



FINAL

DHS Child Welfare Advisory Committee
Legislative Subcommittee
October 11, 2006

ATTENDING:

Karen Andall, Janet Arenz, Bill Bouska, Caroline Burnell, Harry Gilmore, Nancy Miller, Mickey Serice, Kamala Shugar, Jan Slick, Becky Smith, Una Swanson, Matthew Tschabold, Angela Sherbo (by phone)

Guest: Lorie Morphis, citizen; Chris Berger, CASA intern

Minutes recorded by Pam Pearson

Janet Arenz chaired the meeting in Judy Stiegler's absence.

MINUTES

The minutes for 7/10/06 and 9/5/06 meetings were approved.

LEGISLATIVE CONCEPTS – DHS

LC 532 – Threat of Harm

- Swanson: There is not much new information to report since the last subcommittee meeting. Nancy Miller and Linda Guss are on the concept work group. There is general support for the concept. Revised draft language was written to address concerns of Nancy Miller. The goal is to better define what the statute and Child Welfare tries to achieve. As we move to the Safety Model and reinforce child safety, we see threat of harm as establishing child safety at a point in time. In the current statute "threat of" is not tied back to the types of abuse.
- Miller: It is not the past or the future, but a point in time?
- Swanson: When defining it as a type of abuse, yes.
- Miller: "Threat" implies in the future.
- Swanson: That is why we need clarification. All other categories of abuse look at an episode at a point in time. The definition of threat of harm does not include safety. When looking at reports of abuse or the likelihood of future abuse, we are looking at that safety assessment. The draft language eliminates the definition of threat of harm and adds language in each child abuse category that the child has been abused or is likely to be abused. Though a founded

disposition cannot be based on something in the future, we can make an assessment based on a safety threat and can then work with the family on resolving the impending danger.

- Andall: Would this have an impact on the ability to protect children DHS is currently able to protect? Is DHS still able to act on imminent harm?
- Swanson: No, it will not impact our ability to protect children. It improves that capacity when adding abuse or the likelihood of abuse throughout the statute. It clarifies better what law enforcement and child welfare do to verify if a child is and will be safe. Administrative rule on domestic violence already includes “threat of” in its definition. We are incorporating into other statutes what has been done for domestic violence. We have not received the draft language from Legislative Counsel yet.

LC 385 – Caseworker Authority to Remove and

- Swanson: Angela Sherbo, Nancy Miller and Kamala Shugar are on the work group. We have taken into consideration the concerns of the work group. We seek a balance between making sure there are appropriate checks and balances for when caseworkers could take a child into protective custody on their own.
- Shugar: The general concept is to outline who can remove a child and when a caseworker can remove, framing it in the positive instead of the negative. Subsection 2 captures the work group’s discussions. It is more a statement of intent than an obligation. It lays out the policy of what is already occurring. It does not create an obligation on law enforcement because it says “whenever possible.”
- Miller: For a worker to remove a child, law enforcement has to be there, or there is an emergency and the child is in immediate danger. If the child is not in immediate danger, the worker must obtain a court order.
- Shugar: It provides a tiered approach for the worker and clarifies that when a child is in immediate danger, the worker is to seek LEA assistance. If LEA is not available and the child is in immediate danger, the worker would be allowed to take the child. If the child is not in immediate danger and LEA is not available, the worker is to seek a court order. It also addresses what to do when dealing with resistance from the parent or caretaker.
- Swanson: It defines what that resistance is and clarifies some of the concerns of the work group about that definition.
- Sherbo: Asked if the intent is that when LEA cannot be present the worker is authorized to take a child when there is immediate danger. Suggested changing “shall” to “shall make every reasonable effort” in Section 1(4)(a).

- Shugar: Definition of “resistance” reads as: “As used in this subsection, “resist” includes the use or threatened use of violence, physical force or other means that creates a substantial risk of physical injury to any person, or other behavior intended to prevent the employee from taking the child into protective custody, regardless of whether the behavior results in physical injury.”
- Swanson: If the child is in immediate danger and there is resistance, the worker has authority unless the resistance is as defined. Then the worker is to make an effort to engage LEA assistance.
- Sherbo: What happens if law enforcement cannot come and there is resistance?
- Swanson: A call to 911 is to be made. The worker will not leave a situation where child safety is critical and where law enforcement assistance is needed.
- Sherbo: It is wise to get a court order when a child is not in immediate danger. She thought she understood Kamala to say that when a child is in immediate danger, there is resistance and law enforcement is not present, a worker could take a child.
- Shugar: That is not the intent. It says “law enforcement shall make every reasonable effort to be present...”
- Sherbo: Interprets that to mean that the worker would have authority to remove in those situations.
- Swanson: An example would be a situation where there are weapons. We triage to do what is safe to do.
- Sherbo: This would statutorily forbid a worker from saving the life of a child.
- Swanson: As we go through this draft concept process, if you have ideas to get us to where our intent is, please let us know. We continue to receive feedback.
- Sherbo: Disagrees with the intent.
- Miller: There were strong recommendations in the work group that we look at addressing the issue through current statute and in multidisciplinary teams, working on it through practice rather than legislation. She has asked Bruce Goldberg if he is moving forward with this concept despite the work group’s concerns. He said he was not solidly there and there was time for discussion. Is there still a possibility of dealing with this through practice, training and local agreements?
- Serice: Asked that Nancy draft a proposal that we could respond to.
- Miller: The Judicial Department does not support the concept because of the piece about requiring a court order. Judges were almost unanimous. The bottom line is that it limits workers’ discretion and puts children at risk. It may have a fiscal impact due to the increased number of court orders. Asks for any

help DHS can provide in assessing what the workload will be in obtaining these court orders.

- Shugar: If a worker obtains an order prior to removal is a shelter hearing still required at 24 hours?
- Miller: Yes, the purposes are very different.
- Shugar: The concept allows a worker to remove in a portion of situations when a child is in immediate danger or when law enforcement is present. The court order would only be required when those conditions are not met.
- Miller: The work group talked about circumstances, such as when a child is in the hospital, where the child is safe and neither law enforcement nor a court order is needed for the worker to take the child.
- Swanson: We will look at the hospital issue. It is not uncommon for hospitals to ask for a copy of a court order.
- Miller: The statute does just as well to outline your authority.
- Swanson: The work group did a good job identifying alternatives and feedback of the pros and cons.
- Berger: Asked if “resist” is meant to be so broadly defined. It includes the use of violence to any person or other behavior intended to prevent. Would “other behavior” include pleas to the worker?
- Miller: Maybe it should read “other dangerous behavior.”
- Swanson: Thanked everyone for this good feedback.

LC 531 – Front End Custody

- Slick: When a child is not removed from the home following a finding of abuse, DHS child welfare must have custody of the child in order to be a party to the case and able to request that the parents be court-ordered to receive services. This order would be needed if the family is resistive to services. At a work group meeting, Angela Sherbo raised the issue that if the court is ordering services, what is the responsibility of DHS to provide them? The intent is that this responsibility is only for those services related to the identified abuse, not all DHS services. We have not received the draft language from Legislative Counsel.
- Sherbo: Her concern was whether or not DHS was a party to the proceeding.
- Slick: With this legislation, DHS would be a party.
- Miller: The Judicial Department does not support this concept. It puts a restriction on judicial discretion. It is important that judges have a spectrum of intervention, including custody even if the child remains in the home. That legal custody gives DHS access to records. Judges want it to be part of a

spectrum. They do not support the concept when it says DHS never will have custody of a child unless the child is removed from the home.

- Slick: The ability to access records is necessary to determine child safety, which is already within DHS authority.
- Miller: As a legal guardian with the child in your custody, you have additional rights.
- Slick: Agrees. When children remain in the home, there is an assumption the parents have some ability to care for the child. It is not fair to the parent if DHS then makes certain decisions for the child.
- Arenz: Because this concept is not finalized, we will continue this discussion at a future meeting.

LC 721 – Post Placement Supervision

- Serice: Kevin George will establish a work group when we receive draft language from Legislative Counsel. The intent is that DHS would have custody for a fixed period of time (such as 90 days) after a child is returned home. The court could order a longer period of time.
- Sherbo: The concept says legal custody ends at a specified time followed by a limited supervision period. Asked if the limited supervision period takes the place of legal custody.
- Miller: That is different than what Mickey said.
- Serice: The reason for the work group is to get such feedback. We will send the draft language to the work group and Kevin will be able to better explain the intent to them.

LC 720 – Relative Foster Parents

- Serice: We received draft language on Friday, 10/13/06, and forwarded it to CWAC. It allows us to remove Oregon law that is more restrictive than federal law. We may be able to apply a means test.
- Miller: Has a fiscal impact been done?
- Sherbo: There is a policy option package for \$3.5 million.
- Miller: Is there a reason we want a means test for relatives when we don't means test for foster parents? That is her concern.
- Serice: That is a policy discussion to have.
- Miller: Would be happy to have the policy discussion at the legislature. If it has been decided that this concept is moving forward, she will not spend time discussing it now.

- Serice: No decisions have been made on which concepts will be moved forward until the Governor's budget is released. DHS has introduced these proposals with the intent to take them to the legislature. We will disconnect any that we find can be done administratively or are not approved by the Governor. However, we would not disconnect only because of your opposition.
- Sherbo: Asked why the means test is placed in a statute on purchase of care.
- Serice. Is not sure why Legislative Counsel put it there.
- Shugar: Where would it be better placed?
- Sherbo: Does not know if it would fit in another statute. Section 1 of the concept amends the purchase of care statute. Section 2 amends the foster care statutes.
- Serice: He will mention this to Kevin George.
- Miller: Why is it good policy to means test?
- Serice: Feedback during interim committee testimony suggests that a means test will be a more palatable step in this direction from a fiscally responsible point of view.

LC 868 – Interstate Compact on the Placement of Children (ICPC)

- Gilmore: In this concept, Oregon adopts the newly adopted ICPC. The current ICPC has not been revised since its creation in the 1960s and is outmoded with current practice. The new compact addresses this and opens the door for a more effective rulemaking process. Currently, ICPC rules are hard to enforce because they are not in statute. States must pass the new ICPC language to be a member of the compact.
- Miller: Asked if this was another concept that has an impact on courts in what they have to acquire for reviews.
- Gilmore: There is a new law passed at the federal level that is different from this concept. He does not believe we need enabling legislation for that one. If so, he will incorporate it into this ICPC legislation.
- Miller: The Judicial Department will be able to use this legislation for the court piece because it has a broad enough relating clause.

LC 723 – Pre-notification Criminal Records Checks

- Gilmore: We have policies and authority regarding notification to an individual when conducting a criminal records check. We are currently limited in that notice must be given in advance. The intent of this concept is to allow us to provide the notice afterward in some situations, which would allow the use of the information in determining the severity of a report of abuse. We received

the draft language from Legislative Counsel and have provided them with proposed changes to make it clear that notice will be given, but afterwards. The rights in the notice have rarely been taken advantage of by citizens. Most rights in the notice are related to criminal records checks for employment purposes. We do not see this as a violation of due process. The ACLU will oppose it, as they are generally opposed to any weakening of this law. Another part of this concept is in response to new federal law that increases penalties for crimes against children. A small section of this federal law impacts ASFA regarding criminal background checks on foster and adoptive parents. There are certain crimes that automatically disqualify applicants. ASFA had allowed states (including Oregon) to opt out of some of these requirements. The new federal law eliminates that option and our statutes need to comply with federal law. We have until 2008 to make these changes. The last part of the concept adds requirements to fingerprint foster and adoptive applicants.

- Miller: Has DHS looked at the foster parent population to see if any have been allowed to be certified with the opt-out that would now be restricted from being certified?
- Gilmore: It is rare to see one come through, and Ramona Foley reviews them when they do. He does not believe we will have to move any children as a result of the change. The legislation is not retroactive.

LEGISLATIVE CONCEPTS – OTHER AGENCIES

- OCCF: No concepts to report.
- OYA: Two housecleaning bills. One provides equally for adult offenders as for youth offenders. The other is regarding the transfer of youth offenders to mental health facilities. Karen Andall distributed a copy of their agency requested budget.
- CRB/Judicial Department: The Judicial Department has several concepts, but none in the child welfare arena.
- JRP: LC 1076 has been discussed at previous meetings. Once the bill comes back from Legislative Counsel, JRP will continue to involve partners in discussions.

Meeting adjourned.