

Court Improvement Program
Joint Data, Statutes and Rules & Federal Review Committee Meeting Minutes
January 7, 2016

Attendance

Judge Swope (chair), Laura Barno, Barb Baxter, Christina Bertelli-Coleman, Tabetha Blevins, Barbara Blumish, Katherine Bond (by phone), Renea Brown, Nancy Exline, John Hedges, Mike Johnson, Peter Layne, Alicia Mascioli, Jane McCallister, Stacie Mullins, Catherine Munster, Tina Payne, Evan Steel (by phone), Nikki Tennis, Laura Walsh, Bob Wilkinson, Susan Wilmerink, and Joyce Yedlosky

1. Review of Minutes

Judge Swope called the meeting to order. After introductions, minutes from the meeting on October 1, 2015, were reviewed and approved.

2. Data updates from the Court Service analysts

Tabetha Blevins gave an update on the web-based JANIS (Juvenile Abuse and Neglect Information System) project. Court Services is testing JANIS in five pilot circuits (Nicholas, Raleigh, Mercer, Wyoming and counties Tyler, Marshall and Wetzell as one circuit). Nicholas County is the first circuit to be trained. JANIS will be rolled out in phases:

- the first phase of orders, to be released this spring, will allow the user to generate petitions and orders for all of the general hearings in a typical child abuse and neglect case;
- phase two, anticipated to be completed in summer 2016, will provide twelve more orders related to specific types of child abuse and neglect cases; and
- phase three will wrap up the creation of all remaining orders and connecting JANIS to the CAN Database in 2017.

Adding motions or other features will be discussed for possible future phases.

One motion that might be added in a later JANIS phase is a Motion to Terminate Parental Rights (TPR). A motion to TPR would be a compromise between the common practice of asking for TPR in the initial child abuse/neglect petition and filing a separate TPR petition when TPR is definitely sought. Judge Swope shared an example Motion to Terminate Parental Rights from Mercer County, where it is customary to file one. The group is also working on proposed rule changes to give more notice to parents of the possibility that their parental rights may be terminated in the case.

3. Child and Family Services Review (CFSR) and Title IV-E Reviews

West Virginia's third Child and Family Services Review (CFSR) will be in 2017. The state plans to rely more on its own data and review, Evan Steel and others explained. Judge Swope impressed the importance of including stakeholders in the process, as he and others who were reviewers in the 2008 CFSR found it enlightening. Invested stakeholders can help effect systemic improvements.

On the Title IV-E front, the group discussed the issue of disrupted guardianships and adoptions. Evan Steel and Peter Layne explained that such disruptions are considered new foster-care episodes for Title IV-E purposes, which means they require with removal findings (i.e., whether it was contrary to the welfare of a child to remain in the home and whether the Department made reasonable efforts to prevent removal). Peter Layne will draft an explanation of the IV-E situation to share with the judges and use in training.

4. Legislative Proposals for 2016

The group discussed the CIP-supported legislative bills. The human trafficking bill, H.B. 4489, had some changes from the human trafficking workgroup's draft. Joyce Yedlosky said she would like to restore the commission to the bill, as it might help secure grant funding and coordinate efforts. The group discussed how the commission might work without a fiscal impact to the state. Joyce and Rick Staton of the Division of Justice and Community Services (DJCS) will discuss. The Chapter 49 clean-up bill is S.B. 329. It includes extending the decade-old Commission to Study Residential Placement of Children, which should have little fiscal impact, Nancy Exline explained. Moving and updating "contributing to delinquency of child" is S.B. 326.

5. Discussion of proposed rule amendments

The group reviewed proposed amendments to the Rules of Procedure for Child Abuse and Neglect Proceedings to include a Motion to Terminate Parental Rights (TPR) and notice to parents that their rights might be terminated. Catherine Munster suggested amending the notice language to include inheritance and other rights that may be terminated. She also noted that Rule 20 (Notice of First Hearing) already has a notice requirement. With Catherine's edits and additional language in Rule 20, the rule changes were approved to go to the Board.

The group also approved proposals to amend Rule 32, to change 60 days to 30 days for the timing of a hearing after the end of improvement period, consistent with § 49-4-610(8)(B), as well as removing the word "mutual" before "consent" in Rule 17, to encourage co-petitioning.

As requested by the Court, the committee reviewed the recommendations in attorney Tracy Weese's public comments on recent rule amendments. Some of the issues are more training issues, but the group will review them again at the next meeting.

Also directed by the Court, based upon public comments from the Bureau for Child Support Enforcement (BCSE), the committee will work on “self-help” child support forms for use in circuit court. Nikki Tennis and Susan Wilmerink will work on these for the committee to review.

6. Discussion on shackling of juveniles in court

Alicia Mascioli gave a report about shackling of juveniles in court. She shared other states’ developments, including those in the neighboring states of Ohio, Pennsylvania, and Maryland, to adopt presumptions against automatic/indiscriminate shackling of juveniles in court. She talked about the National Campaign to Against Indiscriminate Juvenile Shackling (<http://njdc.info/campaign-against-indiscriminate-juvenile-shackling/>), as well as her observations and discussions with youths who have been shackled. Several members encouraged CIP leadership on the issue. Judge Swope shared a history of handcuffing in court for adults and delinquents. Barb Baxter implored that the group do more than discuss shackling and make suggestions, so that West Virginia is not the last state in the nation to act. The group clarified that the discussion is on shackling of juveniles in court, not in transportation. The committee decided to ask the CIP oversight board to collaborate with the Judicial Association’s juvenile law group on this matter.

7. Interstate Compact on the Placement of Children

Bob Wilkinson gave an update of local efforts to develop border agreement between Cabell and Wayne Counties and adjacent counties in Ohio.

8. New/Other business

The group responded to a question from Matt Arrowood, who is working on electronic filing, about whether orders filing child abuse/neglect petitions are required. The consensus was that a child abuse and neglect petition under W.Va. Code §49-4-601 may be filed without an order, although in several circuits, it is the practice for the prosecutor/CPS to bring the petition to the judge, who issues an order filing the petition. Catherine Munster said this topic was heavily debated when the Rules of Procedure for Child Abuse and Neglect Proceedings were first created; they settled on a notice of hearing instead, which is often in a form of an order. Rule 20 (Notice of first hearing) has the requirements.

9. Next committee meeting

The next combined CIP Data, Statutes and Rules & Federal Review Committee meeting will be on **April 22, 2016, from 10 a.m. to 2 p.m.**, at the Coalition Against Domestic Violence office in Elkview.