

Committee on Juvenile Courts

Committee Minutes

Meeting Date: 10/18/18

The meeting was called to order by
Judge Quigley at 10:04 am

Minutes taken by: Kathy Gillmore

Roll Call

Present:

Honorable Bryan Chambers, Honorable Robert Higgins, Joseph Kelroy, Connie Koch, Caroline Lantt-Owens, Honorable Margaret McCullough, Eric Meaux, Honorable Denneen Peterson (proxy for Judge Fink), Kathleen Quigley (Chair), Honorable Travis Ragland (telephone), Honorable Mark Wayne Reeves, Tyson Ross (telephone proxy for Judge Newman), Honorable Tim Ryan (telephone), Honorable Christopher Staring (telephone), Honorable Sam Thumma (also proxy for Judge Monica Stauffer), Jennifer Torchia, Honorable Daniel Washburn (telephone), Honorable Rick Williams (telephone), Honorable Anna Young

Excused/Absent:

Honorable Terry Bannon, Honorable Allan Perkins, Ernest Rose, Denise Smith

Guests/Staff Present:

Shawn Fuller, Jeff Hood, Jerry Landau, Tina Mattison, Nina Preston, David Withey

Introductions were made around the room.

Adoption of Minutes:

Motion: To accept and adopt minutes from the August 23, 2018 meeting.

Moved by: Honorable Anne Young; **Seconded by:** Honorable Margaret McCullough

Action: Motion passed unanimously.

Topic: DCS Quarterly Update

Speaker: Shawn Fuller, *DCS General Counsel*

Summary of Discussion: (PowerPoint distributed and reviewed):

Department of Child Safety/ Court Authorized Removal Update:

- First Quarter SFY '19
 - Total Removals: 2334
 - Court Authorized Removals Requested:
 - 979 applications for
 - 1546 children
 - Outcomes
 - 1444 authorizations (children)
 - 35 denials (children)
 - 22 applications cancelled by Department
 - 19 in "more information" status (petition)

- 61.8% of removals were with a CAR

The Court Authorized Removal (CAR) process has gone relatively smoothly. There have only been a few minor issues and a few requests have been denied. Judge Ryan has been helpful in working through the issues.

DCS is looking into a developing an appeal process for when a CAR is denied.

DCS has been working with the AOC and Judge Ryan regarding seeking removals of children through the dependency process at the time a petition is filed. A meeting has been scheduled for all interested parties asking for removals as part of the dependency process. This is an area that has been utilized successfully in the past.

Topic: ADJC Update

Speaker: Beth Broeker, *Chief Hearing Officer, ADJC*

Summary of Discussion: (*Brochure on Interstate Compact distributed and reviewed*)

Today's Numbers at ADJC:

- 179 children in secure care (boys- 167, girls-12).
- Community Corrections Officers are supervising 121 children in the community who are on parole and 86 kids through the inter-state compact for juveniles.
- 43 ADJC youth are dually involved with DCS.
- Three diplomas and nine GED's have been awarded thus far this fiscal year.

Tour Update:

- Next tour dates are scheduled for October 30th, November 6th, November 15th and December 4th.
- The tours are most effective for groups of eight and fewer but can accommodate according to request.

Training offered for judicial officers and court staff on the Interstate Compact for Juveniles (ICJ):

- We can accommodate scheduling needs in your county if you are interested. The presentations take approximately one hour.
- The Interstate Compact for Juveniles is a legislatively adopted contract between all fifty states, the U.S. Virgin Islands and the District of Columbia that provides for supervision and return of kids who have run away from home and left their state of residence; are on probation, parole or other supervision or have escaped to another state; or have been accused of an offense in another state. The ICJ and the ICJ rules have the full force and effect of federal law, and under Arizona law ADJC is the compact commissioner and administrator for Arizona. The ICJ handles interstate transfers, which enables states to transfer probation or parole supervision to another state. Since January of 2018, ADJC has processed 95 outgoing youth transfers, 55 of whom are currently under supervision.
- ICJ also allows return of youth who have absconded or run away to another state. The home state can facilitate the youth's return and cooperation with the receiving state.
- The ICJ is important for human trafficking victims; it is a critical tool in protecting kids who have run away.

Topic: Family First Prevention Services Act- Telephone Presentation

Speaker: Judge Maurice Portley (Ret.); *Judicial Consultant; Casey Family Programs*

Summary of Discussion (Information Item/ Handouts -5):

- Judge Portley presented a PowerPoint on the Family First Prevention Services Act (FFPSA).
 - The FFPSA was passed and signed into law (P.L. 115-123) in February 2018 as part of the Bipartisan Budget Act. It is a new option for States and Tribes to claim Title IV-E funds for prevention activities; a new policy to ensure appropriate placements for children in foster care and a new funding and reauthorization of existing funding for child welfare programs, including prevention funding, court funding and specific substance abuse prevention grants.
 - New funding for prevention activities:
 - Allows State and Tribes to receive open-ended Title IV-E funding for evidence-based prevention services.
 - Funding for: children at imminent risk of placement in foster care, or pregnant and parenting youth in foster care. Their parents or kinship caregivers are also eligible.
 - There is no income test for eligibility.
 - Requires prevention services and programs to be promising, supported, or well-supported to qualify for reimbursement.
 - Title IV-E reimbursement for eligible prevention services begins on October 1, 2019.
 - This is an option for states and tribes, tribal organizations and tribal consortiums.
 - Funding requires a state to submit a prevention and services program plan as part of the State's Title IV-E plan.
 - Tribes with an approved Title IV-E plan may choose to provide prevention services programs.
 - Ensuring Appropriate Placements in Foster Care:
 - The following are currently allowed under Title IV-E and will continue under FFPSA:
 - Facility for pregnant and parenting youth,
 - Supervised independent living for those 18 and older,
 - Specialized placement for youngsters who are victims or at-risk of becoming sex trafficking victims.
 - Foster Family Home (defined)- no more than 6 children in foster care, with some exceptions.
 - Beginning as early as October 1, 2019, after two weeks in care, Title IV-E federal support will be available for the Title IV-E eligible youngsters with serious emotional or behavioral disorders or disturbances placed in a Qualified Residential Treatment Program (QRTP). There are no time limits on how long a child can remain in a QRTP as long as the placement continues to meet her/his needs as determined in assessment.
 - Select Additional Changes to Promote Safety, Permanency and Well-Being:
 - Requires the development of a statewide plan to prevent child abuse and neglect fatalities,
 - Provide Title IV-E support for evidence-based kinship navigator programs at 50% on October 1, 2018.
 - FFPSA and the Courts:
 - Judges, lawyers, court staff and court volunteers will be trained in FFPSA.
 - Clear established removal standards.
 - Families will be embraced throughout the process.

Topic: DCS Implementation of Family First Prevention Services Act

Speaker: Mike Faust; DCS, Deputy Director

Summary of Discussion (Information Item):

- Of the opinion that this is not *net new* funding; it provides the ability for states to draw down Title IV-E funding for reasonable candidates, which is previously defined in federal law and currently utilized by the state. Right now, we can only draw out funds for case management service; not direct services.
- *Prevention portion* is connected to the placement portion in that if the state elects to delay implementation of the placement portion, the recovery of IV-E funds on the prevention side must be delayed.
- *Substance abuse prevention and treatment services* are delivered by Arizona Families First (AFF); we are in the process of making this a qualifying program and will take a few months.
 - To qualify, the program must show that it is evidence-informed, evidence-based, or promising-informed-evidence-based.
- *In-Home Parent Skill-Based Program*- our primary service for this is in-home preservation services. The problem is that of the eighteen providers that deliver this service, all have a different program. Beginning next month, we will be pulling together a workgroup to determine a single statewide practice for all providers to follow.
- Reasonable candidate vs. non-reasonable candidate to un-lock Title IVE funds.
- These are not primary or secondary dollars; they are tertiary dollars specifically geared to prevent children from entering foster care.
- QRTP – 95% of kids in group care would not qualify for the QRTP designation, as those placements do not qualify, and they do not meet all of the requirements.
- Each QRTP must have a documented evidence-based program- there is not even one in the state at this point. There are facilities with solid programs that have the opportunity to become evidence-based; this is the work that we have to do in the next two years.
- Ensuring appropriate placement:
 - *Facility for pregnant and parenting youth*- our strategy is to have them not reside in group care, but rather in a family-like setting.
 - *Supervised independent living for those 18 and older*- approximately 820 kids are still in the extended foster care program. Our ability to have them stay with us until age 21 is very positive. The federal government sees this in the reimbursement plan.
 - *Specialized placement for youngsters who are victims* or at-risk of becoming sex trafficking victims- common discussion point; we currently have two contracted providers and are looking to increase this number.
 - *Foster Family Home (defined) as no more than 6 children in foster care*- this is important, in order to differentiate from a “group home”.
- There is quite a bit of work to do to operationalize this program. There will always be a demand for group care, though we have decreased the numbers.

Topic: Delinquency 101 Curriculum Draft

Speaker: Judge Colleen McNally (Ret.)

Summary of Discussion – (Information item; draft agenda distributed and reviewed):

- The idea is to create a course that is available for judges who practice in delinquency. This course would delve deeper into the delinquency process. It is important for the judges to understand the issues that impact the youth/families in juvenile justice planning, such as immigration, LGBTQ, DVD, DCS.
- A draft agenda has been created; feedback on content is appreciated.

- Common themes are on the efforts to uplift awareness and knowledge.
- This training will eventually be web-based and will pilot in April of 2019.
- Should this training be mandatory in the New Judge Orientation?
 - Feedback: whatever best would get the most judges in the room.
 - The committee feedback is supportive and in favor.
- It was noted that the bench book needs to be updated and is missing key parts in the delinquency portion (adjudication and disposition).

Topic: Detention Education

Speaker: Scott Mabery, Director of Juvenile Probation; Yavapai County

Summary of Discussion (Information Item):

- The funding in our detention centers has been drastically cut in recent years.
- The statute that we are looking at is A.R.S. §15-913; the funding is the same as in 1994. The average daily populations in our centers has decreased. The funding flows through on a census-driven formula. However, even with fewer youth in the schools, the staffing must still be in place.
 - A.R.S. §15-913 allowed and required each detention school to have a base of \$20K and allotted \$15.00 per youth.
 - We are proposing to increase the base rate to \$100K and increase the daily rate to \$25.00 per youth.
 - This is based on a 2% inflation rate since 1994, which is deemed reasonable.
- Once the superintendent’s office has a bill in place, we will run it through the committee structure at the AOC to get our funding back where it needs to be to run our detention education schools.

Call to the Public:

The following public members addressed the committee:

Name:	Representing:	Subject:
Jonathan Conant	Juvenile Law Section of State Bar/Private Practice	ICPC- Concerns on DCS Policies and Rules of Practice
Patricia Borden	Arizonans for Rational Sex Offender Laws	3 Statutes to help juveniles/youth convicted of sex offense for 2019 legislative session

Topic: Recommendations of the Post-Conviction Actions Task Force

Speaker: Jerry Landau, AOC Director of Legislative Affairs; PCATF Chair

Summary of Discussion (Possible Action Item / Handouts):

A post-conviction task force was formed as an off shoot of the Fair Justice task force. The purpose of the post-conviction task force is to look at matters to do with juvenile records, juvenile offenses and restoration of civil

rights. Four proposals are presented today; two from the task force and two from Eric Meaux (Maricopa County CPO).

1. Juvenile Court- Destruction of Records

Discussion: A current statute, with a number of changes. This began with a thought of moving from a *destruction* of records to a *sealing* of records. There are circumstances where an adult needs to access their own juvenile records (i.e. military). Destruction has some positive benefits, but also some negative benefits. Sealing also gives a subset category to look at extenuating circumstances (parent owing fines and fees, or restitution). The military looks at whether there was a referral to juvenile court that was dismissed or there was not an adjudication following a trial. If the records have been destroyed, there is nothing to show. This will be brought before the Arizona Judicial Council at their December meeting.

Motion: Support ARS 8-349 as presented. **Action:** Approve;

Moved by: Jennifer Torchia; **Seconded by:** Judge Young

Motion passed unanimously.

- It is noted that there is some risk involved with this. The applicant should be notified as to the risk involved and of the importance of keeping the paperwork. The post-conviction task force is willing to go back to the table to address this. This could be added to the standardized set of forms.

2. Setting Aside Adjudications; Requirements

Discussion: This is a compilation of existent statutes. There are some substantive changes to be aware of:

- Last year, the legislature passed a law allowing juvenile court jurisdiction to extend to age 19 if the prosecutor files a notice of intent to do so; therefore, the set aside statutes must accommodate this.
- The clerk will not charge for a juvenile to file for set aside.
- As was requested in last year's set aside by the legislature, put in a series of factors that the court *may* consider.
- Make clear that the petition is dismissed.
- Department of motor vehicles: discussion on whether we can set aside vehicle crime offenses.
- Requires that the court at disposition provide in writing to juvenile that they have a right to file for set aside.
- A victim's rights component.

Motion: Support ARS 8-348 as presented. **Action:** Approve;

Moved by: Eric Meaux; **Seconded by:** Jennifer Torchia

Motion passed unanimously.

- Distinction noted between E (applicant still required to pay obligations) and F (court can change those monetary obligations; can mitigate all the way down to zero). This is modeled after a statute already in place.

3. Juvenile Offenses; Probation

Discussion: From Eric Meaux; presented to the task force and discussed as it was opportune to do so and not within the mandate of the task force. Currently, if a juvenile is adjudicated delinquent as a repeat felony offense, the person must be placed on intensive probation (IPS). In recent years we have passed evidence-based practice in code which talks about IPS evaluating the nature of the offense. Our system should not be dictated by the offense alone. The recommendation is to move away from the automatic mandate that relies on a second felony. This will be presented to AJC at their December meeting.

Motion: Support 8-341 as presented. **Action:** Approve;

Moved by: Judge Young; **Seconded by:** Judge Reeves

Motion passed unanimously.

4. ***Detention Centers; Dangerous Offenses***

Discussion: A few years ago, the County Supervisors Association brought to the legislature the concept of allowing juveniles who are filed on as adults pursuant to §13-501 to be held in juvenile detention instead of the county jail. However, the then-sheriff believed that every person charged as an adult should be in the county jail and opposed the legislation. At the end of the session the compromise reached was that dangerous offenders would be placed in the county jail; other offenders is a judicial option as to whether to place the juvenile defendant in detention or in jail. It removes the requirement that a person charged with a dangerous offense as defined in statute *has* to be housed in the county jail pending trial; it provides an option for the court. There may be transportation and other issues that must be worked out on a county-by-county basis.

Motion: Support section 8-305 as presented. **Action:** Approve;

Moved by: Judge Young; **Seconded by:** Judge Washburn

Motion passed unanimously.

Discussion: This would be for the juvenile court to handle.

Topic: Legislative Update *Item taken out of order*

Speaker: Jerry Landau, *AOC Director of Legislative Affairs; PCATF Chair*

Summary of Discussion (Information item):

The positions of Speaker of the House and President of the Senate are open; these decisions will be made right after election day. Soon to follow, committee chairs will be appointed. There will be five juvenile bills presented to AJC, along with six other bills. We may combine some, to avoid taking eleven bills to the legislature. There are double-digit members coming from the house over the senate, which will make for a learning curve session.

Committee discussion:

None

Topic: State/Tribal Judicial Roundtable Discussion *Item taken out of order*

Speaker: Judge Kathleen Quigley

Summary of Discussion (Information item):

The letter of invitation is ready to go out to the tribal judges throughout the state, inviting them to the meeting on January 17, 2019. Casey Family Programs will be participating and will bring Judge Thorne to facilitate that meeting. There was also a recommendation to invite Director McKay or his representative. A subcommittee was created to create topics for discussion. If anyone has potential topics for the roundtable, please email Judge Quigley.

Topic: Juvenile Reverse Transfer/Fingerprint Removal *Item taken out of order*

Speaker: Judge Kathleen Quigley

Summary of Discussion (Information item):

In situations where a juvenile is direct transferred to adult, or referred as an adult, they are processed through the fingerprinting system as an adult, with fingerprints then uploaded into the DPS system. DPS does not know when there has been a reverse transfer, returning the youth to juvenile court. We have now put this into process with the clerk's office. When a reverse transfer is granted, the clerk will automatically upload DPS into the distribution list; a copy of the minutes will then be sent to them. DPS will then remove the youth from their system. Judge Quigley will send out the email address to work out your own process.

Topic: Foster Care Review Board (FCRB) and Court Appointed Special Advocate (CASA) Administrative Code
Item taken out of order

Speakers: Caroline Lault-Owens, Deidre Calcoate and Lori Dennison; *Dependent Children's Services Division (DCSD)*

Summary of Discussion (Information item/action item):

Foster Care Review Board (FCRB) Code Revision:

The Code was first adopted in March 2003 and has not been updated since that time. The revisions provided today are technical in nature and conform to statutory and rule changes, as well as recommendations from the Office of the Auditor General during their last Sunset review of the FCRB. Changes were also made to conform the code to meet the requirements of ACJA Manual on Code Drafting. Highlighted changes:

- All references to *Child Protective Services* were updated to the *Department of Child Safety*,
- The code's wording was updated to conform to child welfare statutes,
- Changes were made to the composition of the state board to match current statute per recommendation of the Office of the Auditor General's Sunset Review and subsequent statutory changes,
- Removed the requirement for removal review and all references to FCRB removal review members.
- The draft code was posted on the public forum for comment from September 20, 2018 to October 17, 2018 at noon. No comments were received from 120 views.
- Upon motion passing, we will present to the AJC in December for approval.

Motion: Support Section 7-102 as presented. **Action:** Approve;

Moved by: Judge Young; **Seconded by:** Judge McCullough

Motion passed unanimously.

Court Appointed Special Advocate (CASA) Code Revision:

This code was first adopted in the year 2000 and has had two revisions. This current code has been a work in progress; it is presented today to conform to the current statute and rules and includes updates to current practice within the local programs. The code was provided to the local CASA programs for feedback and a "sneak peek" at revisions prior to public posting. A few comments were received from the local CASA programs, which were then incorporated into the code. The draft code was then posted for public review and comment from July 1, 2018 through September 3, 2018. There were 695 views and no comments were received.

Highlighted changes:

- The effect of the proposal is to amend the CASA code for the first time since 2005. Since that time, significant statutory changes have occurred with respect to dependent children and many citations needed to be updated. As with other AOC programs, the code of conduct is now incorporated into the code section. A significant effort has been made to conform the code to the actual current practices, such

as background checks. Additionally, the CASA code, as one of the first ACJA sections adopted, needed updating to conform to current drafting requirements.

- There are eleven new and changed provisions, as outlined in the handout.
- Upon motion passing, we will present to the AJC in December for approval.

Motion: Support Section 7-101 as presented. **Action:** Approve;

Moved by: Judge Young; **Seconded by:** Judge McCullough

Motion passed unanimously.

Topic: Juvenile Justice Updates *Item taken out of order*

Speaker: Joe Kelroy; Director, Juvenile Justice Services Division (JJSD)

Summary of Discussion (Information item):

- DCS Data Sharing Agreement is now in place; thank you to all for assistance. All probation departments should be trained by the end of the year.
 - A workshop will be provided at next week's conference on "Milestone" in Yavapai County. The Governor's Office may have some interest in this.
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Topic: Report on Rule Petition 18-0005

Item taken out of order

Speakers: David Withey/ Nina Preston; AOC Legal Counsel

Summary of Discussion (Action item):

At the April COJC meeting, Legal Services presented some recommended edits to rules regarding juvenile records. These records were the subject of a petition filed by then-clerk of the Superior Court of Maricopa County Michael Jeanes and presiding juvenile court judge Timothy Ryan. The COJC tentatively approved the edits that AOC Legal recommended, with the request that we consult with Erin Nash, the spokesperson and special counsel to the clerk of the Superior Court in Maricopa County and Dennis Carpenter, General Counsel. In our effort to consult and discuss with them the changes we were recommending, we were not able to reach agreement in time to file comment on May 20th. We asked the court for an extension of time and requested the opportunity to establish a workgroup of stakeholders. Justice Pelander entered an order permitting this; Dave Byers established and convened a workgroup of interested stakeholders.

- Aaron Nash chaired the workgroup; both Judge Ryan and Judge Quigley actively participated, as did Eric Meaux (on behalf of probation). Other members of the workgroup were from the attorney general's office, the clerk's office, the prosecution and defense counsel and court administration.
- The group held two meetings where significant discussions occurred with many perspectives aired regarding the goal of bringing clarity to the rules regarding juvenile records, with the specific goal of making it easier for the clerks to determine what they could release without a court order and what had to go to a judge for a judicial determination.
- It is the firm hope of the workgroup that these changes will bring clarity to the many juvenile court records issues that clerks have faced over the years.
- Copies have been provided of both Justice Pelander's order as well as a copy of the comment that was filed.

Discussion:

- With context to Rule 47, the Juvenile Court Rules have a great concept called “participant”. Rule 47 does not mention this. Would a participant have access? Participant is a term used exclusively in the Juvenile Court Rules. It would make sense to address this and put in as defined elsewhere in the rules. (Thumma)
 - It was suggested that we could supplement the comment; the message would then be communicated.
 - Minutes of discussions that suggest what was/was not included and why.

Motion: Support Rule Petition 18-005 as presented. **Action:** Request to include the phrase “participant” as defined in the Juvenile Court Rules be accounted for in Rule 47 and that it fall within the A 2 bucket.
Moved by: Judge Thumma; **Seconded by:** Judge McCullough
 Motion passed unanimously.

Topic: Arizona Assessment on Juvenile Delinquency Defense

Speaker: Christina Phillis; *Co-Director of Southwest Region; National Juvenile Defender Center*

Summary of Discussion (Information item):

- Two years ago, it was decided to have juvenile defenders assessed statewide in Arizona, with the purpose of the assessment to look at the quality of representation. The center provides training and overall help to public defenders throughout the country, but do not represent anyone. Their primary purpose is to provide training to all 50 states and Puerto Rico.
- The assessment is posted on the National Juvenile Defenders Center website. Hard copies were to have been mailed to all presiding juvenile judges; Chris will follow up on this.
- The Center has done 25 state assessments, of which Arizona is one. Anyone affiliated with Arizona was not a part of the assessment team.
- Suggested recommendations:
 - We need to make sure that youth have court appointed counsel always and at no cost. It should not be based on what the parent can/cannot afford. There a few counties lagging in this regard,
 - The attorney should speak to the child before going into the first court hearing,
 - If the child makes a pitch to waive counsel, they should be able to speak with an attorney prior to waiving counsel,
 - Attorneys should be appointed before child speaks with law enforcement. There should be representation all the way through the process.

Discussion:

- Where are the problems occurring? It was difficult to tell from the assessment whether the issues were widespread or isolated.
 - It was difficult to tell from the assessment whether the public defenders were providing quality service and contractors not, or no one was providing quality service.
 - Fines - Graffiti statute- community service can be substituted as an alternative if the youth cannot afford fines. We may form a panel to study this issue. The National Juvenile Defender Center will not break this down county-by-county.
 - Standards- we did adopt standards for lawyers who practice in dependency cases. There is interest for also adopting standards for those that practice in delinquency. Unlike adults, juveniles are not likely to complain about their court appointed attorney, making the standards a good recommendation.
 - Grants are not provided.
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Topic: Old Business

Speaker: All Members

Summary of Discussion:

No old business was discussed.

Topic: Around the State/Upcoming Training

Speaker: All Members

Summary of Discussion:

Pima – Judge Kathleen Quigley- Distributed handout “Use of Juvenile Detention for Under 18 and Criminally Charged” (working legislative document). California and New Mexico have drafted a statute to provide alternative high school graduation requirements for kids in confinement.

- Removes electives: language, P.E., etc.
- Allows the school the ability to determine whether or not the youth can reasonably graduate in four years by completing all of the electives, so that the youth do not take advantage of the opportunity.
- A committee has been formed to study this possibility.

Santa Cruz- Judge Thomas Fink/ Judge Deneen Peterson- Welcome!

Yavapai - Judge Anna Young- A new program manager was hired last week for our CASA program.

Court of Appeals (Div. 1)- Judge Sam Thumma :

- For the 1st quarter of this fiscal year, our juvenile appeal filings have increased 18% over last year, which is a surprising finding.
- Outreach opportunities: juvenile section of the state bar; taking the court to Flagstaff (NAU), Arizona Western College (Yuma); we hope that this will help diminish case volume on delinquencies.

Joseph Kelroy (AOC) - The H.U.B. had their grand opening last week in Navajo County.

Eric Meaux (Maricopa) - Rick Miller is visiting one of our detention centers as part of his annual board of directors meeting.

Adjournment:

The meeting adjourned at 2:23 pm.