



Supreme Court of Appeals State of West Virginia

News

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Juvenile Justice Commission issues position paper, welcomes new members

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CHARLESTON, W.Va. – The Supreme Court’s Juvenile Justice Commission today approved its first position paper and welcomed two new members.

“This gives a good outline of the mindset of the Juvenile Justice Commission as a whole with regard to these areas of concern regarding juvenile justice. It’s the principles we strive to work towards,” said Chairman Omar Aboulhosn, Judge of the Ninth Judicial Circuit (Mercer County).

Two new circuit judges also joined the multi-disciplinary commission on Tuesday: Twenty-Ninth Judicial Circuit (Putnam County) Judge Phillip M. Stowers and Thirteenth Judicial Circuit (Kanawha County) Judge Joanna Tabit.

“I think both Judge Stowers and Judge Tabit are going to make great additions to the commission. They both have knowledge and understanding of juvenile justice issues. They are going to enhance the commission’s role in striving to perfect the juvenile justice system,” Judge Aboulhosn said.

Under the leadership of then-Chief Justice Margaret Workman, the Supreme Court of Appeals of West Virginia established the commission in 2011. The commission is the mechanism whereby the Court can monitor whether the juvenile justice system provides safe, nurturing living conditions as well as rehabilitative services.

Other current members of commission are Megan Anitto, Assistant Professor, Charlotte School of Law; Jefferson County Magistrate Gail C. Boober; Supreme Court Administrative Director Steve Canterbury; Former State Delegate Barbara Hatfield, (D-Kanawha); Sam Hickman, Chief Executive Officer, National Association of Social Workers, West Virginia Chapter; Circuit Judge Gary Johnson of the Twenty-Eighth Judicial Circuit (Nicholas County); Cindy Largent-Hill, Juvenile Justice Commission Director; Circuit Judge J. Lewis Marks, Jr., of the Fifteenth Judicial Circuit (Harrison County); Mingo County Attorney Jane Moran; Dr. Michael Martirano, Superintendent of Schools, State of West Virginia, represented by Deputy Superintendent Charles Heinlein and Special Assistant for Institutional Education; Nikki Tennis, Director of Children's Services, Supreme Court of Appeals; The Rev. Rue Thompson, Director for State Facilities, Holy Rosary Parish; and The Rev. Matthew Watts, President and CEO of Hope

Community Development Association and senior pastor of Grace Bible Church in Charleston.

The text of the position paper approved Tuesday follows.

Juvenile Justice Commission

The Supreme Court of Appeals of West Virginia is committed to a juvenile justice system that promotes goals established by the legislative and executive branches as found in W.Va. Code § 49-1-1,¹ which includes effective interventions that will enhance the likelihood of rehabilitation and behavior reform. With the establishment of the *Adjudicated Juvenile Rehabilitation Review Commission*, renamed the *Juvenile Justice Commission*, a formal mechanism was established by the Court to study our state's juvenile justice system. The Juvenile Justice Commission believes that through collaboration and communication between the Court, the Legislature, and the Executive branch of government, West Virginia can identify, invest, and organize the resources that will produce the best possible outcomes for youths placed in the juvenile justice system. The Juvenile Justice Commission applauds Governor Earl Ray Tomblin for his commitment to the juvenile justice system and for establishing the West Virginia Intergovernmental Task Force on Juvenile Justice. Through the partnership with Pew Charitable Trusts and by organizing an across-all-branches-of-government collaboration, systems reorganization and implementation can be studied with an evidence-based, data-driven approach. This is critical in establishing systems to serve children in the system and their families. It will also meet the additional goal of enhancing public safety by implementing programs that will result in proven, positive outcomes. Since its establishment, the Juvenile Justice Commission has learned of various problems that hinder the best possible interventions for youths in the juvenile justice system. The following statements reflect the Juvenile Justice Commission's positions on areas of concern.

¹ (a) The purpose of this chapter is to provide a coordinated system of child welfare and juvenile justice for the children of this state that has goals to:

- (1) Assure each child care, safety, and guidance;
- (2) Serve the mental and physical welfare of the child;
- (3) Preserve and strengthen the child's family ties;
- (4) Recognize the fundamental rights of children and parents;
- (5) Adopt procedures and establish programs that are family-focused rather than focused on specific family members, except where the best interests of the child or the safety of the community are at risk;
- (6) Involve the child and his or her family or caregiver in the planning and delivery of programs and services;
- (7) Provide services that are community-based, in the least restrictive settings that are consonant with the needs and potentials of the child and his or her family;
- (8) Provide for early identification of the problems of children and their families, and respond appropriately with measures and services to prevent abuse and neglect or delinquency;
- (9) Provide a system for the rehabilitation of status offenders and juvenile delinquents;
- (10) Provide a system for the secure detention of certain juveniles alleged or adjudicated delinquent;
- (11) Provide a system for the secure incarceration of juveniles adjudicated delinquent and committed to the custody of the director of the division of juvenile services; and
- (12) Protect the welfare of the general public.

Attorney Representation

While interviewing juveniles in the custody of the West Virginia Division of Juvenile Services, overwhelming information was received indicating the lack of contact with counsel during all parts of the adjudication process. Not only do juveniles have the right to counsel, assigned/appointed attorneys serve as advocates for the youths in a complicated and often confusing process. It is our goal that adequate and effective representation happen throughout the entire adjudicatory process, including disposition and post-disposition proceedings. Attorneys for juveniles need to understand that their representation of clients detained or sentenced to juvenile placements, -- either DJJ or DHHR based, -- DOES NOT end until clients are returned home or have achieved permanency, and dismissal orders have been entered by the Court. The failure of a juvenile's counsel to represent a client adequately, even while detained or in placement, has long-term negative impact on the youth that frustrates the goals as outlined above in Footnote 1.

Sentencing Mandates

Sentencing options for juveniles are often either "completing the program" or "flat" (fixed time frame) sentences. As research has been completed on adolescent development of the brain, it has been noted that motivation can be a struggle for teens. This is especially challenging for teens in the juvenile justice system, who present with chaotic family situations, learning disabilities, histories of substance abuse, and mental health concerns. It is our desire that sentencing options encourage quarterly multidisciplinary team meetings that include recommendations from treatment teams and the completion of individualized service plans. Further, we discourage the use of "flat sentences" and encourage the focus to be on completion of programs or achievement of established treatment goals.

It is important for the public and those involved in the Juvenile Justice system to remember the mission of the juvenile justice system is two-fold: rehabilitate juveniles and protect the public. With that said, flat sentences of juveniles may not serve the goal of rehabilitating juveniles as a detainee would have successfully complete the plan of rehabilitation but would not be permitted to be released because of not having completed the flat sentence. We have found that some juveniles with flat sentences do NOT behave as well after completing the rehabilitation part of the program as there is no incentive, such as level increases leading to early release, for behaving well.

Alternatives to Detention and/or Incarceration

Evidence continues to show that incarceration or residential placement of juvenile offenders is often counterproductive to rehabilitation and reform. Incarceration and residential placement has been demonstrated to be ineffective, antiquated, and expensive. While we recognize the need for consequences for misbehavior and the importance of public safety, we advocate strongly for providing services that will re-direct these teens toward becoming successful young adults. With appropriate re-direction of resources, research has shown that in many cases where incarceration or residential placement of youths currently are ordered, better outcomes and less recidivism occur when youths are ordered to complete community based programs. It is our hope that, in appropriate cases, a continuum of services is developed and available in each juvenile's home/community.

Further, it is our belief that with the development of community-based services, the current bed capacity for the Division of Juvenile Services will adequately serve those West Virginia youths who need detention or commitment.

Continuum of Services

The Juvenile Justice Commission realizes the term “continuum of services” is used frequently throughout the systems serving West Virginia’s children and families. However, without *organizing a system of interventions* that address the individualized needs of a youth and his/her family in a local setting, successful outcomes will be difficult to achieve. A focus on diversion and treatment versus the belief that treatment requires out-of-home placement is necessary when embracing a community-based philosophy. If out-of-home placement is necessary, we encourage the establishment of a service plan that includes rehabilitative programs (individualized to that juvenile), specific goals leading to transition, and strong discharge plans. This should be established and reviewed using the multidisciplinary team process.

The Juvenile Justice Commission is interested in the opportunities offered through the Division of Juvenile Services Youth Reporting Centers. It is our goal to learn more about this intervention strategy and how it fits into the community-based continuum.

Evaluations and Assessments

The clients within this system are children; teenagers who are still growing and developing. Because of the complex issues involved in working with adolescents, combined with sometimes chaotic family situations, learning disabilities, histories of substance abuse, and mental health concerns, we feel compelled to emphasize our support for assessments and evaluations. These should be concise and timely. A report outlining all components of a youth’s presenting issues is necessary prior to organizing treatment services. We would further encourage that these assessments include each youth’s family/home environment, and if at all possible be conducted locally allowing a juvenile to stay close to home (if not feasible to be in the home) throughout the assessment process. Local, community-based, forensic mental health and educational evaluations, as opposed to longer duration evaluations of forty-five or sixty days, provide for less disruption in a juvenile’s education, thereby promoting the added goal of keeping children from falling behind in school. Evidence suggests that juveniles who are held back a year in school are often less likely to complete their high school education. Failing to graduate high school is one of the critical factors that lead to criminal conduct as an adult. Therefore, minimizing the disruption to a juvenile’s education by completing local evaluations, or evaluations that last no longer than ten to fourteen days of detention, will once again promote the goals as outlined above in Footnote 1.