible abuse
7	Birth Hospitals	Select from list of birth hospitals, 10 questions to answer
8	Education/Child Care	Provider, issues
9	Law Enforcement/Military/CIC**	Issues, family contact with law enforcement
10	Coroner	Scene investigation performed + 6 other items
11	DCBS*	Dates investigation initiated and completed, issues
12	Neighbor/Bystander/Family	Concerns reported, details of concerns
13	Substance Abuse By Caregivers	In substance abuse program + 5 other items
14	Substance Abuse By Child	In substance abuse program + 3 other items
15	Mental Health Of Caregiver	Caregiver assessed for cognitive issues + 5 other items
16	Mental Health Of Child	Child on medication + 4 other items
17	Court System	Prior history, family court involvement, issues
18	Overall Case Positives	Quick DCBS response*
19	Family Characteristics	Criminal history, substance abuse by caregiver, family violence + 37 other items

	Element	Examples Of Items Included
20	Categorization (by analyst before	Full list: abusive head trauma, apparent murder/suicide, blunt
	discussion by panel)	force trauma—not inflicted (farm machinery, ATV, fall), blunt
		force trauma—not inflicted in motor vehicle crash, burn,
		carbon monoxide, drowning/near-drowning, failure to
		thrive/malnutrition, gunshot (accidental), gunshot (homicide),
		natural causes/medical diagnosis, neglect, other,
		overdose/ingestion, physical abuse, sexual abuse/human
		trafficking, smoke inhalation/fire, sudden infant death in
		infancy (SUDI)/near-SUDI/apparent life-threatening event,
		suicide (child), traumatic asphyxia, undetermined (cause of
		death or near-death event)
21	Other Qualifiers	Full list: apparently accidental, manner undetermined/foul play
		not ruled out, potentially preventable
22	Panel Determination	Full list (space included for "missed opportunities"): abusive
		head trauma, neglect (general—can include leaving child with
		unsafe caregiver), neglect (impaired caregiver), neglect
		(inadequate/absent child restraint in motor vehicle), neglect
		(medical), neglect (unsafe sleep), neglect due to unsafe access
		to deadly/potentially deadly means (includes ingestions, injury
		due to child access to gun, unsafe access to ATV, farm
		machinery, etc.), no abuse or neglect, other, physical abuse,
		sexual abuse, supervisory neglect, torture.

*DCBS=Department for Community Based Services. **CIC=Crime Information Center Source: Elisha Mahoney. Email to Colleen Kennedy. June 13, 2018.