

Council of Juvenile Services
March 25, 2004
Meeting Minutes

Thursday, March 25, 2004

Council of Juvenile Services Members Present: Carol Twedt, Mike Dacy, Doug Herrmann, Sharon Sonnenschein, Susan Randall, Dallas Johnson, Judge Janine Kern, JC Chambers, Gib Sudbeck, Laura Dillon, Dave Nelson, Grant Walker, Doug Thrash, Joseph Verhulst, Sean Gilmore

Council of Juvenile Services Members Absent: Dennis Daugaard, Mike Leidholt, Judge Cheryl Three Stars Valandra, Richard Bird, Lindsay Ambur

Others Present: Tim Reisch, Kevin McLain, Jodi Kirschenman, and Joy Erlenbusch from the Department of Corrections; Keith Bonenberger from UJS; Ken McFarland and Kelly Serr from SDCC SAG

1. WELCOME and REVIEW OF AGENDA

Carol Twedt, Chairperson, welcomed those present and called the meeting to order at 8:05AM at the Lode Star Hotel in Ft. Thompson. Introductions were made. Carol provided an overview of the previous day's event which included the Tribal Advisory Group (TAG) meeting, the South Dakota Coalition for Children Advisory Group (SDCC SAG) meeting, and a banquet that included members of the TAG, SDCC SAG, and Council of Juvenile Services members. Carol then provided an overview of the day's agenda.

Jodi Kirschenman handed out the Coalition for Juvenile Justice 2003 Annual Report titled "Unlocking the Future" along with the cover letter that accompanied this report. CJJ is a non-profit, private coalition on Advisory groups, and CJS will be approached in the future about joining CJJ and using some of CJS allocations for dues. It should be noted that CJJ is no longer the designated advisory group for the Office of Juvenile Justice and Delinquency Prevention. A new advisory group has been appointed called the Federal Advisory Committee. Judge Janine Kern has been appointed by CJS to serve as the representative on this committee and Doug Herrmann serves as the back up.

2. APPROVAL OF MINUTES FROM 11-18-2003.

Dallas Johnson moved to approve the minutes, Doug Herrmann seconded, motion carried unanimously.

3. APPROVAL OF BYLAWS

The bylaws were drafted using elements from the previous meeting, reviewing bylaws from the former SAG, and reviewed elements of other state's bylaws.

Susan Randall asked what sources were used to develop Article III, Section B. Selection Criteria of the bylaws. Kevin McLain indicated that it comes from State Law and was drafted to be consistent with the requirements of the Formula Grants Program (ie. Formula Grants Program, Federal Statutes and Rules, and South Dakota Codified Law). Susan voiced her concern of Laura Dillon no longer being a resident of South Dakota since she lives in Montana, and Susan presumed that all council members would be South Dakota residents. Susan asked if a provision should be included to address council members that no longer live in the state or if we should leave this issue un-addressed and assume it will get worked out somehow. Susan brought this for discussion and asked what the requirements were. Kevin indicated he was not aware of any requirements, but that he did some general research on boards and commissions to research the removal of members and recommendations of removal of members. Kevin is not aware of any statutory requirement but that doesn't mean that there isn't any. Members discussed possible ways to word this section. Dave Nelson voiced his concern that if we address this under Section B. Selection Criteria, then we would be tying the Governor's hands and that he can't appoint someone because they live out of state. Dave said he felt we could add a statement under Article VI. Removal of Council Members that says if a member is no longer a resident of South Dakota, then CJS may make recommendations to the Governor that he-accept or replace that member. Dave made a motion that the new, additional wording read as: "During a 12-month period, or if that member is no longer a resident of the state of South Dakota." Section B. Article VI: Removal of Council Members will then read: "The Chairperson may recommend to the Governor that a Council member be replaced if that member misses three consecutive meetings or misses fifty percent of Council Meetings during a twelve-month period or if that member is no longer a resident of the state of South Dakota". *Dave Nelson moved to approve the bylaws with this addition. Susan Randall seconded, motion carried.*

Article X: Committees of the bylaws indicates that there shall be an executive Committee of the Council of Juvenile Services to consist of the Chairperson, Vice-Chairperson and three members elected by the Council. This committee will act for the council in the interim between meetings. Judge Kern suggested that if we approve these bylaws with this provision, that we elect this council at today's meeting. Chairperson Carol Twedt indicated that election of these members would take place right after lunch.

Under Article III, Section A, Gib Sudbeck mentioned that there is no mention of Substance Abuse listed. He requested it be listed. It will be added under number three of this section.

Judge Kern made a motion to adopt the by laws. Doug Thrash seconded, motion carried unanimously.

Carol Twedt added an item to agenda that Executive Committee members will be elected right after lunch.

4. LEGISLATIVE UPDATE / NEED for LEGISLATIVE COMMITTEE

Kevin McLain explained changes in 2004 legislation:

- Senate Bill 56 - Zero tolerance DUI offenses were reclassified from class II misdemeanor charge for which the youth could be held or sentenced to detention for up to seven days, to a status offense for which they would appear in court as an alleged child in need of supervision (CHINS). As a CHINS, youth that violate zero tolerance DUI will now only be held in detention consistent with the JJDP Formula Grant guidelines.
- Another piece of legislation passed in the 2004 Legislative Session limits the period of time that an adjudicated CHIN of supervision, who is also in violation of a valid court order, could be ordered to detention as a disposition. This new limitation is 90 days, which is consistent with the existing limitation for delinquent offenders.
- The 2004 SD Legislature also passed the new juvenile interstate supervision compact. Keith Bonenberger, Court Services, explained this nationwide movement to bring new legislation for juveniles in interstate compact supervision.
- A bill was passed which prohibits capital punishment of youth that commit their crime while under the age of eighteen.
- Legislation was also enacted which established a commission to study the State's compliance with the federal Indian Child Welfare Act. SD is already subject to the ICWA. The perception of bill's sponsors and support is that SD sometimes fails to live up to the requirements of the ICWA, which requires working with tribes and others on the removal of Indian children from their homes. It also addresses utilization of family, tribal members and Native people when dealing with foster care, custody and adoptions. This piece of legislation relates to the Juvenile Justice Act as ICWA does apply to status offenders Susan Randall and Tim Reisch also provided their understanding of the bill.

Dave Nelson asked what role, if any, did CJS play in legislation. Kevin explained that most dealt Zero tolerance DUI. Susan Randall testified on behalf of SDCC, Sheriff Leidholt testified in favor for senate bill 56 when it was in Senate State Affairs, and then Dennis Daugaard testified in favor of the bill when it went to the House. This raised questions and discussion on whether or not these individuals were testifying on behalf of CJS without the Governors request. Dave Nelson said he would not feel comfortable having council members testifying in the capacity of a CJS member. Susan said she didn't think members could do this because CJS is an advisory to the Governor and didn't think CJS members had any direct right to go testify. The Governor identifies his department people or senior staff who will represent his views. All we can do is recommend to the Governor. Discussion then continued on the process DOC uses for legislation and obtaining the Governor's approval when he wants legislation introduced as a Governor's bill or an agency bill.

Carol Twedt said she feels that CJS needs better guidelines on legislation and lobbying than what CJS currently has and that there is also a need for a legislative committee to update CJS of any bills, issues and concerns. Janine Kern suggested representation from at least the Unified Judicial System, Department of Corrections, and the South Dakota Coalition for Children for this committee; and that before CJS can address bills, introduce legislation, etc., a process needs to be developed.

Susan Randall recommended this committee be called an Ad Hoc Legislative Committee to clearly indicate the committee's limited specific purpose

Gib Sudbeck made a motion to appoint an Ad Hoc Legislative Committee; Dallas Johnson seconded. Chairperson Carol Twedt asked for nominations or volunteers for this ad hoc committee. Susan Randall, Janine Kern, and Dave Nelson volunteered to serve on this committee. Chairperson Twedt added this to the motion already on the floor. Motion carried unanimously.

5. ADDITIONAL CJS RESPONSIBILITY

A letter from Secretary Reisch to Representative Casey Murschel was distributed to the CJS members. The letter relates to licensure standards and addresses a piece of legislation that Rep. Murschel had introduced in the 2004 that dealt with county contracted but privately operated detention centers not being required to be licensed by DSS. Private facilities are required to have appropriate licensure by the Department of Social Services (DSS). The Plankinton initiative, which will include a secure 40-bed unit, will open first as a detention center. It will be an Aurora county facility and the operation of the detention center will be contracted to Cornell Companies. Since it is a county facility, it will not need to be licensed by DSS. The legislation introduced by Rep. Murschel would have required a county juvenile detention center operated by a private entity to be licensed by DSS. There was enough concern about the implementation of this piece of legislation that Secretary Reisch, in the form of the letter that was distributed, suggested that the CJS take this on as an issue to research and address. The Under SDCL 1-15, additional responsibilities of the CJS can be assigned by the Governor, by the DOC and by the CJS. Secretary Reisch's letter assigned this issue to CJS. Rep. Murschel was comfortable with CJS looking into this issue and had her legislation tabled.

The issue of licensure standards for county operated juvenile detention centers was discussed. Susan indicated that there are no standards right now. She has reviewed the statutes that says the DSS must license child welfare organizations but believes that its written broadly enough that it will give the DSS authority to license detention centers which house children in the same way other facilities do. However, the department has never promulgated a separate set of rules for such facilities and residential and group-care rules are not appropriate to apply to detention center.

Judge Kern suggested an Ad Hoc Committee to report to the larger group that would address this issues and address what division of government or agency would be responsible if not DSS. Kevin advised that whether it should include not only detention centers but holdover sites as well

Chairperson Twedt ask for a motion to accept the request of Janine Kern to appoint an Ad Hoc committee to explore the advisability and feasibility of licensure standards for all detention centers, shelter care, and holdover sites, and report back to the council. Janine Kern moved, Doug Herrmann seconded. Dave Nelson opposed, motion carried.

Chairperson Twedt asked those who are interested in serving on this Ad Hoc committee, to please let Jodi Kirschenman know.

6. COMPLIANCE MONITORING DATA

Kevin McLain discussed the compliance monitoring data that DOC staff has collected. DOC collected 2002 detention center and jail data that was submitted in the compliance monitoring report. DOC is currently collecting calendar year 2003 data. The data will be analyzed in two timeframes – before and after July 1, 2003 – to gauge the effect of the compliance legislation. DOC staff will also need to analyze the data after July 1 due to two new collocated juvenile detention centers in Day County and Codington County and to account for Faulk, Grant, Walworth, and Edmunds jails as rural 48-hour facilities. Walworth County has now been approved as a collocated juvenile detention center as of February 5. Joy Erlenbush provided an overview of the data that she has received to date

7. DISCUSSION and APPROVAL OF 3 YEAR PLAN UPDATE / FY04 FORMULA GRANT APPLICATION

Kevin McLain handed out a spreadsheet that summarizes the Juvenile Justice funds that CJS has access to and are applying for, and also a spreadsheet that shows the JABG programs. There are 6 different grants. The FY03 Formula Grant submitted in November 2003, FY04 Formula Grant, FY03 JABG Grant submitted and approved September 2003, FY04 JABG Grant, FY03 Challenge Grant, and FY04 Title V Grant. A plan update is due in June 2004 for the FY03 formula grant. The data will not change but will have the addition of DOC Commitments data, and a little bit of court data that came from the court website.

The FY04 Formula Grant budget was reviewed. If the funds are not spent as budgeted, DOC is allowed to request to move the funds to other areas. DOC will also be working with Susan Randall and the SD Coalition for Children staff in the near future to transition the funds for the county reimbursement program.

Susan Randall provided an update on the non-participating funds allocated to the tribes. \$20,000 has been allocated to each of the 8 tribes with headquarters in South Dakota. Seven of the eight tribes have submitted requests and have been approved for their \$20,000. Two of these tribes, Crow Creek and Lower Brule, are using the funds to develop a juvenile justice plan.. Five of the tribes are using it for probation services and Yankton Sioux Tribe is using \$12,000 for a program they've designed in cooperation with the First Circuit Court. This

program is to keep the youth in the communities that have alcohol and drug issues. These youth coming before the Tribal Court are offered a range of community based services to address their individual issues.. Susan was unsure how the Yankton Sioux Tribe will use the balance of \$8,000. Janine Kern suggested CJS increase the Native American allocation to help fund the programs that the tribes have started. Gib Sudbeck reminded the Council that the Tribes can apply for funds under the Juvenile Justice Systems Improvement category as well. ***Gib Sudbeck made a motion to approve the budget portion of the Formula Grant, Doug Herrmann seconded. Motion carried unanimously.***

Kevin explained two new FY04 federal requirements for the Formula Grant Program: 1.) the state will begin to implement a system to ensure that if a juvenile is before the court in the juvenile justice system, public child welfare records for the juvenile on file in the geographical area will be made known to the court. 2.) The state will work on establishing policies and systems to incorporate child protective services records into juvenile justice records for purpose of establishing and implementing treatment plans for juvenile offenders. Kevin McLain said that the preliminary response from DSS is that this is a workable issue and may not even require legislation to make it happen. Kevin recommends that this fall under the systems and services committee's responsibilities to work on.

Janine Kern would like wording in the Formula application that we need a plan to address the problem of too few CSO's for the number of youth under their jurisdiction. We need an increase in Court Services Officers to reduce their caseloads to a more appropriate level. A discussion was held that this language could go in page 4 of the application as item number 16 under the list of issues that CJS will address as well as integrate it into page 61 of the application. ***Janine Kern motioned to address this in the 3-Year-Plan, JC Chambers seconded. Motion carried unanimously.***

The council then reviewed the timelines in the FY04 Formula Grant application outlined in the plans for compliance with the first three core requirements of the JJDP Act. Some of the timelines were too optimistic so changes were made to some of the timelines for DSO, Separation, Jail Removal, and Plan for Compliance Monitoring.

- DSO Strategy #2 survey timeline is aggressive so moved back to Sept. 30, 2004. #4 compliance monitoring manual will need committee approval so it won't make the April timeline; this date was changed to January 2005.
- The DMC plan (summary on page 44) was reviewed by OJJDP who indicated that the timelines are too optimistic. Kevin McLain visited with Dr. Leonardson about this, and DOC asked to extend the timeline from September 30, 2004 to March 30, 2005; and October 2004 to July 2005.

Janine Kern expressed concern that tribal youth arrested can be put in county jails with adults because the federal government is exempt from the JJDP Act. She believes we have the responsibility to bring this to the attention of the Federal Government and include it in our 3-Year-Plan. A suggestion was made by Dallas to ask our Congressional Representatives to deal with this to avoid hurting our 3-Year-Plan. Susan commented that we should recommend it to the Governor, communicate to the congressional delegates, and other strategies that CJS can come up with. Carol Twedt suggested CJS work through the congressional delegates initially and not jeopardize our plan. Janine Kern then suggested asking the Compliance subcommittee to address it. Kevin recommended it also be addressed through the Tribal Advisory Group. Additional discussion ensued. ***Janine Kern moved to put a comment in the 3-Year-Plan that CJS is going to look at the data and identify children held federally with adults, add it to the Compliance Monitoring Committees responsibilities under Jail Removal. JC Chambers seconded, motion carried unanimously.***

Tim Reisch provided a briefing on the Plankinton facility and the proposed plan for it's use.

Susan Randall felt changes should be made to the meeting minutes from November 2003, and made a motion for the changes to the meeting minutes to read: "Further discussion occurred on whether or not to have the DMC Committee review Native American Tribal Juvenile Justice services and recommend use of pass-through funds. Forming a fourth committee specifically for Native American programs was considered. Members decided to retain three committees but to also utilize the SDCC tribal advisory group to provide input on tribal issues. Programs for Native American youth in the State's justice system and tribal systems was moved to the Systems and Services Committee." Janine Kern seconded, motion carried unanimously. Meeting minutes will be corrected to reflect this.

8. PLANS FOR SUBCOMMITTEES: SYSTEMS & SERVICES, DMC, and COMPLIANCE MONITORING

Bylaws allow the Council to elect three members from the CJS body to serve with the Chairperson and Vice-Chairperson as an Executive Committee that is to conduct business and make decisions in the interim between meetings. Nominations accepted for and voted on for the three different slots:

-Dave Nelson nominated Janine Kern. Doug Thrash seconded, motion carried.
-Doug Thrash nominated Doug Herrmann, JC Chambers seconded, motion carried.
-Gib Sudbeck nominated JC Chambers, Susan seconded, motion carried.
These three will join Sheriff Leidholt and serve on the Executive Committee

9. FEDERAL ADVISORY COMMITTEE UPDATE

Janine Kern explained the Federal Advisory Committee, called the Juvenile Justice Advisory Committee (JJAC), and the training she attended in Alabama. She provided a handout, which lists the recommendations of the JJAC from January 2004. Two priorities before the meeting ended included electing a president for the JJAC (Dave Schmidt from New Mexico was elected); and to make a recommendation as to how Title V funds should be utilized. This recommendation would then be sent to Administrator Florres from OJJDP.

The advisory committee recommended that a formula based distribution be used so that each state would receive Title V funding. JJAC will work with OJJDP to develop the distribution of funds for FY05. OJJDP is moving toward FY2005 to be competitive based awards for Title V, which South Dakota may or not be successful in obtaining. Competing for the funding is causing concern with other states. If it does become a competitive solicitation, the JJAC recommends that all funds are awarded to states for approval and distributed through the SAG's.

Janine also advised that there are problems with the language of the anti-lobbying legislation that was recently enacted. The JJDP Act requires SAG's to report to their legislature and governors on the status of their juvenile justice laws, rules and regulations. This could be in conflict with the anti-lobbying legislation. Janine Kern is drafting a letter to Attorney General Larry Long and the Governor informing them of this Lobbying Prohibition and to seek their guidance in determining what South Dakota needs to do to remain compliant. Janine advised that this federal legislation should be repealed and that we ask that it be removed from the grant application requirements. Janine Kern's recommendations to CJS for inclusion in the States submission to the FAC in the following:

1. Fully fund the Juvenile Accountability Block Grant
2. Fully fund Juvenile Prevention Block Grant
3. Remove the anti-lobbying standard assurance from the grant applications
4. Fully fund reservation juvenile justice tribal programs to a sustainable level; and
5. Compliance with the JJDP Act requirements by federal entities such as BIA, FBI, immigration services when housing juveniles.

Susan Randall made a motion to support Janine Kern's recommendations, Dallas Johnson seconded; motion carried unanimously

Motion made by Janine Kern to approve the Formula Grant Application, JC Chambers seconded; motion carried unanimously

10. STATUS OF COMMITTEES

3 committees exist as outlined in the Three-Year Plan: Systems and Services, Compliance Monitoring, and Disproportionate Minority Confinement (DMC). Janine Kern has a meeting scheduled for the System and Services Committee. Susan Randall is debating whether to have the DMC committee meet prior to receiving evaluation data from Dr. Leonardson or if the committee should meet without having that information. Kevin McLain indicated that by this fall, the DMC committee would have arrest, detention, DOC, court, and jail data to review. At this time there is a gap with the diversion data received to date. DOC will have to initiate a state data collection for diversion. Kevin McLain will put together a draft letter that explains the need for diversion data elements and email it to Dave Nelson.

11. DISCUSSION / APPROVAL OF CHALLENGE GRANT

Challenge Grant application is completed and ready for submission. A total of \$87,500 is being applied for in the application. At the previous meeting, the CJS identified alternatives to school detention and expulsion and basic juvenile justice system services as the application categories. Kevin McLain said his perception from working with the school districts on this issue is that they would be inclined to provide alternative education opportunities to kids being expelled or suspended. The Systems and Services Committee will identify the school districts that will be interested in addressing this issue.

Dallas Johnson indicated that truancy was not addressed in the Challenge Grant application. It was determined that it doesn't fit in this category, but CJS can use systems and services funds to address it.

Dallas Johnson motioned to approve the Challenge Grant Application, seconded by Janine Kern; motion carried unanimously.

12. APPROVAL OF TITLE V APPLICATION

\$100,000 is allocated for the implementation of community-based prevention activities. Kevin McLain recommended that the council focus on medium sized communities to make the most impact. Invitations can be sent out to communities to attend a prevention planning training. A Technical Assistance Provider would be brought in to train prevention planning.

Susan Randall moved to approve the application, Dallas Johnson seconded; motion carried unanimously.

13. APPROVAL OF FY04 JUVENILE ACCOUNTABILITY BLOCK GRANT (JABG) APPLICATION

JABG funds appropriated have continued to decrease each fiscal year; therefore, the allocation amounts for the local entities and the state are also decreasing. The state uses their funding of the JABG grant to provide juvenile corrections agents in the rural and under-served areas. Since the allocations are decreasing, DOC has been budgeting general funds to make up for the decrease in federal funds.

Gib Sudbeck moved to approve the application, Doug Thrash seconded; motion carried with three members abstaining from voting due to conflict of interest: Doug Herrmann, Dave Nelson, and Carol Twedt.

14. ANNUAL REPORT – DUE JUNE 30, 2004

The requirement of the annual report only relates to CHINS requirement and reads as: “Make a special study of, and make an annual report to the Governor, the UJS, and the Legislature by June thirtieth of each year concerning, the appropriate administration of and provision for children in need of supervision in the state”. DOC staff will be collecting data for the report on CHINS and the report will more than likely be a little longer so that it can address all of CJS’s progress. A draft of this report will be ready for review at the next meeting.

15. LIST SERVE

Jodi Kirschenman explained that a list-serve is being developed and tested for CJS members to use. The listserv will allow CJS to communicate to all members at once through email. Once it has been tested and ready for use, information will be emailed to CJS members

16. NEXT MEETING

The CJS set June 3rd and June 4th in Pierre as their next meeting date. Meet in Pierre the night of June 3rd at 6:30 and continue on June 4th, to adjourn by 2pm. Possible topics include: Annual report, Systems and Services Committee update, Legislative Committee update, Plankinton detention standards.

15. MEETING ADJOURNED at 2:05 PM.

Recorded by Jodi Kirschenman, JJ Specialist