

Juvenile Policy Board
Minutes
(Unofficial Until Approved)
February 28, 2014
2:30pm

Members Present:

Judge William Herauf, Chair
Justice Lisa Fair McEvers
Judge David Reich
Judge Doug Mattson
Brad Saville, Juvenile Court Officers Association
Scott Hopwood, Juvenile Court Director, Unit 4

Members Not Present:

Referee John Grinsteiner
Judge Daniel Narum

Staff Present:

Sally Holewa, State Court Administrator
Lana Zimmerman, scribe

Guests:

Shawn Peterson, Juvenile Court Director, Unit 1
Cory Pedersen, Juvenile Court Director, Unit 3
Karen Kringlie, Juvenile Court Director, Unit 2
Lee Ann Barnhardt, Director of Education and Communication
Mike Hagburg, Staff Attorney

Judge Herauf called the meeting to order. He asked if there were any additions or corrections to the April 5, 2013, meeting minutes. Because Justice McEvers was not a member of the Board at the April 5, 2013 meeting, she asked about the discussion in reference to N.D.C.C. § 27-21-05, Division of Juvenile Services to report to the committing juvenile court. Ms. Kringlie clarified the discussion was in regards to the statute that required filing with the court. Judge Reich shared Rule 3.5 N.D.R.Ct., requires e-filing in district courts. Ms. Kringlie agreed that a reference should be added to clarify this as the statute states the Department of Corrections has to submit filings to the court.

Judge Herauf asked if there were additional changes and added the reference to the rule. Justice McEvers also noted a change on page 2, last paragraph to read, “the Division of Juvenile Services.”

A motion was made by Judge Mattson to approve the April 5, 2013, minutes as amended. The motion was seconded by Judge Reich, motion approved.

Review Administrative Rule 35

Ms. Holewa proposed to change the time frame of the comment period in Administrative Rule 35 from 45 days to 15 days. The notice requirements are distributed to only internal stakeholders. Other committees that require comment periods are Administrative Council, which is 30 days, and Personnel Policy Board, which is 15 days.

A motion was made by Judge Mattson to change the comment period as stated in AR 35 from 45 days to 15 days. The motion failed, due to a lack of a second. Discussion convened.

Judge Reich asked what the procedure is after the Juvenile Policy Board recommends amendment of a rule. Ms. Holewa clarified that since this is an Administrative Rule, it would go directly to the Supreme Court. It will then be distributed to the district court judges and the appropriate district court personnel. Judge Mattson suggested that a 30-day comment period may be more successful. Justice McEvers agreed to make the comment period longer to provide judges time to have discussions at their local judges meetings. Judge Mattson also shared that changes to policy or procedure is something which would be discussed with the presiding judge.

A motion was made by Judge Mattson to amend the comment period be changed from 45 days to 30 days, seconded by Judge Reich, motion approved.

A motion was made by Judge Herauf to recommend this to the Supreme Court to amend AR35 to provide a comment period of 30 days. The motion was seconded by Judge Mattson, motion approved.

Review Comments from Policy 400 Series

Please refer to handouts. Comments were sent from Ms. Holewa, Justice Mary Maring, and Judge Karen Braaten. Ms. Holewa explained that, quite sometime ago, the Board had approved recommended changes to a few of the 400 series policies. She has visited with Mike Hagburg in regards to possibly changing the appropriate policies into rules.

Mr. Hagburg has completed a preliminary view of the 400 series and is requesting suggestions from this Board in the drafting of proposed Rules of Procedure.

* Policy 401 - Drug/Alcohol Screening could be put in the Rules of Juvenile Procedure, easily. There is an equivalent rule in the Rules of Criminal Procedure that allows this sort of screening.

* Policy 402 -Juvenile Court Records and Confidentiality and Policy 403 - Expungement could also be added to the Rules of Juvenile Procedure, but where they go depends on the philosophy. They could also be added to the Administrative Rules.

* Policy 404 - Restitution and Community Service could be a procedural rule and there are equivalent rules in the Rules of Criminal Procedure.

* Policy 405 - Detention Hearings definitely has an equivalence in the Rules of Criminal Procedure where there is a rule providing for when detention hearings are to be held within 24 hours.

* Policy 406 - Report Alcohol and Drug violations to the Department of Transportation. The philosophy as to why something should be a court rule or policy is a question of whether people outside of the court system are going to need to use, or want to know about it. The policies are not readily accessible by the public. Therefore, attorneys wouldn't have access to the policies because they are on the internal website, which is accessed by court employees, judges, and justices. The question is whether it should stay a policy or rule and is determined by if the public should have access.

* Policy 407 - Electronic Monitoring. This is like the other rules on screening and testing. It could be a Rule of Juvenile Procedure.

* Policy 408 - Court officer may not sign petition. This is something that can go into the existing Rules.

* Policy 409 (time standards) and 410 (duties of juvenile court officer) should stay policies.

Judge Herauf asked for any thoughts of the 400 series policies. Ms. Holewa explained if there are things that attorneys and the public should know, they should be placed in the Juvenile Rules of Procedure. The recommendations will then go to the Supreme Court.

Judge Mattson asked which policies should remain policies. Mr. Hagburg answered Policy 406 (report alcohol and drug violations to the Department of Transportation), Policy 407 (time standards), and Policy 410 (duties of juvenile court officer).

The Board decided to look at the submitted comments on the three policies and directed Mr. Hagburg draft the remaining policies as Rules of Procedure.

There were no comments on policies 406, 409, and 410. The Board directed they be sent to the Supreme Court for approval, as amended.

Ms. Holewa shared the comments from Judge Braaten which dealt with Juvenile Drug Court and there was a response to that comment from Justice Maring stating it has been noted and is included in her comments, as well. Justice Maring had a comment on Policy 401, Section II, and Ms. Holewa had a comment on Section VI.

Judge Braaten commented the policies talk about Juvenile Court and don't specifically identify Juvenile Drug Court as being included.

Justice Maring commented regarding Policy 401 explaining that if a juvenile is ordered to participate in the Juvenile Drug Court program under N.D.C.C. §27-20-31(7), Juvenile Drug Court has the authority to conduct drug and alcohol testing. Therefore, she suggests adding the authority of the Juvenile Drug Court.

Ms. Holewa stated Policy 401, Page 2, Section VI, under Procedures states, the Juvenile Court Administration shall establish procedures and training requirements as necessary to implement this policy. There is no such entity as juvenile court administration. The recommendation is a juvenile court coordinator by rule that section VI could be amended to read: “the Juvenile Court Coordinator in consultation with the Juvenile Court Director, shall establish procedures and training requirements as necessary to implement this policy.” The rule provides the juvenile court coordinator is responsible to implement procedure to carry out policy.

A motion was made by Justice McEvers for the change to Policy 401 above, seconded by Judge Mattson, motion approved.

Ms. Holewa shared in Policy 402, section II, juvenile records confidentiality. This policy applies to the “working files” of the juvenile court. This should be defined as it is unclear as to what types of case-related documents or other types of records are being maintained outside of the official court file. The definition in our personnel rules of the working file, and under Administrative Rule 41, is a definition of a working file, but there is no definite definition of working files in Policy 402.

Scott Hopwood explained that a working file would be a paper file that is used on a day-to-day basis. Materials contained in the working file are informal adjustment documents and evaluations pertaining to the youth on the informal side. There are also formal documents in the working file. Ms. Holewa asked for a definition of the working file to be included in the policy, due to it possibly changing to a rule and open to the public. Mr. Peterson shared that Administrative Rule 19 specifically talks about the working files and may have a better definition. Ms. Kringlie shared that 70% of cases are filed in the juvenile office, so probation notes, informal adjustment agreements are maintained there, which is the working file. Ms. Holewa explained a “working file” is the unofficial records, but these are actually documents and information that are part of the official record. Mr. Peterson explained that a definition of a “juvenile working file” in Administrative Rule 19 and record retention schedules refer to informal and formal documents, case notes, and reports. Ms. Holewa is in the process of requesting the Court to completely review Administrative Rule 19.

Mike Hagburg will review options to clarify a definition of a “working file.”

* Policy 404 - Section VI, Community Service, C. 2. The child is covered under Worker’s Compensation by the agency or workplace, or the North Dakota Supreme Court, should change to the North Dakota Court System.

The Board requested Mike Hagburg be added to the June Agenda in regards to changes in the 400 series policies.

Court Improvement Project Committee Update

Ms. Barnhardt updated the Board on two projects of the Court Improvement Committee. The ICWA compliance audits are underway. Researchers at UND, which hold the contract, are going through our court records and identifying ICWA cases to make sure standards in the Federal guidelines are being met for compliance. A finalized ICWA audit will be produced at the end of summer and will be submitted to the Court. If there are some variances or areas not in compliance, the procedures and processes will need to be identified. Currently, the biggest hurdle is in the findings in the file. Overall, the preliminary data looks good and is in compliance.

A quality assurance program is underway, which is funded through a grant to contract with Mr. Paul Ronningen. He will be a monitor, so when a deprivation case is filed, he will track that case and make sure all of the internal time standards are moving forward. This should help us with the data in regards to permanency hearings being held within the 365 day window. He will also be looking at individual cases to define trends, or areas which could potentially be a policy and procedure problem. The rest of the Court Improvement Project is mainly spent on data collection, time standards, and data that is annually provided to the Federal Children's Bureau.

Keep Kids in Schools Initiative

Chief Justice VandeWalle, Judge Narum, Ms. Barnhardt, Cory Pedersen, and Louie Hentzen attended a summit in New York City on the school and prison pipeline, which looks nationally at the link between kids dropping out of school and getting involved in the court system and ultimately ending up in adult prison. Limited data from each state was provided and the plan is to convene the appropriate people in North Dakota to see if there is a problem in the state. A team was comprised that consists of Chief Justice VandeWalle; Judge Narum; Ms. Barnhardt; Cory Pedersen; Kirsten Baesler; Director of the Department of Public Instruction; Land a representative from the ND School Boards Association; the ND Secondary School Principals Association; and the Indian Affairs Commission. A behavioral psychologist from Sanford Health that deals with adolescent behavior, and the head of the Sanford marketing office, are also involved.

A primary concern in North Dakota is the dropout rate of Native American students that runs about 50%. The team discussed 0 tolerance policies and the impacts on kids getting referred to juvenile court, and identified school resource officers.

The team plans to review school data to determine if a particular geographical area can be identified. Problem areas are that referrals aren't reported from a school directly to the court system. Ms. Barnhardt reported that the team should receive data from the court officers and determine what the caseload looks like, what are the courts dealing with, how many of the kids in the courts caseload are there because of truancy issues, how many have a history of expulsion, and how many are over the mandatory attendance age. On the surface, very few of the referrals come directly from a school. Most are from law enforcement. Some cases originate in the school, but not all. Thirty percent are beyond the compulsory attendance age in the caseload and are over the age of 16. The proportionality is almost exactly what the proportionality to the population, which was predominantly white juveniles, followed by 17% Native Americans. It

wasn't disproportional like the current caseload. The team will next research the types of referrals.

Ms. Barnhardt received from the Department of Public Instruction, the information that is reported out annually of the types of crimes which include assaults, alcohol and tobacco. Ms. Barnhardt is working on compiling the data from both entities to see if there are matches. Truancy rate is extremely high and the courts truancy numbers are low that get reported to juvenile court. Forty five percent of the caseload have had prior suspension or expulsion from school.

The ultimate proposal is better educating educators and school administrators about juvenile court. This is just a way to intersect between education and the courts. There are no big initiatives coming out of the team's work. It is important to look at the data and determine what is taking place.

Ms. Barnhardt stated the team will meet again at the end of March and she can report back to this Board.

Court Leadership Symposium

Ms. Holewa shared that the Court Leadership Symposium was created from the Justice Management Institute. This is a think tank and research body that was an offshoot of the National Center for State Courts. They put together court reform areas because juvenile reform, just like the evidence-based sentencing on the adult side, is a current social concern. Twenty five states are either doing both or one or the other. Ms. Holewa thought that we should know what is going on nationally because it eventually will go to the Council of the State Governments or our legislative body.

Ms. Holewa referred the Board to the handout: What State Courts Can Do To Promote Juvenile Justice Reform.

I. Core Reform Area: Racial and Ethnic Fairness in Juvenile Justice. The Juvenile Director's have worked hard in the last year to have a detention screening tool to utilize to try and reduce disproportionate minority impact, which started in January. There will be some data for this Board in six months on how to reduce the number of minority individuals who are being arrested and detained for the same or similar offenses, and why a youth isn't arrested and detained. A study done by the state Juvenile Justice Advisory Group shows that law enforcement officers in the field less than five years, tend to make more minority arrests than officers who have been in the field longer. There is a video that was funded to train new law enforcement officers. This is something that continues to be discussed at meetings and working with the detention screening tool. Having more alternatives to detention and electronic monitoring.

II. Core Reform Area: Juveniles with Behavioral Health Needs. Mental health screenings are done on all probation youth which can connect them with services. There are concerns about rural areas and access to mental health services. Access in rural areas is a big concern. There was an expansion the last biennium into the western area of the state, which added a worker in Fargo and the only area in the state that is lacking intensive in-home is the Southeast Judicial District.

ITV interaction has been utilized allowing more ways to connect and collaborate. There have been a lot of concerns about adolescent addiction treatment statewide. There are regions that aren't licensed and can't provide providers. Ms. Kringlie shared there was a meeting with Alex Schweitzer at the North Dakota State Hospital, which was a safety net for kids without insurance. Mr. Schweitzer stated they weren't receiving any referrals. There are kids that have maximized benefits. Ms. Holewa shared there is a stakeholder group that convened in February to look at the behavioral health issues and have discussed the lack of juvenile services with all behavioral stakeholder groups. This is something that the interim legislative committee on human services was tasked with studying in this area. The goal is to look at regulations that may be inhibiting some of this. There is no reciprocity on license with any states for addiction counselors or mental health professionals. Psychiatric care and providing kids psychiatrist services is a three month waiting period.

III. Core Reform Area: High Quality Juvenile Defense Services. The Indigent Defense Commission has adopted some policies about specific training for juvenile defenders. There aren't any rules about waiver of counsel.

IV. Core Reform Area: Dual Status Youth and Fragmented Child-Serving Systems. Because this is a small state, it is collaborative and meetings with all local stakeholders is consistent. There are individual judges that hold local stakeholder meetings. There is a very strong push to get more focus on dual status youth and to come up with a hybrid court process that would deal with those cases.

V. Core Reform Area: Over-Involvement of Non-delinquent Youth in Juvenile Courts - Local areas have worked with school resource officers and there are schools that have student attendance review boards, which have cut down on the number of truancy referrals to the courts. Across the state, there are unruly diversion programs which diverts unruly youth for family counseling.

Ms. Kringlie shared the Juvenile Policy Board five year strategic plan is due for review and proposed adding it to a future agenda in the fall of 2014 to be adopted in 2015.

Meeting adjourned at 4:30pm.

