**Indiana Task Force on Public Defense**

**February 9, 2018**

**10:00 – 12:00**

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

# Agenda

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

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

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

4) Subcommittee Reports:

CHINS/TPR Subcommittee – Jeff Papa

Appellate/Post-Trial Subcommittee – Joel Schumm

5) Listening Tour Update – Kathleen Casey

6) Structural Issues Discussion - Judge Tinder

(Closed Session)

Adjourn

**Indiana Task Force on Public Defense**

**Friday, December 8, 2017**

**10:00 – 12:00**

**309 W. Washington Street, Fifth Floor**

**Minutes**

**Members present: Judge John Tinder (Ret.), Larry Landis, Representative Greg Porter, Jeff Papa, Joe Heerens, Jud McMillan, Joel Schumm, Justice Chris Goff, Judge Mary Diekhoff (phone); Steven Luce (phone); Andrea Lyon (Phone)**

**Staff Present: Kathleen Casey, Staff Attorney, Public Defender Commission; Kim Tandy, Technical Advisor, Public Defender Commission**

**Others Present: Dean Emeritus Norm Lefstein, Advisor; Kristin Casper, Amy Karozos, Andrew Cullen**

1) Welcome and Opening by Judge John Tinder

Judge Tinder called the meeting to order at 10:00 and welcomed guest Mimi Laver from the American Bar Association.

2) Approval of Minutes of the Friday, November 10th Task Force Meeting

The minutes of the November 10th Task Force meeting were unanimously approved. (Porter, Papa)

3) Presentation: Children in Need of Protection and Termination of Parental Rights Issues

Jeff Papa gave an introduction to this segment of the meeting, providing an overview of the work of the Subcommittee on CHINS/TPR. The Subcommittee members have met twice by phone, and then convened an additional meeting by web ex with Mimi Laver in November. The Subcommittee has sought additional expertise from 8 individuals, including lawyers for parents and children, CHINS/TPR magistrates, and the state CASA director. On January 3, the subcommittee and others will hear from individuals in other states about their models for parent representation. That meeting will be done live and via web ex at Barnes and Thornburg at 1:00. Questions from the broader group after today’s session can be brought back to Subcommittee for further exploration.

Kim Tandy did a brief overview of by PowerPoint of the system of representation and state oversight on CHINS/TPR cases. She also referenced several handouts provided by Mimi Laver included in the packets and through email distribution.

Tandy discussed the statutory right to counsel in CHINS/TPR cases for parents, as well as the lack of statutory authority in most CHINS/TPR cases for children, other than what is known as CHINS 6 cases.

Data was provided from 2014 – 16 showing substantial increases in both CHINS/TPR filings and appointments of more than 50% during those 3 years. At least in part this has been attributed to the opioid problems the state is experiencing, with high rates of removing and case filings. Katie Casey mentioned that Vanderburgh County, as an example, has 2-3 times the caseload allowable for CHINS cases. That caseload is 150 maximum for full time attorneys with adequate support staff, and 120 without. Part time attorneys are 75 and 60 cases respectively. Katie mentioned that this is the #1 problem expressed by chiefs who have an inability to keep up with the caseload increases and remain in compliance.

Tandy also mentioned that the state’s oversight of CHINS/TPR current is done only in Commission counties, and those requirements include basic training, a caseload standard, and minimal levels of experience before trying a TPR case.

Unlike other parts of the CHIN/TPR system which were moved to the state as part of its responsibility around 2008, parent representation expenses remained with the counties as part of their financial responsibilities.

Judge Tinder asked how this responsibility fell on the public defender system. Larry Landis explained that the Webb v. Barrett case[[1]](#footnote-1) many years ago held that public defender lawyers cannot be required to provide pro bono representation for indigent clients. Years later, it was determined that the counties were responsible for payment. Some counties refused, but judges were required to ensure that payment was provided. New funding was not allocated at that time.

Mr. Bohannan has previously mentioned that Don Lundberg filed a case years ago which resulted in a decision placing the burden on the public defender system to provide representation to parents in CHINS and TPR cases. Kim Tandy mentioned that she has been unable to track that case down, and that she has attempted to contact Mr. Lundberg without success at this time.

Joel Schumm asked if CHINS and TPR cases are weighted the same by the Commission. Judge Diekhoff noted they were, and that it is usually the same attorney handling both.

Joe Heerens explained that on the state side, there are two attorneys in each county for DCS, about 200 across the states. His office is well aware of the growth of caseloads, and several lawsuits have been brought against DCS. The cost on the state side has gone up considerable. The legislature is working to address this. Mr. Heerens also indicated that John Hammond from the Governor’s Office of Counsel works with Judge Bonaventura, and that the Commission on Children, chaired by the Chief Justice, is also aware of these issues.

Landis indicated that this is something the legislature must solve. DCS filed what they think needs to be filed.

Mimi Laver began her presentation explaining her background as an agency attorney in Philadelphia before moving to the American Bar Association Center on Children and the Law. She serves as the Legal Director for the Center on Children and the Law. She has worked with the Parents Alliance for Effective representation to build a network of parent lawyers nationally. She has commonly seen that states have lawyers available to represent parents in child welfare cases, but that they are not specialized and it results in suboptimal representation.

There are good tools now for quality representation involving parents. The focus should be on standards. ABA has Standards for Parent Representation, and has also developed more recently the Indicators of Success, which provides measures of high quality representation. A more recent initiative of the ABA is the Family Justice Initiative, which has created core elements of high quality representation for both parents and children in child welfare. All of these documents are included in the handouts to the Task Force.

Mimi explained there are many differences between parent representation in child welfare cases and criminal case representation. Many of these cases go on for years, and require high levels of support to access services. Lawyers also need to know a lot about social work and empathetic approaches to working with this client representation. They must also know how to negotiate with DCS. They can be the best friend the agency never knew they had.

Indiana can utilize existing entities to help strengthen parent representation including the Court Improvement Project and the Committee on Improving the Status of Children.

Mimi discussed several core components of a good system of parent representation, including interdisciplinary models which utilize social workers an can better manage costs for representation. Themes also include workload studies, such as the one Pennsylvania did, and key accountability measures such as training, and a communications mechanism which provides for consistency throughout the state and counties. Best practices for caseloads is around 60 clients, and that is without a separate practice. She stressed that many children are removed for poverty related issue, and that we should do everything we can to avoid that because of the trauma it inflicts upon kids.

Larry Landis asked about models in other parts of the country which have transitioned from county based to state. Mimi mentioned that North Carolina is a county based system which has hired someone at the state level to oversee contracting, and who works well with the counties. Washington State went from 100% county based, starting with pilots, with caseload standards, adequate pay, and social workers. The project has had several evaluations. Ever year it has improved. By accident it was also discovered that counties with OPD offices showed permanency options were achieved quicker. Funding has increased several times and is now 100% in all counties. Oregon and Colorado and implementing the Washington model.

Judge Tinder asked how we best reach consistency across counties, given size and population differences. Mimi explained lawyers are easier to find in urban areas, but in rural areas, you can provide some type of hub where attorneys can be spread out, perhaps on a regional basis. If you use contract lawyers, they must be held to standards, and what else you decide your lawyers should be doing on these cases. Legal Services works well as they have other poverty related services which can be helpful. Once you have determined key attributes, you can have flexibility in the service model.

Other states which have a regional approach include Massachusetts, Oregon and Washington. Joe Heerens suggested that state funding might look different with a regional structure.

Mimi indicated that judges often can be involved with the evaluation of how lawyers are performing, even if they are not involved in direct appointment of them.

Joe Heerens indicated that there has been a 50% growth in CHINS/TPR cases and asked if other state models have shown similar growth. The numbers are increasing and not decreasing. Mimi indicated she has been looking at this, but is encouraged by the fact that Jerry Milner at ACF through HHS is very focused on prevention initiatives. Federal funds are generally used only when children are removed. Having strong community based system which come together can be really effective. If you bring housing assistance into the equation, for example, you can have significant impact. She mentioned the recent book Evicted, which draws a strong corollary between housing instability and removal.

Representative Porter asked about the links between education attainment and child welfare. Mimi indicated that the connections between the two are strong, and that school stability is really critical

Larry Landis asked whether state funding to match county funding is being done elsewhere. Does parity in funding schemes help drive caseload? Mimi said this could be a double edged sword, but she did not know. Jud McMillin stated that there are big disparities which exist and that anecdotal information may be needed to show discrepancies in pay.

Joe Heerens asked if there were good examples of changes which created better outcomes. Mimi indicated that in New York, there are five different offices which have outcome based measures and that Casey Foundation has worked on this with them.

Justice Goff discussed some of the merits of regionalization as done through piloted courts, but also cautioned that with regionalization, rural counties can sometimes be consumed by the largest county and its needs. He explained in Indiana there are 500 judicial officers, and 26 administrative districts with an administrative judge responsible for each. CIP contemplates districtwide grants. Multi-district problem solving courts for the region were created, and provided a way to get necessary people together. Within a 4 county district, for example, we had to include mental health and others so that we all speak the same language about systems of care. This is a bare bones model of a good delivery system if we want to do pilots.

Mimi indicated that Court Improvement Projects are given federal funds through the state Supreme Courts to improve child welfare. Many states bring all stakeholders together through this process.

Judge Tinder asked if there was a federal case which granted the right to counsel for parents and children in these cases. Mimi responded that there was not but that the Troxell case gives guidance, and that there are some rights that kin or grandparents may have.

Larry Landis mentioned that in the last couple of years, a significant number of Supreme Court and Court of Appeals cases have been filed in CHINS and TPR cases and that there is a high reversal rate. More and more states are focusing on strong appellate law in this area. In a number of cases it is apparent that lawyer didn’t do their job well enough. Delays in appeals cause real problems in these cases. Mimi mentioned that a new Michigan case and said that pro-parent reported cases are increasing. Joe Heerens asked if there is a trend in greater reversals. Joel Schumm said that the Supreme Court has taken a hard look at these cases sometimes on the basis of procedural due process. We could easily get the reversal list. They seem to be more inclined to take cases.

Judge Tinder indicated that if they are accepting more discretionary review, there is likely more reversals. Amy Karozos mentioned that there are a lot more CHIN appeals noting that court intervention was not necessary. Mimi suggested that Courts are learning more about the harm being done to children in removal. She has not previously seen that view point as much.

Jud said that the PD system is failing people tragically. He recently got 2 people out of jail and knows of several others sitting there needlessly. PDs are done with the case once the person goes to jail, but other issues arise.

Larry Landis said that the DCS budget is 1 billion dollars, versus what counties have to defend these cases. Money has been piled on at the state level.

Jud mentioned that in some counties where he practices, they may share DCS lawyers, but no public defenders are there. It takes both sides to resolve cases, and these are often cases which need resolution outside of cou8rt.

4) Subcommittee Reports:

a) Appellate/Post-Conviction – Joel Schumm

Joel Schumm reported out on the following activities for the Appellate/Post-conviction subcommittee: 1) the subcommittee is looking at models which include Kentucky, Idaho, Illinois, Michigan and Ohio; 2) they have examined national standards for appellate representation, particularly with focus on oversight and quality controls; 3) they are scheduling a meeting with several individuals separately, including the State Public Defender, Attorneys’ general who handle criminal appeals, post-conviction lawyers, and appellate lawyers.

The committee will also prepare questions for the Chief Defender meeting in January. They would like to have a discussion with some of the appellate judges in the state as well.

b) Juvenile Defense –

Kim Tandy reported in the absence of Judge Carmichael that the Juvenile Defense Subcommittee participated in the OJJDP project’s stakeholder group meeting in November, and was able to get input back on several core components necessary for a strong system of juvenile defense. A web ex session to examine 4 state models is scheduled for January 5 from 10:00 – 12:00. The juvenile defense subcommittee should be prepared with its recommendations by the February 9th meeting of the Task Force.

5) Old Business:

a) Update on Listening Tour

Katie Casey reported that five listening tour sites have been identified and dates are being locked in for Indianapolis, Valparaiso, Fort Wayne, Jeffersonville and Evansville. We hope that least 3 Task Force member can make it to each of these. The Commission has been given a proposed budget to assist with these meetings in obtaining a court reporter.

b) Data update – Commission vs. Non-Commission Counties

Katie reported that staff have done some preliminary work to examine data differences between those counties participating in the Commission reimbursement program and those which do not. Initial date did not show significant differences in appointment rates. A deep dive has not been done, but a new data person is being hired by the Commission which might help general some additional information which would be useful.

c) Stakeholder Surveys

Kim Tandy shared that stakeholder surveys are being prepared, and that we have been able to obtain some assistance in this area with a consultant. Sheriffs, County officials, Judges, public defenders are the likely groups for these. We will meet with some individuals separately about this, but any Task Force members who have ideas about content on surveys can contact Kim.

6) New Business:

Judge Tinder reported that he has decided to schedule a special meeting with the Chief Defenders in the state on January 26th, 12:00 – 2:00, and hopes that other members can attend this. There will be phone in capability and the meeting will be recorded. It will not be the only means for this group to have input, but it is important to let defenders know we want to hear from them. Larry Landis indicated that there are a few others who indicated that they might want to attend.

7) Discussion Topic: Closed Session

Narrowing Key Principles/Questions still to be Answered

The group met in closed session to begin a discussion of key principles which should be integrated into any changes in Indiana’s public defense system.

The meeting was adjourned at 12:10 p.m.

**Indiana Task Force on Public Defense**

**Meeting with Chief Defenders**

**Friday, January 26, 2018**

**12:00 – 2:00**

# Minutes

Task Force Members Present: Judge John Tinder (Ret.), Andrea Lyon (phone), Justice Christopher Goff, Joe Heerens, Steven Luce, Larry Landis, Representative Greg Porter, Judge Vickie Carmichael, Judge Mary Willis, Joel Schumm, Monica Foster, Jeff Papa

**Staff Present: Kathleen Casey, Kim Tandy, Derrick Mason, Paula Diaz, Kristin Casper, Andrew Cullen (phone), Bernice Corley, Amy Karozos**

**Guests present: See transcript for complete list.**

**1) Call to Order**

The meeting was called to order by Judge John Tinder, who explained its purpose, and introduced members of the Task Force and the Court reporter.

**2) Discussion with Chiefs**

All discussion from Chiefs was transcribed and is incorporated by reference.

**3) Questions and Answers**

The questions and answers were transcribed and incorporated by reference.

The meeting ended at 2:50 p.m.

1. [↑](#footnote-ref-1)