

Office of the Child Advocate
Juvenile Justice Policy and Data Board Meeting Minutes
April 11th, 2019

Council Members or Designees Present

- Maria Mossaides (OCA)
- Rebecca Brink (DCF)
- John Millet (Probation)
- Cristine Tedstone (DCF)
- Peter Forbes (DYS)
- Barbara Kaban (CPCS)
- Lindsey Tucker (DPH)
- Thomas Capasso (Juvenile Court)
- Katherine Lipper (EOE)
- Naoka Carey (CfJJ)
- Rep. Tim Whalen
- Rep. Carolyn Dykema
- Chief Kevin Kennedy (Chiefs of Police Association)

Other Attendees

- Melissa Threadgill (OCA)
- Lindsay Morgia (OCA)
- Glenn Daly (EOHHS)
- Jacob Agus-Kleinman (CSG Justice Center, by phone)
- Rebecca Hamlin (Rep. Whalen's office)
- Elizabeth Walk (Rep. Dykema's office)
- Marlies Spanjaard (CPCS)
- Matt Cregor (MHLAC)
- Brian Jenney (DPH)
- Rebecca Hamlin (Rep. Whalen's office)
- Jose Monteiro (DCF)
- Bridget Nicholls (DMH, by phone)

- Other members of the public

Meeting Commenced: 1:03PM

Approval of Minutes from February 27th, 2019 Meeting

Ms. Threadgill welcomed the group and everyone around the table introduced themselves. The first item was the approval of the minutes. Ms. Threadgill asked for a motion to approve, provided by Ms. Lipper. All agreed, and the minutes were approved.

Report out from Data Subcommittee

Ms. Threadgill told the group that we would start the meeting with report-outs from each of the subcommittees, and then spend the majority of the meeting discussing concerns that have arisen regarding changes to the statute regarding arrests and jurisdiction over certain juvenile cases.

The Data subcommittee met last Friday, and contributed additions and ideas to the framework for measuring the impact of statutory changes. The subcommittee also talked about what data is and is not available and the timeline for completing the June 30th report:

- The first draft of the report will be reviewed at the May 9th data subcommittee meeting
- The interim draft will be reviewed at the June 7th data subcommittee meeting
- The final report will be submitted to the full board for review by COB on June 10th and reviewed at the June 12th meeting

Ms. Threadgill asked board members to schedule time in their calendars to review the report before the June 12th meeting. If members would like to do a close edit of the report, she will send the interim draft for review.

Ms. Tucker asked if the goal was to receive all edits by June 12th. Ms. Threadgill said that bulk of the edits will come through the data subcommittee, but that edits can also be made by the Board at the June 12th meeting. Given the June 30th deadline, the goal will be to vote to approve the report at the June 12th meeting.

Report out from Community-Based Interventions Subcommittee

Ms. Threadgill said that the CBI subcommittee welcomed presenters in March and April to discuss police diversion and District Attorney diversion, respectively. At the last meeting in April, we had presentations from the Suffolk and Cape and Islands DAs' offices and had representation from the Plymouth and Norfolk District Attorney offices. In May, the group will hear presentations on judicial diversion. Ms. Threadgill also reminded the group that the community-based intervention surveys are out in the field, and encouraged board members to share it with their constituencies.

Ms. Threadgill shared three themes that emerged from the diversion meetings so far. First, there is wide variation on who is offered diversion and who is making decisions about diversion. It is a patchwork system with variation from town to town and county to county. There is also variation regarding use of evidence-based practices and data to evaluate the programs. The common barriers to increasing use and success of diversion include issues with transportation and services for high risk/needs youth. There are also concerns about waitlists.

Rep. Whalen asked if the waitlists were the result of issues with MassHealth, as he hears about MassHealth frequently from his constituents. Mr. Jenney replied that from his experience, the issue is the workforce. Ms. Mossaides also commented that Massachusetts does not have enough providers, and asked what actions would increase the number of providers. She noted that some providers do not take insurance.

Ms. Lipper asked about the meaning of "high-risk" youth. Ms. Threadgill clarified that these youth tend to have multiple, more acute issues, or may be dually involved with DCF and

DYS. These youth do not necessarily need to be in the juvenile justice system, but need a higher level of care.

Chief Kennedy noted that services vary by community. Ms. Mossaides mentioned rural communities struggle because of both a lack of services and a lack of transportation.

Mr. Daly shared that in a joint effort between the Family Resource Centers and the SSY program, programs are required to contract with a mental health clinic. The goal is to be a stop-gap between the time a family seeks help and the Medicaid referral.

Report out from Childhood Trauma Task Force

Ms. Threadgill reported that in March, the CTTF heard presentations from ROCA and the Boston Medical Center Child Witness to Violence project. Yesterday, the conversation focused on schools. The subcommittee heard presentations from the Trauma Learning Policy Initiative, Boston Public Schools and Boston Children's Hospital, and DESE. It was a robust conversation about what screenings are appropriate in a school setting and what can be done to support such efforts statewide. In May, the group will hear from presenters about services for immigrant and refugee children who have experienced trauma.

Ms. Carey asked how the CTTF would use the information from these presentations. Ms. Threadgill said that they are learning sessions and opportunities to solicit input. Given how broad the mandate is for the CTTF, the presentations and the results of the trauma survey will help the group decide what to focus on.

Discussion on Implementation Challenges re: Changes in Arrest/Jurisdiction Authority

Ms. Threadgill asked Mr. Capasso and Chief Kennedy to provide a litigation update so that all members would understand the current issues regarding the changes in arrest/jurisdiction authority. Ms. Mossaides said that often times, there are unintended consequences to statute changes, so we want to get an understanding of what those are and ideas for appropriate interventions.

Mr. Capasso began by saying that the SJC arguments about this case can be viewed online. The individual who is challenging this portion of the statute was arrested for operating a vehicle without a license. He had previous involvement with the system, but did not have a previous charge of operating without a license. The argument is that since it is his first offense of operating without a license, the case should be tossed out. The Commonwealth is arguing that this is the wrong interpretation of the law, and that it is not meant to be offense-specific. Mr. Capasso noted that the judges asked good questions in this case to try and address the core issues. One judge asked why the legislature didn't just eliminate the word "first" - in other words, why not say that officers cannot arrest at all for these offenses if that was the ultimate goal? He expected we would receive a ruling on this that might provide clarity by July or August. However, the SJC does not need to decide on this specific piece of the law to resolve this case.

Chief Kennedy followed up by saying there is a lot of confusion about the application of the law by police officers and judges. It is not clear who will prevail in the case, but all of these different interpretations suggest that something about the law has to change. Police are finding the situation confusing and frustrating. Ms. Threadgill noted that the SJC is looking at an important legal question, but ultimately the question before the court is a narrow one.

Ms. Threadgill said that she found some information regarding the intent of this piece of the law on Senator Brownsberger's website that may be helpful for the conversation. Sen. Brownsberger was the chair of the Judiciary Committee at the time. The website noted that the legislature anticipated that there would be a "shift in system response" for certain kinds of behaviors., and she suggested that a goal for the group could be to identify if that shift was happening effectively, and if not, what was needed to help make that shift.

Rep. Whalen told the group that there is a strong likelihood that this portion of the law is going to change. He noted that last year, the judiciary had less than three days to review a 400 page bill., and the rest of the legislature had a week and a half. Rep. Whalen, a former police officer, took five or six days to read the bill and nothing about decriminalization of certain offenses stood out to him at the time. Now, he has spoken with other legislators and they are shocked that this part of the bill was "snuck through." He stated that no one wants to arrest kids if it can be avoided, and he is sponsoring a bipartisan bill and budget amendment regarding this issue.

Ms. Kaban asked the representative if he could share any hints as to where it was going in the Legislature. Rep. Whalen said that language was built around diversion. If an offense happens in a school, the amendment would make arrest an option but the child would be automatically placed in a diversion program. Youth are aware of the changes in the law, which is causing disruption in schools. The bill would ensure that children would get the services they need through the court. Ms. Threadgill acknowledged that the issue was currently before the Legislature, and suggested that even if the law changes, there was value in discussing way to strengthen the alternatives that exist beyond arrest.

Ms. Threadgill told the group that she went through the list of offenses that are covered by the change in the law, including those punishable by 6 months in jail or less and fines. Michael Glennon from the Suffolk DA's office helped her find this list. Many of the offenses listed are not often used, such as "frightening pigeons" or "vinegar violations." Ms. Threadgill went through the list to identify charges that are most relevant to this conversation, such as trespassing and disorderly conduct, to bring some context to the discussion. Ms. Threadgill asked the group if any common charges were missing. Chief Kennedy noted that lewd conduct is more than a six-month penalty, and that some driving violations may be missing. Ms. Threadgill will make the changes on the list.

Ms. Threadgill said that some members asked for summaries of research about diversion. CSG put together a memo for the groups, and all members received a copy prior to the meeting. There were no questions regarding this document. Ms. Threadgill drew the group's attention to efforts in Florida and Delaware that we may want to consider. Florida has started using assessment centers for their youth, and both states use civil citations. When a behavior is happening, a youth

will receive a civil citation that may result in a fine or community service. We do not currently use civil citations in Massachusetts.

Ms. Threadgill presented a summary of potential concerns raised by the statutory changes regarding arrest:

1. Youth are falling through the cracks - are there more youth that we are failing to reach because of the law changes?
2. Public safety - is the public more at risk because of these changes?
3. Schools - have school environments been negatively impacted by the law changes, in terms of both safety and the learning environment?
4. Accountability - are we harming youth by sending a message that certain behaviors aren't serious and/or not holding them accountable via the justice system?

Ms. Threadgill asked if anything was missing from the list. Ms. Carey asked for clarification regarding the first issue. Is the concern about not seeing youth at all, or does it also include the assumption that without compulsion, individuals will not access services?

Chief Kennedy noted that if a parent does not file a CRA, the court cannot compel services.

Mr. Capasso said that the summary of concerns did not include changes regarding youth under 12. Mr. Capasso shared an incident of vandalism that occurred at a school. The two students involved were 11 and 12 years old; the 12 year old was arrested and the 11 year old was not. The parents were upset that one faced consequences and not the other.

Ms. Threadgill noted that this example demonstrated concerns re: public safety, accountability, and youth falling through the cracks.

Ms. Mossaides asked if the concern regarding compulsory services applied to parents, children, or both. Ms. Carey said that for younger children, the parents would be compelled to act. But she noted there is a difference between falling through the cracks and being unable to complete the requirements because of barriers.

Rep. Dykeman said she understood the logic behind compelling people to comply, but also said that we could be setting them up to not comply depending on the circumstances. She is curious if there is any research on this.

Chief Kennedy expressed concerns about accountability and access. He noted Middlesex has a substantial diversion program, but there is no longer a mechanism to connect youth to those services.

Ms. Threadgill transitioned the group into a discussion about ideas regarding the right system response to these concerns. There are four questions that need to be addressed:

1. What are the behaviors we are concerned about?
2. Why are we concerned about these behaviors?
3. What response(s) would address those concerns?
4. What is needed for that response to occur?

Ms. Threadgill turned it over to Ms. Mossaides to facilitate this discussion. She noted that it will be helpful to focus on specific behaviors rather than just theoretical concerns

Chief Kennedy said that one concern is children under 12 who commit a violent offense, such as a stabbing or shooting. Mr. Millett shared that there was a shooting in Lawrence recently that involved a 13 year old. If that child had been 11, nothing would have happened. Chief Kennedy asked what else could be done in this scenario besides bringing the child to the hospital?

Ms. Brink asked if there was any data available to demonstrate that violent behavior is a problem for children under 12, and said it was hard to have this discussion without those numbers. DYS has very few children under 12 that are committed.

Ms. Mossaides asked if there was any data available from SROs regarding these types of behaviors at school. Ms. Carey said the FBI has this information.

Ms. Kaban said that in her experience as a juvenile defense attorney, she may see one or two of these types of incidents in a year. At such a young age, the likelihood is that the child will be deemed not competent regardless, and the juvenile court would not have jurisdiction anyway.

Rep. Whalen asked what we should tell the people who live around a child engaging in violent behavior.

Ms. Mossaides asked Ms. Carey, who has looked at the data, to describe the more typical behaviors that appear in this age group. Ms. Carey said that serious bodily injuries account for under 5%. The vast majority are low-level cases. Chief Kennedy replied that low numbers does not mean that these situations do not happen. Ms. Carey agreed, but said that these incidents need to be put in a context.

Ms. Mossaides said that some of the behaviors of concern seem to be assault, problematic sexual behavior, and robbery. Mr. Capasso also expressed concern that younger youth were being placed in high-risk situations. For instance, he has heard that gang-involved youth will give a gun to an 11 year old because they know the police cannot do anything.

Ms. Carey said that there is always a hypothetical situation, and that this came up frequently during the raise the age debates. We need to consider the data so that we can point to something other than fear of hypotheticals.

Ms. Tedstone asked if there are any numbers on children under 12 and the types of crime committed. She noted that if we do not know what they have been arrested for, we will not know what kinds of services to provide.

Ms. Kaban said that when a child is acting out, it typically means something is going on at home and/or the child is struggling with a mental illness. There are other mandated reporters, including doctors and teachers, that can file a 51A if there is concern. Chief Kennedy said that the behaviors are not always a result of abuse and neglect. Ms. Kaban said she was referring to

the fact that we have multiple systems in place, and that we need to figure out how to get police access to those systems.

Ms. Brink asked the group to consider the existing pathways, what is working about them, and what is not. We should start with what we have, such as FRCs, 51As, and CRAs.

Ms. Mossaides said she was hearing from the group that one issue is what the police need to do in order to make that link to other service systems. There is no provision that creates a mandatory trigger. Ms. Carey said this is why we need to know the behaviors that are concerning. Ms. Mossaides took the example of violent behavior; two children under 12 are constantly fighting. What should the SRO do?

Ms. Carey said the SRO should ask why they are fighting. Something may have happened with a child's placement, the child may have been exposed to violence, or some other incident.

Mr. Monteiro shared that when he was working in Brockton, he had a nine year old on a CHINS case. It was clear to him that the systems were not talking to each other regarding this child. There had been a home invasion the night before, which explained the child's behavior. How do we connect systems when we don't know where the resources are? We are good at intervention, but not prevention.

Ms. Mossaides said that one common thread in the conversation so far is the importance of figuring out why a child is engaging in certain behaviors. Should some behaviors trigger specific responses, like an IEP or educational assessment? Ms. Spanjaard suggested the Functional Behavioral Assessment could be helpful.

Ms. Brink said that many schools are trauma-focused, and people know how to do that, but implementation is resource dependent. The trauma group (CTTF) may find pilots or geography-specific models to share. Ultimately, the locus of support should be in school.

Ms. Mossaides asked the group if they were comfortable with an assessment as a first step. Ms. Carey said that assessments are often done down the road - the arrest comes first, then the assessment. Schools want the police to deal with problematic behaviors. This isn't always appropriate, but it is what we have gotten used to.

Rep. Whalen said that schools do not have the resources. There is recognition that the most important thing we need to do is have more counseling available. Police are not trained to do assessments. He asked how we can compel parents to agree to services, and compel the child. Would DCF need to be involved? What are other mechanisms in place?

Ms. Brink noted that DCF does not compel kids to participate in services.

Rep. Whalen noted that when a child acts out, and the assessments and services are outside of the court system, there is no follow-up. Court orders are mandated. If the court is not involved, how do we make sure that parents and children are accessing services?

Ms. Mossaides asked if we could mandate assessments. Ms. Spanjaard said parental consent is required.

Ms. Tedstone said that DCF could get involved, as it could be considered neglect of a child. DCF provides services and engages with the child and family. If parents do not engage, they can request custody.

Ms. Brink said that for DCF to be involved, there needs to be a determination of abuse or neglect. Otherwise, DCF is not involved.

Rep. Whalen said that prior to the law change, courts could mandate certain actions. With court orders off the table, we cannot compel people - where are we left? Ms. Kaban said that the same issue would emerge if the child ended up in court. Being in court increases the child's likelihood of commitment; if they are ordered to do something and do not comply, they could be committed to DYS custody.

Rep. Whalen asked about CRAs as an alternative. Mr. Capasso said that the days of a child being committed for not complying are long gone. Mr. Millet said that probation has about 220 kids as a result of probation violations, which is small compared to the rest of the population. Ms. Carey said that there are still hundreds of kids affected.

Mr. Daly said that regardless of the current numbers, arrest is no longer an option. What are the options for police in the moment? Mr. Millett said that previously, parents could file a stubborn child report, which worked before the CHINS law changed. Juvenile probation worked with these youth to do case plans and risk assessments.

Mr. Monteiro said that in a conversation with a police officer, the officer shared that another option that had been taken away from them is community policing. There is no opportunity to see police do anything besides act as a stick. He asked how we can provide services so that the police have options and can avoid filing a CRA? This is the purpose of the family resource centers; families do not have to fail to get the services they need.

Ms. Carey asked if the police can go to the FRCs. Chief Kennedy said that they can make a referral, but if the child or family doesn't go forward, what can they do?

Mr. Monteiro asked if there was any data available on how often families refuse services? Ms. Brink said it was hard to get data on this, as there are differences between a family refusing to engage or not engaging due to barriers to access. Ms. Brink said the law, as written, takes away the option to compel.

Ms. Mossaides said that she heard three points emerging. First, there is a distinction between what happens during the school day and what happens in the community. Next, we need to understand why parents may not be responsive. Third, CRAs have an assessment component, so this alternative is in place. Family resource centers have become a hub for assessments and services. If parents are not cooperating, this could be a potential 51A, though this is an extreme example. She asked if anything was missing.

Mr. Cregor introduced himself and said he was from the Mental Health Legal Advisory Committee. MHLAC has been working with Hampden County schools. What is striking to him is the concern with connecting to resources. In schools, there is a tremendous need for this. Mental health and learning needs are not being addressed, and the problems compound upon themselves. Schools' limited resources lead to using police for discipline purposes instead of handling the problem internally. Mr. Cregor said he has worked with great SROs, but we know that 1) schools are the safest place for kids and 2) it is the bonds within the building that make a difference for kids. Looking at school discipline, a bond has been broken when someone calls the police on a child. That child is not going to want to take any advice from cops.

Mr. Cregor continued by saying he wishes that the bonds in every school were strong, but they are not. He encouraged the group that as we analyze questions, we should think beyond compulsion and remember the disservice that we do by replacing school with the juvenile justice system. The new law guides us in thinking about restoring the dynamic back to school, and to make distinctions between discipline and serious situations.

Chief Kennedy said that legislature mandated MOUs between police and schools, so the roles of each should be clear. He also said that SROs were not included in the discussion.

Ms. Mossaides said that we need to identify some entity to help coordinate interdisciplinary responses. Out of our current state resources, if something happens with a child at 9PM, who or what is available to do follow-up: schools, FRCs? What is available to do an assessment that identifies needs and then does follow-up to ensure those needs are being met?

Ms. Brink noted that it depends on the child and the location of the incident; there may not be a single place, but there may be a way to triage. Ms. Carey suggested mobile crisis, but that is only available in some parts of the state. Ms. Brink said we have things in place, but need to understand what these kids look like, what existing places we can call, and the challenges and barriers to accessing those places.

Ms. Spanjaard asked what data we need, or what data do we not have that we are going to need. Ms. Threadgill noted that the data might be in the list we have of referrers and community-based providers. Mr. Jenney also suggested forensics. Ms. Carey said the parents should be the first contact; most parents want to be first in line when it comes to disciplining their children.

Mr. Capasso asked who should make an assessment after the police have been called. Ms. Brink asked what the police would do before the law changed. Chief Kennedy said now with the CRA changes, the police cannot hold a child. Ms. Brink clarified that she was referring to the more recent criminal justice reform act. Chief Kennedy said that police can no longer bring runaways to the station. Ms. Brink noted that that change was from the 2012 CHINS reform law.

Mr. Daly said that the CRA committee went through this and had to come up with some level of services to make available. The old practice was to involve police, who are now frustrated, and we should have some more concrete information. He is supportive of the discussion, reiterating

that we should look at the services we have and come up with ways that community providers to be more responsive.

Ms. Kaban asked if there were examples available from any other states. Ms. Carey shared that arresting children under 12 does not happen in Europe, so there are strategies that are available. There are also lessons to be learned from the CRA law implementation efforts. Police do not have a checklist of what they should do, which could be a helpful resource.

Ms. Mossaides reminded the group that in many other places, services are provided on the county level. Massachusetts is in the minority with its state-level model. She noted that we need to figure out after-hours services.

Ms. Care said that this gets back to what police are seeing at 9PM - are they mental health issues, destructive property, substance abuse? There are strategies for all of these things. Ms. Brink said we also need to determine who does the assessment on the ground.

Ms. Carey said that if public safety is at risk, police still have options. Chief Kennedy replied that this would fall under the “community caretaker” role of police.

Mr. Capasso said that the court clinics do a lot of assessments and he feels good with the court clinicians making decisions pre-arraignment. Ms. Brink asked if we can change who could use the court clinic, and Mr. Capasso said yes.

Mr. Monteiro said that different levels of responses are required in different situations, and that the public safety response is different than when a child in distress. In Brockton, the police partnered with mobile crisis. Mobile crisis workers went on ride-alongs with police in order for both parties to understand the expectations. Police then had a resource to help de-escalate a situation. This could be available as an option in other places.

Chief Kennedy agreed that we do have some things in place, but it is not clear what happens afterward. Mr. Monteiro asked if it was the police’s responsibility to follow up, and Chief Kennedy said yes, because the police are going to be called back again. Mr. Monteiro said that it should be mental health that follows up. Chief Kennedy said that there can be a long wait before mental health services get involved. Ms. Threadgill said that the issues regarding waitlists mental health services do not disappear once a child is referred to the court. Mr. Monteiro asked if children need more mental health services and specific diagnoses, or do they need something more general?

Rep. Dykema noted that as we think about how we can support children, we should remember the power of resiliency and the power of belonging in a community. Isolation can be damaging, so we should consider what can be done locally so that children feel welcomed back into their communities.

Ms. Threadgill reminded the group that the next meeting of the full JJPAD is on June 12th.

Meeting adjourned: 3:00PM