

Office of the Child Advocate
Juvenile Justice Policy and Data Board - Community-Based Interventions Subcommittee
Meeting Minutes
Tuesday, May 21st, 2019

Subcommittees Members or Designees Present:

- Maria Mossaides (OCA)
- Chief Justice Amy Nechtem (Juvenile courts)
- Thomas Capasso (Juvenile courts)
- Chief Kevin Kennedy (Chiefs of Police Association)
- Brian Jenney (DPH)
- Thula Sibanda (DYS)
- Marlies Spanjaard (CPCS)
- Kimberley Lawrence (Probation)
- Rebecca Brink (DCF)
- Dr. Nancy Connelly (DMH)
- Sana Fadel (Citizens for Juvenile Justice)
- Barbara Kaban (CPCS)

Other Attendees:

- Melissa Threadgill (OCA)
- Lindsay Morgia (OCA)
- Angela Brooks (AG's office)

Meeting Commenced: 2:05PM

Review and Approval of the April 8th, 2019 Meeting Minutes

Ms. Threadgill asked for a motion to approve the minutes. Dr. Connolly motioned to approve. The group approved the minutes.

Update re: Community-Based Interventions Survey

Ms. Threadgill provided an update on the two surveys that are out in the field. There has been a great response to the referrer survey, with a total of 125 responses and relatively even representation across counties. That survey will close in two weeks, so committee members were asked to share it with their colleagues. The response to the provider survey has not been as strong; there have only been 20 responses. The Children's League and Providers' Council have agreed to help with this. Ms. Threadgill asked committee members to email her if they had any further ideas about outreach for the provider survey. That survey will continue on through the summer.

Presentation on Judicial Diversion in Massachusetts (Juvenile Court)

Chief Justice Nechtem thanked the group for inviting her to this meeting. She noted that Mr. Capasso debriefs her on the JJPAD meetings so she can stay up to date on what's happening. Chief Justice Nechtem said that it is always good to be a part of a multi-disciplinary group, and the juvenile courts have increased collaboration over the years, particularly through the Leadership Forum. She thanked the group for all of the work they do in the community, and apologized for having to leave at 3PM. She noted Mr. Capasso will speak to the group about data.

Chief Justice Nechtem discussed how juvenile justice and child welfare often go hand-in-hand. The court's focus is on how we can pay attention to these cases. She spoke of a new initiative between the courts, DYS, and DCF called Pathways. One result of the criminal justice reform bill, there have been differences in interpretation of the legislation. They do not want more young people involved in the juvenile justice, but there is concern that they may be missing youth who are in need of services. As such, when younger children appear in court, they are now flagged as potential child welfare cases, which creates an opportunity for DCF to work with the family.

Chief Justice Nechtem shared that child welfare cases are up, with a 30% increase since 2012, though the numbers have dropped slightly more recently. Most commonly, they are seeing mental health and substance use issues. She thanked DCF for the work that they do, and noted that they are all facing more cases with the same number of people and the same number of resources.

Chief Justice Nechtem discussed a summit that took place on April 3rd where multi-disciplinary county teams met to discuss a new model, differential case flow. In this model, the court, in conjunction with community partners, decide what "track" a case should go on. It is an individualized process and works as a way of moving cases forward with as little exposure to

the court as possible. Hampden County has served as a leader in this model, and they are trying to spread the word. They are moving onto the implementation stage, and each county has to create a system that will work for them. Counties will collect baseline data, and the juvenile court hopes to hire a program coordinator soon. Chief Justice Nechtem expressed optimism that this would create positive change in child welfare and juvenile justice cases, and the bottom line for the courts is always youth and families.

Chief Justice Nechtem shared that in terms of diversion, all counties have DA diversion. She recently met with the judges, and what diversion looks like depends on the county. They are figuring out uniformity of practice. DA diversion is still strong, and she gave the example of the Suffolk County DA's office working with the court. One of the main challenges is finding resources that meet the child's needs. The Chief Justice referenced the sequential intercept model and said that they had identified resources to build a database of resources. This will help each county leader and others know where they can go to place children. She said that this is a time of growth for the court, and that she is frequently in contact with Ms. Mossaides.

Chief Kennedy asked if all of the child welfare cases were sent to DCF. The Chief Justice said that they were. Sometimes probation will identify cases, and then substitute with DCF. Chief Kennedy then asked if grandparents were going to court. The Chief Justice said perhaps in guardianship hearings, and that the juvenile courts have representatives on the grandparents' commission. Ms. Lawrence also noted that a judge can do a 3rd party placement, and probation can follow up.

Mr. Capasso reiterated that judicial diversion varies from county to county. Mr. Capasso also shared some data challenges. MassCourts, their database system, can track some diversion, but not by type. It is possible they can report the number of children who received diversion, but they could not say if it was from a judge or the district attorney's office. They are working with their tech people to fix this.

Mr. Capasso went over several handouts with the group, the first of which showed the differences in filings. Some of the differences may be artificial and can be traced to differences of opinion on law, but overall the number of filings have dropped over the years. However, there has been a slight uptick in youthful offender filings. Ms. Kagan asked if the data could be parsed by county. Mr. Capasso said that the second handout had data by county, but only for delinquency filings. They can probably do the same for youthful offender filings.

Mr. Capasso noted that one of the first questions asked is, what's a filing? If someone took DA diversion, would it be captured in this data? Maybe. However, if they received police diversion, then it likely wouldn't be captured in the data. The other two handouts contain information provided to the judges about the criminal justice reform legislation, noting that the flowchart is particularly helpful. Clerk magistrates have shared that sometimes, judges are involved with DA diversion. Judges can also order diversion. The chart explains, in the last bubble, information about getting complaints expunged, with the CARI record transfer being the most important.

Approved at June 2019 CBI Subcommittee Meeting

Ms. Fadel asked for clarification, and Mr. Capasso said that the CARI informs the CORI.

Ms. Spanjaard asked if there was any data about when in the process judges order diversion. Mr. Capasso said not yet, but it can be discussed.

Chief Kennedy asked how Suffolk DA diversion gets reported to the court. Mr. Capasso said that the clerks don't know specifics. Chief Kennedy asked if it was at the clerk hearing or prior to arraignment, and Mr. Capasso said it was prior to arraignment. Chief Kennedy asked how we would record this information in who is getting diversion. Mr. Capasso said that he thought of it like a funnel - what is the youth's first crack? DA diversion seems to subsume diversion, then there is some judicial diversion. It is clear that kids are getting diverted, but it is not clear through which channels. There is one county that is not doing judicial diversion.

Ms. Threadgill asked if there were any other reasons for no diversion. Mr. Capasso said no, but in Worcester, judicial diversion means something specific - it references one specific program that a small group of youth are eligible for. He noted that as time goes on, there will likely be more programs available.

Ms. Threadgill asked how we could expand judicial diversion. Chief Justice Nechtem said that it will take practice change, a change of culture, informing the bar, sharing information, and getting the community involved. Mr. Capasso said that the juvenile court does two conferences every year, and that they could do one of them on judicial diversion.

Ms. Fadel asked if there are any best practices that can be shared as training for judges. Chief Justice Nechtem said that they are looking at it, keeping in mind that different counties will have different needs. It will be discussed at the fall conference. Mr. Capasso said that the conference is a good time to share educational information, as probation, clerks, and judges are all in the same place.

Ms. Kaban asked if there has been any change in CRA filings. Mr. Capasso noted that they are either slightly down or level. He thought there would be an increase because of school scenarios. Ms. Spanjaard noted that disturbing school assembly was often an add-on charge, so the filings have remained the same. Suspensions and expulsions also remain about the same.

Presentation on Probation's Role in Judicial Diversion

Ms. Lawrence is an Assistant Chief Probation Officer in Essex County. In her office, about 90% of cases are care & protection cases. Probation has had to change their structure as a result of the changes in caseload. Ms. Lawrence referenced the "diversion drawer" where they have kept track manually of how many cases were DA diversions or judicial diversions. They had 36 cases

of DA diversion, 24 of judicial diversion, and 120 pending delinquency.

Ms. Lawrence said that her office uses the Ohio Youth Assessment System (OYAS), which is a tool to measure post-disposition risk level that helps to make service plans. They are now using the OYAS-DIV tool pre-arraignment upon request, which provides a screening to indicate whether a youth would benefit from diversion. Some information is gathered from documents, other information comes from youth and families. If the score is low, probation lets the judge know. Currently very few assessments are being done because probation is not being asked to use the tool.

Mr. Capasso said that most judges are looking for a reason to divert. The law says that they do not need an assessment to divert, so they can do it themselves.

Ms. Kaban said that as an attorney, she would not want her clients to answer the last two questions on the OYAS-DIV. She asked if the process had to operate in this way. Ms. Lawrence said that one change that they have made is when complaints are issued, youth can speak to the bar advocate. The idea is to give youth an opportunity to speak with counsel about the best track for their case. Ms. Lawrence also noted that youth who score medium or high on the OYAS may still get diverted.

Ms. Mossaides asked about the advantages of having an assessment. Mr. Capasso said that assessments do give some guidance. Ms. Mossaides asked if they could be used to look at disproportionality. Ms. Threadgill said that this screening tool is about the youth's risk of recidivism, not what the child's needs are. She asked how judges are making decisions about what the child's needs are. Mr. Capasso said it is through judge-child interactions. The sense is that the judge will figure out how to get to the child's needs.

Ms. Mossaides said she was thinking about an assessment similar to CANS that gets to what the child needs. We want to encourage diversion that addresses the child's needs. While we do not have family resource centers everywhere, they do have clinical capacity.

Ms. Kaban said that they ask parents what is helpful for the kids. Sometimes there is a deficit in certain skills; it is very hard to get information from a 12-14 year old about their needs. She is not sure if the courts want to get into this role, as it could be read as crossing boundaries. Mr. Capasso said in a recent case, the judge and probation believed the youth needed services, but the defense attorney thought they could win in court.

Ms. Fadel noted that a question on the OYAS-DIV asks if a child has ever had a family member arrested. Was there an assessment outcome tied to this question. Ms. Lawrence said that if a youth is a good candidate for diversion, probation will let the judge know. It is not meant to be a full assessment, and by law, probation should not be doing anything other than the screening pre-arraignment. She shared she is not sure if the legislature thought through the meaning of "evaluation" when putting together the criminal justice reform package.

Mr. Capasso said that they are more concerned that judges divert when it is appropriate. Ms. Kaban has said that sometimes the judge has known her client better than she did, as the judge had seen them through care and protection or CRA cases.

Ms. Threadgill asked where the court clinics fit in. Dr. Connelly said that the clinics receive referrals from the courts. The number of cases going to the court clinics have declined over the years. These cases tend to be more complex. Ms. Threadgill noted that some court clinics said that they are involved in diversion, but Dr. Connelly said that they may be using the term “diversion” to mean stopping the process of criminalization.

Ms. Kaban asked if requests for competency evaluations have gone down. Dr. Connelly said that this number remains steady.

Mr. Capasso shared that recently, a judge wanted to do an assessment on a 10 year old, and that judges are often thinking about the needs of the youth. Dr. Connelly said that based on what we know about brain science, we would not expect a 10 year old to be competent to stand trial.

Mr. Capasso mentioned a pilot program in the adult court that the juvenile courts latched onto regarding failure to appear rates. The pilot is using text messages to remind individuals about their court dates. Other states are moving in this direction.

Ms. Lawrence said that the DA Diversion program in their county does not allow counsel at intake, and also requires that the child take some responsibility for their actions in order to be eligible.

Dr. Connelly said that in the adult courts, they have always had trouble measuring what does not happen or what doesn't get reported. Numbers are going down overall, and while we hope it is due to diversion, there could be other factors involved. Mr. Capasso noted that the expungement numbers have become skewed because they include petitions, but they don't have the data on the information the legislature wants.

Questions and Discussion on Diversion

Ms. Threadgill moved the conversation towards talking about next steps for this group. We did these sessions on different types of diversion. As we move into fall, where we will have to start thinking about recommendations, what are some questions that still need to be answered? We can use these questions to plan out the summer.

Ms. Fadel asked about the financial impact for community-based providers that have to do their own fundraising for services. Ms. Mossaides ask if this depends on the services offered -

Approved at June 2019 CBI Subcommittee Meeting

for instance, the Commonwealth pays for Family Resource Centers. Ms. Fadel said that the Suffolk DA's office has MOUs with juvenile diversion service providers, but none are paid for these services.

Ms. Threadgill said that she is hoping the provider survey will help address those questions. The group can consider a budgetary analysis of state spending, looking at earmarks for specific organizations.

Ms. Threadgill asked if we should talk to MassHealth. Ms. Brink said that would be difficult. They have contracts, but if you bundle the range of services called "diversion," some would be covered by Medicaid and some would not. How would we tease that out?

Ms. Lawrence shared that DA diversion is not paying for services, but they are paying coordinators to organize.

Ms. Kaban asked given the diversity of the programs, how are we going to know what works?

Ms. Mossaides responded that she believes when the legislature provided these two new functions to the OCA, they knew there would be a process at every stage. Given we are only a year in, we are still doing fundamental gathering of information. Does the Commonwealth ensure a range of services across the state?

Ms. Brink asked how we collect outcome data that holds us accountable in terms of racial disparities, socioeconomic differences, etc, and also accounts for discretion.

Ms. Mossaides said that the legislature is more general at the beginning, and then will start to get a little more prescriptive. However, we are not there yet. We cannot take discretion away, but we can identify the places that lack resources.

Ms. Threadgill asked if there were any additional people we should consider bringing in to share information. Mr. Jenney mentioned a group that DPH is involved with that is doing some related work, and that this group may want to share information to inform that committee.

Ms. Mossaides said that it would be helpful to have data that says for these types of youth, these kind of services are most appropriate. Ms. Fadel mentioned that the Washington State Institute of Public Policy has a list that may be helpful. Mr. Jenney said that community providers are using the list and are familiar with the practices.

Ms. Sibanda mentioned that Cambridge uses a tool called the YLS-CMI, which is a matrix that

Approved at June 2019 CBI Subcommittee Meeting

shows if a child presents as low or medium risk, these are the programs in the community that are available for them. Each court could benefit from these kinds of resources.

Ms. Mossaides noted that we do not have structure to do assessments; who owns assessments? Even with sufficient funding, where do assessments reside? Our child services are spread out between the executive branch and the judiciary. Ms. Lawrence said there are also ownership considerations for the state and local jurisdiction. Mr. Jenney brought up the issue of who owns the information, as there is some information agencies cannot share.

Ms. Threadgill summarized the discussion in three questions:

- What are the diversion programs available?
- Are they effective?
- How are we matching kids to programs?

She suggested thinking through others to bring in and how to structure conversations about these issues. Before the next meeting, she will send an outline to the group for feedback.

Adjournment: 3:41PM