

PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

Minutes of the 6th Meeting of the 2020 Interim

November 13, 2020

Call to Order and Roll Call

The 6th meeting of the Program Review and Investigations Committee was held on Friday, November 13, 2020, at 1:00 PM, in Room 171 of the Capitol Annex. Representative Lynn Bechler, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Danny Carroll, Co-Chair; Representative Lynn Bechler, Co-Chair; Senators Karen Berg, Tom Buford, Michael J. Nemes, Reginald Thomas, Stephen West, Whitney Westerfield, and Phillip Wheeler; Representatives Chris Fugate, Al Gentry, Kim King, Adam Koenig, Ruth Ann Palumbo, Steve Riley, and Walker Thomas.

Guests: Melissa Currie MD, Norton Children's Hospital Pediatric Protection Specialists; and Dawn Blair, Assistant Hardin County Attorney

LRC Staff: Gerald Hoppmann, Committee Staff Administrator; Greg Daly; Chris Hall; and Joel Thomas; and Elizabeth Hardy, Committee Assistant

Minutes for October 15, 2020

Upon motion by Senator Carroll and second by Senator Wheeler, the minutes for the October 15, 2020, meeting were approved without objection.

Selection of Study Topics

Representative Bechler announced that the selection of study topics would be moved from its place on the agenda and considered next.

Representative Koenig moved, seconded by Senator Nemes, that the committee study the process by which judicial contracts are awarded. The motion carried.

Representative Bechler asked for a motion from a House minority member, but there was none.

Senator Carroll moved, seconded by Senator Nemes, that the committee study the executive branch's handling of the COVID-19 pandemic, with specific areas of focus to be determined. The motion carried.

Senator Berg moved, seconded by Senator Thomas, that the committee study broadband infrastructure in the state—where we are and what we need to do to move forward. The motion carried.

Child Fatality and Near Fatality External Review Panel

Members of the Child Fatality and Near Fatality External Review Panel presented information about the panel's work and recommendations. Dr. Currie explained that the multidisciplinary expert panel reviews child fatalities and near fatalities that are suspected to have resulted from child maltreatment. It is an independent body attached to the Justice and Public Safety Cabinet for administrative purposes and has a memorandum of understanding with the cabinet. She described the process of appointment to the panel and the panel's meeting history.

Dr. Currie explained that the panel reviews cases that are referred by the Department for Community Based Services (DCBS) or the Department for Public Health, regardless of whether child maltreatment was substantiated. She described the process of reviewing cases in SharePoint, as well as the use of a full-time analyst and contract nurse analysts to review case information. The panel's data collection tool also resides in SharePoint, which consists of 22 data fields. For example, the panel determines risk factors, presence of child abuse or neglect, whether the incident was accidental or possibly preventable, and whether malfeasance was not ruled out. In FY 2018, there were 136 cases, including 54 fatalities. The panel projects that there will be 182 cases reviewed from FY 2019.

Dr. Currie said the panel looks at accountability without blaming individuals and focuses on systems issues that might be addressed. She noted that frontline staff are often dealing with incomplete information at the time and have limited resources.

Dr. Currie said the statute requires the panel to produce an annual report by the end of November, but it has requested additional time in the past couple of years in order to include reviews of as many of the cases as possible. The reports include recommendations for prevention strategies.

Dr. Currie described a near fatality involving a 3-year-old child who apparently had accidentally overdosed on a parent's prescribed Suboxone that was left accessible to the child. The panel determined that this was a potentially preventable case of caregiver neglect related to unsafe access to a deadly substance. Dr. Currie said cases involving overdose or ingestion of substances had increased over the past few years. She discussed several legal and illegal substances and noted that Suboxone, often used to treat opioid addiction, was the most frequent. The poison control center has records of approximately nine times as many ingestion cases as the panel has seen. She said that some of these cases were not reported to DCBS because they were truly accidental, but it is likely that there is significant underreporting in other situations.

Dr. Currie listed some recommendations that the panel has made related to overdoses. She described potential recommendations related to safe sleeping, babies with prenatal drug exposure, drug testing of caregivers, training for coroners and law enforcement, awareness of child head trauma, and encouraging everyone to report child maltreatment.

In response to a question from Representative King about why the child in the example case was removed from the mother's home and placed with the father, who had a history of substance abuse, violence, criminality, and substantiated child maltreatment, Ms. Blair explained that sometimes DCBS places a child without court involvement, which is what happened in the example case. The panel looks at these cases and works with DCBS to prevent such issues in the future. Dr. Currie said that this case would be in the annual report as a DCBS issue. Representative King requested that the panel keep the committee informed about those kinds of issues.

In response to questions from Representative Bechler, Dr. Currie clarified that "supervisory neglect" in the presentation meant neglect by the caregivers. She explained that cases usually reach the panel after a significant delay. If the child had still been with the father at the time of review, the panel would have discussed with DCBS whether that was prudent. If it is too late to intervene in a particular case, the panel considers preventive recommendations.

In response to a question from Representative Thomas, Dr. Currie she said that in the cases reviewed by the panel, she was unaware of cases involving violence toward animals, but it is often seen in cases of severe child abuse. Ms. Blair said that in her practice, DCBS has often asked about and identified violence toward animals as a factor.

In response to a question from Representative Koenig, Dr. Currie explained that drug testing of caregivers could be done at the scene of a child death or shortly thereafter, but it takes some time to certify a near fatality, meaning drug testing cannot be done immediately. She said she would support drug testing of caregivers if it were obvious that a case involved a near fatality.

In response to questions from Representative Gentry, Dr. Currie said the number of overdose and ingestion cases has continued to increase since FY 2018. Ms. Blair said that in cases involving caregiver substance abuse, drug tests on children often come back positive even when they have not ingested substances. Ms. Blair explained that the statute specifies some professionals as mandatory reporters, but everyone is required to report reasonable suspicions of child maltreatment. The question is what constitutes a reasonable suspicion.

In response to questions from Representative Bechler, Dr. Currie said the number of cases overall has gone up. Some of that is due to an increase in Department for Public

Health referrals, most of which are sudden unexpected infant deaths with risk factors. There has been a modest increase in cases coming to the panel, but prior to the pandemic there had been an increase in the number of reports and substantiations coming through DCBS. She said it was not clear whether the pandemic would increase the number of maltreatment cases.

Senator Carroll asked if an open dialog exists with DCBS when an alarming issue is identified. Dr. Currie responded that such a dialog does exist with DCBS and law enforcement. She explained that dialog with law enforcement, other than the state police, is more difficult because there are many local agencies involved, and they are not directly represented on the panel. Ms. Blair agreed and said that as a result, the panel tries to make broad recommendations for law enforcement. Dr. Currie added that the panel has sometimes issued letters to agency leaders or judges requesting more information on specific cases. Senator Carroll said that the panel's feedback to individual law enforcement officers and social workers is important for their follow-up. He then shared an example from his experience as an investigator related to a Sudden Infant Death Syndrome case.

In response to further questions from Senator Carroll, Ms. Blair said that in order to keep the case reviews from being used in court, the panel redacts as much identifying information as possible in open meetings. Panel review often takes place before the criminal case has been completed. She expressed the opinion that a statute preventing the panel's findings from being used in criminal trials would be beneficial. Senator Carroll asked the panel members to suggest legislative language to limit the admissibility of that information.

In response to questions from Senator Berg, Dr. Currie said the panel has reviewed some gunshot cases. Peer-on-peer cases are not reported to DCBS or the panel, but young children who get access to a gun via supervisory neglect do go to the panel. Norton Hospital is seeing this as an issue. Ms. Blair said it has been addressed in previous annual reports. Dr. Currie and Ms. Blair agreed that they were unable to say what the effect would be of increasing the penalty for giving a minor access to a gun. Ms. Blair noted that there are questions about parental culpability when the minor is a teenager. Dr. Currie said looking at statistics from other states with different laws might show an association between accidental gunshot deaths and strictness of gun safety laws.

In response to questions from Senator Buford, Ms. Blair suggested clarifying that child maltreatment cases in civil court can proceed before a related criminal case is completed. She explained that the statute requires that civil cases related to dependency, neglect, and abuse be disposed of within 45 days, but some jurisdictions hold those cases beyond 45 days when there is an ongoing criminal case. Dr. Currie and Ms. Blair also recommended funding for family drug courts.

In response to a question from Representative Bechler, Ms. Blair said her impression was that the majority of the panel's cases go to civil court, but not many go to

criminal court. One difference is that criminal court requires identifying a specific perpetrator beyond reasonable doubt, but civil court does not. Dr. Currie said that of the cases identified at Norton Hospital as definitive physical abuse, which is not just fatalities and near fatalities, fewer than 10 percent go to criminal trial; some of the others might involve plea deals.

In response to a question from Representative Bechler, Dr. Currie said it was difficult to know how different agencies received the panel's recommendations, in part because of the volume of cases. She added that the panel has limited ability to follow up on its recommendations and cannot require agencies to comply. She also stated it is a challenge for the panel to develop meaningful recommendations. Dr. Currie believes that the size and composition of the panel is appropriate, and that the panel can add ad-hoc members if needed. Ms. Blair agreed.

Representative Bechler announced that there would be no further Program Review and Investigations Committee meetings in the 2020 Interim, but the committee is able to meet during legislative sessions if needed.

Senator Carroll thanked the staff and administrator and encouraged members to let the co-chairs know of any topics they would like to see addressed at a future meeting.

The meeting adjourned at 2:09 p.m.