

**Court Improvement Program**  
**Joint Data, Statutes, and Rules & Federal Review Committee Meeting**  
**October 1, 2015**  
**Draft Minutes**

**Attendance:**

Judge Derek Swope (chair), Barb Baxter, Tabettha Blevins, Katherine Bond, Tamerra Gilmore, Kandi Greter, Alicia Hawkins, John Hedges, Mike Johnson, Eva Klain (by phone), Brandon Lewis, Alicia Mascioli (by phone), Brenda McPhail, Andrea Mitchell, Tina Payne, Peggy Rash, Cortney Simmons (by phone), Nikki Tennis, Laura Walsh, Bob Wilkinson, and Susan Wilmerink.

**1. Review of minutes**

Judge Swope called the meeting to order. After introductions, minutes for the joint Data and Federal Review meeting on July 17, 2015, were reviewed and approved.

**2. Data updates from the Court Services analysts**

Time to Petition for Termination of Parental Rights (TPR) performance measure – Nikki mentioned some difficulty in measuring the time to termination of parental rights (TPR) petition because West Virginia does not file a separate TPR petition; such a request is usually made in a motion. ABA consultant Eva Klain summarized her research on how other states handle TPR requests. Her summary of findings was in the meeting folders. Eva reported other states do not specifically reference the termination date when the statutory grounds are met. Some of the highlights were the following:

- Other states don't address the filing of the separate petition in statute, but allude to it.
- The petition can be filed when statutory standards are met (mandatory and discretionary).
- They imply some passage of time in other states.
- Florida addresses the petition; their law may something to consider if the practice change is made.
- Texas is the only other state with procedures similar to West Virginia's.

Judge Swope said that written motions for TPR are typically filed in his circuit, and he will share an example TPR motion for the committee to consider. Tabettha Blevins and Nikki said that not all circuits use written motions. Formal motions are not filed universally or set in the rules, although the Supreme Court of Appeals of West Virginia has reversed termination of parental rights when the record lacked a case plan or clear notice of TPR (see *In re C.M. and C.M.*, <http://www.courtswv.gov/supreme-court/docs/spring2015/14-0533.pdf>). Bob Wilkinson said someone needs to file a notice/motion to terminate the improvement period and/or parental rights, often by oral motions. Katherine Bond said in some places, a hearing is requested on disposition and there is an assumption that everyone understands it is a contested TPR hearing. Bob said

in other states, there are “no reasonable efforts” circumstances. He said in Cabell County, they have a separate hearing on whether to grant an improvement period. He suggested DHHR should request that no reasonable efforts be made in the petition if appropriate. Brenda McPhail mentioned that concurrent planning requires more than one plan (e.g., reunification and adoption). TPR may be one of them. John Hedges said he is skeptical about a rule change. He sees a reason for a notice (i.e., due process), but a statutory change would be cleaner, he said. Mike Johnson mentioned the national AFCARS meeting. He said everyone is struggling with concurrent planning with substance abuse. Nikki said Evan doesn’t seem to like TPR with a concurrent plan. Eva asserted it is really an issue of due process. She said the case plan or order may not be enough notice. In parents’ minds, they’re still pursuing reunification. A clear demarcation needs to be established to make sure respondents are aware that termination of their parental rights is being addressed. Judge Swope recommended drafting a rule to require a motion for TPR for the next meeting.

Web-based JANIS (Juvenile Abuse and Neglect Information System) – Tabby reported Court Services is now using a programming firm out of South Charleston called ASP. Several programmers mapped the desktop JANIS and are working on web-based JANIS. She said they will be reviewing the first forms (7 forms to start with), the petition and orders at critical stages of a child abuse/neglect case, this coming week. It is planned to be ready in January 2016, with roll-out phases for additional orders and pleadings, she said. Other phases will include connecting JANIS with the CAN database. She suggested that it is possible to develop bold order language for TPR and maybe a notice/motion in the future, to help with the Time to Petition to Terminate Parental Rights measure. The seven forms slated for the initial roll-out are the petition and pre-adjudication, preliminary hearing, improvement period, disposition, adjudication, and review orders.

#### Child Abuse and Neglect (CAN) Database

Tabby mentioned that Angie Saunders will be presenting at the new judges’ conference at the upcoming Fall Judicial Conference. She plans to include a FAQ sheet in the new judges’ materials and all judges’ envelopes with CAN database statistics.

Lastly, Tabby reported that most judges and their assistants are entering data faithfully into the CAN database, but eleven judges were still under the sixty percent (60%) reporting compliance, and one judge has never reported. She included in the meeting folders a CAN database summary on JA cases that she did for a recent data request.

### **3. Updates on Title IV-E Secondary Review, next round of Child and Family Services Reviews (CFSRs)**

Title IV-E Secondary Review - Nikki reported the P-rate is continually improving, now more than 50 percent. The rate is much higher with the current BCF administration than it was in the past. The latest update from Evan Steel of the Administration for Children and Families (ACF) consisted of some tips for applicable children in FACTS.

Child and Family Services Reviews (CFSRs) – The next CFSR will be in 2017. Brenda McPhail reported there will be a new format that is “data driven.” She said Kanawha County is always a location used in the review because it has the largest population. Additionally, Brenda announced her retirement slated for the end of October. The new CFSR Coordinator will be Rhonda LaRue. Brenda said Rhonda been through the CFSR process before, and there should be no problems with the changeover. The statewide self-assessment based on the Annual Protective Services Report (APSR) is due next year and they have chosen to do their own reviews. She said everyone will be getting together soon to talk about the systemic factors because the new instrument is more difficult. Training will need to take place, she said.

#### 4. Legislative proposals for 2016

The committee discussed legislative priorities for 2016.

- There are some **technical amendments needed for the reorganized Chapter 49**. Judge Swope announced the drop-dead date to suggest revisions for the bill will be November 3. Bob Wilkinson suggested inviting the DHHR legislative liaison, Melanie Pagliano, to upcoming committee meetings. Tina Payne will check with Marty about the numbering of definitions within a section and overall cleanup of the chapter. Bob Wilkinson and Katherine Bond discussed her question about convictions for offenses against children, which is a section in Chapter 49 and in criminal code. “Can a criminal case handle TPR, or do you need a separate petition?” he asked. Bob and Katherine both agree it is clear that TPR is handled through Chapter 49 procedure, not the criminal case. Otherwise, it causes due process issues, Katherine said. For example, different lawyers with different experience handle child abuse and neglect and criminal cases. The group concluded that is good to have “conviction for offenses against children” in both §49-4-609 and §61-8D-9.
- Report from **human trafficking** workgroup – Nikki reported that H.B. 2161, amending the state’s human trafficking law, passed during the 2015 session, but the Governor vetoed it for technical reasons. The human trafficking workgroup has recently met twice and developed a rough-draft concept. They hope to have a more finalized product after the all-day workgroup meeting on October 23, 2015. Bob Wilkinson mentioned he would like to see indeterminate sentences changed to determinate ones.
- **Foster Care Bill of Rights** from the Foster Advocacy Movement (FAM) – Nikki reported that MODIFY was no longer pursuing this bill, drafted by the Foster Advocacy Movement. Katherine said that §49-2-126 was amended during the last legislative session (separate from H.B. 2200) and now has some similar goals for children in foster care. She will share details.
- **Bureau for Child Support Enforcement (BCSE) insurance bill** - Barb Baxter asked the committee to consider the BCSE insurance bill; DHHR, however does not want to pursue it at this time.

**5. Updates on procedural rule changes**

Nikki reported that the Rules of Procedure for Child Abuse and Neglect Proceedings have recently finished the public comment process. She said the Rules of Juvenile Procedure were recently out on public comment and now are awaiting final approval.

**6. Interstate Compact on the Placement of Children (ICPC) discussion**

Bob Wilkinson gave a brief summary of where his efforts stand on the border agreement with Lawrence County, Ohio. He said nothing is set in stone, but they are working on a predictable and workable solution on both sides. He distributed to the committee a working draft border agreement and said the nomenclature is almost exactly the same as the Tennessee border agreement example, except the beginning. Judge Pratt in Wayne County heard about Bob's efforts and he's interested in starting a similar agreement with Kentucky. Bob asked DHHR's ICPC meeting representatives (Andrea Mitchell and Alicia Hawkins) for their comments on the agreement. They both agreed the timelines weren't realistic and says an ongoing problem is missing or not receiving orders in the ICPC packets. Susan Wilmerink suggested using GALs and CASAs to do home checks. In her opinion, the checks are an integral part of their jobs. Nikki Tennis motioned to make the ICPC border agreement with Lawrence County, Ohio an official pilot project and officially sanctioned to be voted on by the CIP Board at the next meeting. The vote was eight to five in favor of the pilot project.

**7. New/other business**

Judge Swope asked Nikki to add the shackling of children in juvenile court to the discussion/agenda. Nikki included in the meeting folders the National Council of Juvenile and Family Court Judges (NCJFCJ) resolution regarding shackling to start the discussion. Judge Swope stated the importance of judicial discretion. Tina Payne mentioned the topic is back on the Juvenile Justice Commission agenda for its December meeting. Judge Swope would like to work on a best practice, and he also would like to know the positions of the Department of Corrections (DOC) and the Division of Justice Services (DJS). Barb Baxter agreed the topic needs discussed because the committee and CIP have been talking about trauma-informed treatment of kids. Bob Wilkinson remembers when DJS did not have custody, and transporting was done the local sheriff's department. He said they didn't shackle in most cases and they certainly were not in jumpsuits. Now, kids look just like adults in the courthouse. Security mentality often trumps treatment mentality; it is cheaper to shackle than to treat, he said. Judge Swope requested everyone to think about the pros and cons for the next meeting. The committee agreed to add the discussion to future agendas.

**8. Set next committee meeting**

The next combined CIP Federal Review and Data, Statutes, and Rules committee meeting will be on **Thursday, January 7, 2016, from 10:00 a.m. to 2:00 p.m.**, at the City Center

East Building in Kanawha City in the 2nd Floor Conference Room. Lunch will be served between 12:00 p.m. and 12:30 p.m.

Adjournment