Indiana Task Force on Public Defense

**April 20, 2018**

1:00 – 4:00

309 W. Washington Street, 5th Floor Conference Room

# Agenda

**1) Welcome and Introductions – Judge John D. Tinder (Ret.) (3 min)**

**2) Minutes from the February 9, 2018 Task Force Meeting – Judge Tinder (2 min)**

**3) Subcommittee on Appellate/Post-Conviction – Joel Schumm, Chair (10 min)**

Submission of Report and Recommendations

**4) Subcommittee on CHINS/TPR – Jeff Papa, Chair (10 min)**

Submission of Report and Recommendations

**5) Public Defense State Based Reforms to County Delivery Systems (2 hours)**

**Guests:**

David Carroll, Executive Director

Sixth Amendment Center

William Leahy, Director

NYS Office of Indigent Legal Services

Judge Thomas Boyd, Commission Member

Michigan Indigent Defense Commission

**6) Fact Finding Process Recap – Judge Tinder (10 min.)**

Listening Tour Results

Survey results

Other summaries of information

**7) Structural Workgroup – Judge Tinder (closed session) (30 min.)**

Discussion of recommendations and models

**Indiana Task Force on Public Defense**

**February 9, 2018**

**10:00 – 12:00**

**State Government Center, Conference Rooms 4-5**

# Minutes

1. **Call to Order – Judge John Tinder (Ret.)**

Judge Tinder called the Task Force to order at approximately 10:00 a.m. and introductions were conducted. Task Force members in attendance were: Larry Landis, Indiana Public Defender Council; Rod Bohannon, Indiana Legal Services; Judge Vicki Carmichael, Clark County; David Bottorff, Association of Indiana Counties; Judge John Tinder (Ret.), Chairman Indiana Task Force on Public Defense; Professor Joel Schumm, Indiana University School of Law – Indianapolis; Justice Goff, Indiana Supreme Court; Jeff Papa, Barnes and Thornburg; Judge Mary Ellen Diekhoff, Monroe County. Present in the audience were: Dean Emeritus Norm Lefstein, David Carroll, 6th Amendment Center; Tim Curry, National Juvenile Defender Center; Amy Karozos, Indiana Public Defender Council; Andrew Cullen, Indiana Public Defender Commission; Kristen Casper, Indiana Public Defender Council; Derrick Mason, Indiana Public Defender Commission, Task Force staff members present included: Kim Tandy, and Kathleen Casey.

Judge Tinder noted that the First Listening Tour was to be conducted that afternoon and that valuable input had been received from a similar meeting with the Chiefs on January 26, 2018.

1. **Approval of Minutes from December 8, 2017 Meeting – Judge John Tinder (Ret.)**

Mr. Landis moved to approve the minutes from the December 8, 2017 meeting. Judge Carmichael seconded the motion. A slight correction was made in the minutes to accurately reflect attendance. The motion passed unanimously. Motion passed unanimously.

**3) Presentation: Juvenile Defense Subcommittee**

**Juvenile Defense as a Specialization Area**

Judge Vickie Carmichael, Chair

Tim Curry, Director of Training and Technical Assistance,

National Juvenile Defender Center

Amy Karozos, Project Director, Juvenile Defense Project,

Indiana Public Defender Council

Judge Carmichael thanked the Task Force for their work. She noted that the current effort for juvenile defense reform began in 2015, though an assessment of juvenile defense was conducted in 2006 as well. In 2015, the Indiana Public Defender Council (IPDC) received a grant from the Department of Justice to begin their project for reform. As part of that process to apply for the grant, the team was required to outline specific standards and guidelines as well as the impact on families in the long term.

Judge Carmichael noted that the IPDC Juvenile Defense Project was working with the Juvenile Subcommittee of the Task Force on Public Defense in order to develop subcommittee recommendations. As part of that process, Judge Carmichael noted that the subcommittee heard from other states and then drafted the report that was presented to the Task Force.

Judge Carmichael introduced Tim Curry of National Juvenile Defender Center (NJDC), the technical assistance provider to the IPDC Juvenile Defense Project. Mr. Curry explained how juvenile defense is different from adult criminal law practice. He noted that this principle is important when examining the recommendations provided by the Task Force subcommittee. He reviewed the history of standards for juvenile, and noted that prior to NJDC there were no national practice standards for attorneys representing juveniles in criminal cases.

Mr. Curry noted that NJDC standards are minimum standards, and reflect best practices. He noted that there is often confusion to the role of counsel in juvenile proceeding. He outlined that the right to counsel is different for juveniles than that of adults. It is a right derived from due process.

Mr. Curry then reviewed the assessment of juvenile defense in Indiana conducted as part of the IPDC Juvenile Project grant application process. While it was not the first time juvenile work was reviewed in Indiana, this assessment uncovered a lack of zealous advocacy, a lack of expertise in juvenile law, and role confusion. Mr. Curry clarified that the role confusion for attorneys reflected a tension between the need to represent the wishes of the client and what may be considered the best interests of the client.

Judge Carmichael added that there is often a tension between the representation of the child and the parent’s wishes as well.

Mr. Curry noted that the Office of Juvenile Justice and Delinquency Prevention (OJJDP) picked Indiana as a state to receive a planning grant in 2015, with implementation of the grant in 2016. The key issue for consideration for the upcoming years was sustainability.

Mr. Curry then listed the key attributes of a working juvenile justice system. He stated that juvenile justice should not be a “training ground” for attorneys who then move on to other types of cases. Rather, it should be a specialty at both trial-level as well as appellate. Post dispositional services were also identified by Mr. Curry as important for juvenile defense.

Amy Karozos, director of the IPDC Juvenile Justice Project reviewed the key findings from the assessment and the work of her team. These findings included: (1) early appointment of counsel and reduction in waiver of counsel remains a priority; (2) indigency determinations should be consistently applied; (3) post-disposition advocacy needs to be strengthened; (4) juvenile defense as a specialization is lacking; (5) oversight and accountability measures are inadequate. She said that there has been an effort to increase juvenile defense as a specialization. She also reviewed the impact of Criminal Rule 25 (CR 25).

Ms. Karozos stated that CR 25, effective January 1, 2015, was not being consistently applied. She reviewed the waiver rates in Indiana and noted that waiver rates had decreased since implementation of the rule. However, there was an additional review underway and that there was still very little post-dispositional advocacy. Over one-half of the state saw no juvenile appeals in a six year period.

However, Ms. Karozos stated that her project had implemented reforms to address the ongoing concerns. Specifically, the use of an e-mail listserv was one method that the project used to connect juvenile attorneys around the state.

Ms. Karozos advised that one finding of the subcommittee report would be that oversight is currently inadequate in juvenile justice. Specifically, the Public Defender Commission standards for training and experience are not sufficiently tailored for juvenile defense.

Ms. Karozos then addressed the issue of access to experts for juvenile defense attorneys in Indiana which includes social workers. Ms. Karozos said that Marion County does have access but that is not the case in many other counties.

Ms. Karozos then reviewed the number of juveniles that have been interviewed as part of the IPDC project. 234 juveniles have been interviewed by her team, with 48 referred for a direct appeal, and 16 for the juvenile form of post-conviction relief. She said she was thrilled to work with her team but that much more work need to be done. At the moment, the IPDC team cannot do direct representation of juveniles, and that there are still obstacles to implementing training.

Justice Goff asked how it happens that CR 25 is not followed in court. Ms. Karozos responded that when juveniles are detained, sometimes the appointment of counsel be made during the detention hearing, but the children are not actually represented at the hearing and don’t meet with counsel until after the hearing.

Mr. Bottorff asked how the waiver rate for juveniles compared to adults. Ms. Karozos said that at times juveniles are more likely to waive because they wish to have the proceeding over with quickly, or don’t understand the proceeding. Judge Tinder asked whether the waiver rate is consistent by county, and Ms. Karozos responded that it is not consistent. Judge Carmichael said that in her court they do not ask whether the juvenile wants to waive counsel, and in doing so they prevent violations of CR 25.

Mr. Landis said that he believes the information presented by the juvenile subcommittee reflects the issue of a lack of independence from the judiciary; that CR 25 is not self-executing and that it is inexcusable that there are children in the Department of Correction who have never seen a lawyer.

After reviewing the other state models examined, which included Colorado, North Carolina, Ohio, and Wisconsin. Ms. Karozos then turned to recommendations, and emphasized that there is currently no enforcement of standards. The recommendations included: (1) centralize the support and oversight for an Office of Juvenile Defense Services in Indiana; (2) provide legislative authority for the Office of Juvenile Defense Services to adopt standards, data collection, training, access to experts; (3) increase recruitment and retention of juvenile defense counsel; (4) provide appellate and post-trial representation to youth; and (5) require the collection of juvenile-specific data. Judge Tinder asked whether a centralized office, which was one of the recommendations, must be separate. Judge Carmichael responded yes. Mr. Landis said that the Commission could create a juvenile sub-section of its organization.

Judge Tinder asked whether there is overlap between Child in Need of Services/Termination of Parental Rights (CHINS/TPR) and juvenile defense. Judge Carmichael said that there is some overlap but that it is still a different set of skills. Mr. Curry responded that in Mississippi, reform efforts found that resources devoted to TPR cases actually cut into juvenile resources.

Jill Johnson added that there is an issues of conflict that may arise when the public defender office represents the juvenile accused of a crime as well as the child’s parents who may be facing a CHINS or TPR case. She noted that Marion County does have “dual status” projects where the court recognizes that the child may be facing a delinquency case and also be receiving services from the Department of Child Services as a child who has been identified as CHINS.

Professor Schumm asked whether a statewide appellate office would be part of the solution to reforming the juvenile justice system. Mr. Curry responded that Ohio has specialized juvenile appellate attorneys, and that for juveniles, post-dispositional services is much broader than in the adult world.

Justice Goff asked whether a regionalized model based on the re-entry court model might alleviate some of the concerns with resources identified by the juvenile subcommittee report. Judge Carmichael responded that the idea of regionalization has been discussed in rural regions.

Larry Landis also discussed the idea of an administrative rule for data reporting, or to make data reporting mandatory as part of the Public Defender Commission, in order to enforce standards. Judge Tinder said that the subcommittee will set an agenda item at the next full Task Force meeting to adopt the report.

David Carroll then addressed the Committee and updated the Task Force on improvements in Michigan, where the reform effort was able to secure a multi-million dollar increase in the state’s budget for indigent defense, totaling $85 million dollars.

**4) Subcommittee Reports:**

**CHINS/TPR Subcommittee – Jeff Papa**

Jeff Papa informed the Task Force that fact gathering continued and that an upcoming subcommittee meeting was set for February 27, 2018 at 1:00 p.m.

**Appellate/Post-Trial Subcommittee – Joel Schumm**

Professor Schumm also reported that an appellate subcommittee meeting was set for February 21, 2018 at 2 p.m.

**5) Listening Tour Update – Kathleen Casey**

Kathleen Casey reported on the dates and times of the Listening Tours and directed Task Force members to the Task Force website for registration for future events.

**6) Structural Issues Discussion - Judge Tinder**

There was a closed session discussing structural issues reviewed by the Task Force thus far.

Adjourn