

LEGISLATIVE OVERSIGHT & INVESTIGATIONS COMMITTEE

Minutes of the 5th Meeting of the 2021 Interim

October 14, 2021

Call to Order and Roll Call

The 5th meeting of the Legislative Oversight & Investigations Committee was held on Thursday, October 14, 2021, at 1:00 PM, in Room 131 of the Capitol Annex. Representative Jason Nemes, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Jason Nemes, Co-Chair Senator Danny Carroll, Co-Chair; Senators Jason Howell, Morgan McGarvey, Michael J. Nemes, Wil Schroder, Brandon J. Storm, Reginald Thomas, and Max Wise; Representatives John Blanton, Lynn Bechler, Ken Fleming, Joni L. Jenkins, Steve Riley, and Scott Sharp.

Guests: Dr. Melissa Currie, MD, FAAP, Chief, Norton Children's Pediatric Protection Specialists; Dr. Jamie Pittenger Kirtley, MD, FAAP, President, Kentucky Chapter of the AAP; Dr. Elizabeth Salt, PhD, University of Kentucky College of Nursing; Steve Shannon, Executive Director, Kentucky Association of Regional Programs, Inc.; Jason Hamilton, Executive Director, Justice and Public Safety Cabinet, Office of Financial Management Services.

LRC Staff: Gerald W. Hoppmann, Committee Staff Administrator; Committee Analysts William Spears, Chris Hall, Joel Thomas, Jeremy Skinner, Shane Stevens, Jacob Blevins, Ryan Brown, Taylor Johnston; and Ashley Taylor, Committee Assistant.

Minutes for September 16, 2021

Upon motion by Representative Bechler and second by Senator Nemes, the minutes for the September 16, 2021, meeting were approved without objection.

Staff Report: Kentucky Child Fatality And Near Fatality External Review Panel 2021 Update

Legislative Oversight staff members Chris Hall and Jeremy Skinner presented results of the annual evaluation of the Child Fatality and Near Fatality External Review Panel. The review included a summary of staff's work since 2014 and discussion of the

major objectives of the 2021 update. Staff also summarized three major finding areas and seven recommendations.

The draft report and presentation slides are available on the Legislative Oversight and Investigations Committee webpage.

Representative Blanton thanked staff for the presentation and asked how data are reported if there is not a standard or definition for reporting, which could cause over-reporting or under-reporting. Mr. Hall discussed the difference between a data tool and data dictionary, as well as the consistency by which data are used.

Representative Blanton stated that problems can be created when inconsistencies arise in what may or may not be reported. He gave his version of a solution, which is to set out standard definitions for what should be reported. He expressed concern that the panel may be missing important data that are needed to make its determinations.

Senator Carroll asked staff to elaborate more on his concerns regarding follow up and accountability to the findings and recommendations that the panel makes. The follow up to those findings and recommendations does not always seem to be specific and there is no accountability to ensure that agencies implement the panel's recommendations. He expressed concern that if this is happening with every case, the value of the panel is diminished.

Mr. Hall explained that the panel does not have statutory authority to enforce its recommendations. Because of the panel's current caseload, it does not have enough staff to follow up on recommendations. Senator Carroll discussed the possible need to follow up on this area to increase accountability. He requested comment from the panel on whether the legislature should include requirements that the panel's annual recommendations go to a specific cabinet or agency. Senator Carroll also suggested providing a 6-month deadline to finalize efforts and then report progress to the committee.

Representative Fleming stated there seems to be a systemic, organizational, structural issue in terms of accountability and how processes are set up. He asked staff to comment on the structure of what the panel does and what the Department for Community Based Services (DCBS) does. Mr. Hall briefly explained the DCBS process for receiving and investigating allegations and how fatality and near-fatality cases are then forwarded to the panel. Representative Fleming followed up by asking whether the panel's responsibilities should be realigned or readjusted. Representative Nemes commented that the panel could address questions related to its current statutory authority.

Representative Nemes called members of the Child Fatality And Near Fatality External Review Panel to testify: Dr. Melissa Currie, MD, FAAP; Dr. Elizabeth Salt, PhD;

Dr. Jamie Pittenger Kirtley, MD, FAAP; and Steve Shannon, Executive Director of the Kentucky Association of Regional Programs, Inc.

Dr. Currie stated the panel was created by executive order in 2012 and codified in statute in 2014. The purpose of the panel is to conduct comprehensive reviews of child fatalities and near fatalities suspected resulting from abuse or neglect. She described the panel as a panel of experts as opposed to a panel of citizen reviewers. Members are recommended by respective boards or governing bodies and several of the nominations are submitted to the attorney general who then makes the final appointments. Panel members are unpaid volunteers. Statute requires the panel to meet quarterly; however, because of the volume of cases, in 2020, the panel met 10 times, and in 2021, the panel has met each month so far to get through the cases that have been provided for review.

Dr. Currie clarified the panel's reporting has not been inconsistent, and that it has definitions for each of the data fields, which constitutes a data dictionary. She explained that within the data tool for every data field, definitions and guidelines are provided. She also stated that over the years data fields have been added to the data tool.

Dr. Currie mentioned their data tool has about 240 data fields compared to the National Child Fatality Review Panel data tool that has 2,500 data fields. Case analysts and panel staff pull and input data into the data tool using SharePoint. She explained that the 2,500 data fields from the national data tool are well beyond what they could do with a volunteer panel and only two case analysts. She wanted the committee to know that the panel has engaged with the National Child Fatality Review Panel and has taken its resources into account as they have created the structure and processes of the panel.

Dr. Currie noted referrals come from DCBS and include cases that involve fatalities or near fatalities alleged from abuse or neglect. Children who die unexpectedly for whom there was not a child protective services (CPS) report or an allegation of abuse or neglect do not get reviewed by the panel. Cases are also referred from the Department for Public Health's local fatality review teams. These teams include first responders, medical examiners, and the coroner. This is a team that reviews local child deaths in their community and that may have concerns about a specific case that may not have been reported to DCBS.

Dr. Currie explained the processes in which cases get referred to the panel. DCBS staff conduct their own investigation into the case and make their own substantiations independent of the panel, likewise the panel makes its findings independent of the findings of DCBS. She stated that there are some cases where DCBS has chosen to unsubstantiate a case and the panel has made a finding of abuse or neglect. In 2020, the panel reviewed 182 cases: 85 fatalities and 97 near fatal cases. This year the panel is on track to review about 200 cases.

Dr. Currie said that over the years the panel has made several recommendations and advocated for implementation but that the panel does not have the authority to hold any agency or legislative body accountable for implementing the panel's recommendations.

Dr. Currie summarized recommendations from the panel's 2020 annual report. Those recommendations are implementation of family drug courts, plans of safe care for neonatal abstinence syndrome or opioid withdrawal syndrome and substance-exposed infants, best practices for medication-assisted treatment, drug testing protocol at the time of a fatal or near fatal event, suicide prevention lifelines, and psychological autopsies. Dr. Currie stated that over the last year, the panel has partnered with the Kentucky Safety Prevention Alignment Network and developed the Child Home Safety Committee.

Dr. Salt explained the panel has cross-checked the current data tool with the national data tool. She said the panel reviews about 25 cases. With each data field requiring about one minute to enter, the panel would need five analysts to input data, but it currently only has two. She stated that the feasibility of using the national tool is a huge limitation.

Dr. Salt explained the panel has moved the data tool to REDCap, a software platform that allows each variable to have its own name from which it creates a data dictionary. This will allow for data analysis to be more easily implemented. Additionally, any specific variables the panel wants to include in the annual report could be easily procured.

In response to a question from Representative Nemes, Dr. Currie explained the purpose of the national data tool differs from the one used by the panel. She said that the national tool includes data from more than 40 states and is much more granular. The purpose of the national data tool is so that federal agencies can develop their own prevention services and recommendations. She noted that the panel would need its own investigators to collect and use that information because law enforcement and DCBS does not collect it.

Representative Nemes noted other states are probably reporting the information for their own best practices, in addition to comparing to other states nationally. He said that the Department of Revenue could probably provide family income data and that 250 fields out of 2,500 may not be capturing enough information for the panel to work effectively. Using the Department of Public Advocacy as an example, Representative Nemes said that it might work better if the panel could make budget requests to the General Assembly rather than to the Justice and Safety Cabinet. The panel could remain independent but have more autonomy with budget requests because they are the experts and know what could make the panel work more effectively.

Dr. Kirtley clarified that the Cabinet for Health and Family Services does input child fatalities into the national dataset, but it does not include near fatalities.

Representative Nemes expressed concern that the panel is not using the full amount of money being appropriated by the legislature. He also noted that since the panel is not part of the budgetary process to make direct requests to the General Assembly, there is significant room for improvement. He stressed the importance of the panel being able to independently make a budget request directly to the legislature, such as the Department of Public Advocacy, which is also within the Justice and Public Safety Cabinet.

Jason Hamilton, Director with the Office of Financial Services, Justice and Public Safety Cabinet, said that it is true that there is no separate line item appropriation for the panel, which can very valuable for funding decisions. He said that the panel is under the Office of the Secretary and competes with other programs for appropriations.

Representative Nemes responded by stating that it appears that the base funding for the panel is not all being allocated to the panel. He said he is also aware of competition at the Justice and Public Safety Cabinet and that some worthy programs are underfunded. He thinks there should be a line item of direct appropriation for the panel.

Senator Thomas asked if the number of child fatalities has declined in the 10 years the panel has existed. Dr. Currie responded that although they are not seeing a drop in numbers, and that cases are not getting any better, she did not know how much worse the situation might be without the panel making recommendations and working with DCBS.

Senator Carroll said that having a panel of experts that cannot maximize recommendations in a timely manner is a problem. He explained he was not placing blame on law enforcement or DCBS, but that it is a staffing issue, but that the shortages of social workers is significant and needs to be addressed. He stated that panel recommendations should be directly linked to someone who is accountable and can provide research. He said that he would be happy to sponsor a bill for drug testing in fatality and near fatality cases. He also said that the panel should make clear to the legislature, in writing, what it needs to be effective.

Dr. Currie replied that the panel would appreciate any additional legislative support. To help the panel be more effective with its work, Dr. Currie said that the panel could provide the legislature with a dollar amount needed to implement the panel's programs. She also explained that it would be helpful if the panel better understood what is feasible from a policy standpoint.

Steve Shannon, Executive Director, Kentucky Association of Regional Programs, Inc., discussed that the work of the panel needs authority to see that recommendations are implemented. He wanted to know who the panel should give its recommendations to so that they are carried out.

Senator Carroll responded that the panel should be independent, like public defenders. Senator Carroll noted that the efficiency of the panel is critical to maintaining accountability. He said that the panel will be a priority on his agenda, that the panel should be aggressive, and that it should go directly to the committee to make requests.

Mr. Shannon said that creating the panel as a stand-alone entity had been considered in the past, but it never happened.

Representative Nemes stated the panel has a contract that allows some independence from the cabinet. He said he would talk with Senator Carroll and Appropriations and Revenue Committee co-chairs Senator McDaniel and Representative Petrie about getting a line item. Mr. Shannon said that he did not want to cause a problem with the cabinet.

Senator Carroll responded he thinks it will be a priority for Secretary Kerry Harvey of the Justice and Public Safety Cabinet. He said that the processes are in place and the panel just needs more direct contact. Senator Carroll then asserted that he would file the drug testing bill next session. In response to a comment by Mr. Shannon, Senator Carroll wanted to know where there was opposition to moving forward with drug testing.

Representative Nemes said that after 10 years and a revamp of the committee, maybe it is time to give the panel some teeth.

Representative Blanton said he intends to give the panel his full support. He asked if the panel could provide the number of fatality and near fatalities for the years 2018 and 2019 because over the last 18 months, there has been an increase in crime and domestic violence.

Dr. Currie responded she did not have those numbers readily available, but she agreed that there has been an increase in crime and domestic violence.

Dr. Salt pointed out that COVID caused a significant decrease in reporting cases despite potentially increased case severity. She said that the systems for reporting child abuse were disabled by COVID and that the severity of cases may have increased because people were not responsive to the situations occurring.

Representative Nemes said that, as of September 23, 27 students from Jefferson County Public Schools were shot and killed and another 91 were shot and survived. He wanted to know if the panel examines those cases. Dr. Currie replied that the panel does not examine those cases because they are attributed to external factors.

Senator Carroll asked Dr. Currie if the way the panel selects cases is appropriate and credible. He said that DCBS chooses cases to be reviewed, but they are also the agency conducting the work.

Dr. Currie responded she thinks it works well because DCBS sends all of the fatality and near fatality cases, whether or not they substantiate the finding. She said that, to her knowledge, they are not missing any cases. She stated that the way DCBS assesses certain cases, like sleep-related deaths, rarely rises to the level of something the panel would review. She added that, in those instances, the panel only sees a small portion of cases.

Representative Fleming stated he thought that the General Assembly had failed the panel by not giving them the proper tools to be effective. He said that he will support Senator Carroll's bill on the House side and that the line-item budget idea needed to be examined further. Representative Fleming asked Dr. Currie to discuss what a psychological autopsy is and how it gets used.

Dr. Currie explained psychological autopsies are performed or led by someone with the appropriate training when a suicide is determined. A psychological autopsy involves talking to contacts of the deceased child to better understand if there were any concerns with abuse, mental health, or neglect that may have contributed to the suicide. The results are then shared with community organizations involved in suicide prevention so they can develop programs that can prevent suicide.

Dr. Kirtley responded that more information about how to intervene and reach children at risk of suicide will be better in the long term. She further stated that the number of unsuccessful suicide attempts has been staggering.

In response to a question from Representative Fleming, Dr. Currie said that she did not know if the panel has seen a completed psychological autopsy. The panel has discussed it, but has not determined a way to employ it.

Mr. Shannon responded he was not sure if there were many people in the state qualified to conduct psychological autopsies. He said that he was unaware of trainings or workshops for conducting psychological autopsies, but he thinks it is a missed opportunity.

Representative Bechler stated he questions whether a young person understands that suicide means death. He asked if there are studies showing what kind of information should be given to a young person and that addresses suicide, either in Kentucky or nationwide.

Mr. Shannon responded by saying there are suicide hotlines and groups that focus on teen suicide by going to schools and conducting suicide prevention presentations. He said that in June or July of 2022, the state will get a 988 number where people can call and be connected with a clinician. Mr. Shannon said the issue is whether at-risk kids are receiving the information they need.

Dr. Currie explained that there are data showing effective suicide prevention messaging. She stated that far more copycat suicides occur following a suicide where the media reports on the method. The panel is trying to educate the media about not reporting how a suicide was carried out. Dr. Currie maintained that children understand death and that adults sometimes do not understand the pain children are carrying. She said that it is important to empower peers to seek help for children who are in pain.

Representative Fleming asked Dr. Kirtley how much it would cost to hire a data analyst. Dr. Kirtley deferred to Elisha Mahoney, a staff person attending the meeting, who said she did not know but that their office was working on it.

Representative Fleming said that information would get to the Appropriations Committee and hoped to get the panel a line item in the budget.

Representative Blanton commented he does not understand why the child fatality rate and near fatality rate have been under-reported in the media despite increases in the last few years.

Dr. Currie responded that the panel only reviews cases where there are allegations of abuse and neglect and they only see a small portion of overall fatalities in children. She said that the panel does good work and has seen success, but any help with funding and staffing would be helpful.

Dr. Salt thanked the committee and said she looked forward to ongoing communication.

Representative Nemes mentioned that the family drug court in Jefferson County is the only one of its kind in the state and should be expanded. It has been privately funded, and he wanted to mention the people who helped, including the National Council of Jewish Women, Jane Emke, Representative Joni Jenkins, Senator Julie Raque Adams, and Franklin Circuit Court Judge Phil Shepherd.

Motion to adopt the Legislative Oversight & Investigations staff report made by Representative Blanton and seconded by Senator Carroll. The report was adopted by roll call vote and the meeting adjourned.