



**Washington State Supreme Court  
Commission on Children  
in Foster Care**

**5/6/2019  
1:00 p.m.  
Reception Room  
Temple of Justice**

**Agenda**

1:00 pm 5 min	1. Welcome and Introductions	Justice Bobbe J. Bridge (ret.), Co-Chair Jody Becker, Co-Chair
<b>Announcements</b>		
1:05 pm 5 min	2. Justice Bridge's and Akanksha's last meeting – Updates on new staff person TBD	Justice Bobbe J. Bridge (ret.), Co-Chair Jody Becker, Co-Chair
<b>Updates and Old Business</b>		
1:10 pm 5 min	3. En Banc Presentation Recap	Justice Bobbe J. Bridge (ret.), Co-Chair Akanksha Jayanthi, CCFC Staff
1:15 30 min	4. Dependency Report 2018	Matt Orme, Washington State Center for Court Research
1:45 5 min	5. Action on Normalcy Workgroup Recommendations	Justice Bobbe J. Bridge (ret.), Co-Chair Jody Becker, Co-Chair
1:50 pm 15 min	6. Normalcy Workgroup Update: Comprehensive Sex Ed	Jeannie Kee, Normalcy Workgroup Chair
2:05 pm 20 min	7. Reunification Steering Committee Update	Joanne Moore, Office of Public Defense
2:25 pm 10 min	<b>Break</b>	
2:35 pm 20 mins	8. Children's Legal Representation Pilot Update	Jill Malat, Office of Civil Legal Aid
<b>New Business</b>		
2:55 pm 20 min	9. Fostering Family Initiative	Katie Ferguson, Amara
3:15 pm 15 min	10. Youth and Alumni Leadership Summit 2019 Information	Jolie Bwiza, Youth in Care Rep iLeana Areiza, The Mockingbird Society
3:30 pm 10 min	11. Tribute to Justice Bridge	Joanne Moore, Office of Public Defense Justice Barbara Madsen, Incoming Co-Chair
	<u>Upcoming 2019 Meeting Dates</u>  Monday, December 9, 2019	



# Washington State Supreme Court Commission on Children in Foster Care

## Report to the Washington State Supreme Court 2018 Commission Activities April 2019

With the belief that all children need safe, permanent families that love, nurture, protect and guide them, it is the mission of the Washington State Supreme Court Commission on Children in Foster Care to provide all children in foster care with safe, permanent families in which their physical, emotional, intellectual, and social needs are met. The Commission works to achieve its mission by monitoring child welfare programs, broadening public awareness and support, and improving collaboration between the courts, child welfare partners and the education system. The purpose of this report is to summarize the activities of the Commission during 2018.

### Commission Membership

**Washington State Supreme Court, Co-Chair:** Justice Bobbe J. Bridge (ret.)

**Deputy Secretary of DCYF, Co-Chair:** Connie Lambert-Eckel (Jody Becker, beginning December 2018)

**Director of Washington State Office of Civil Legal Aid:** Jim Bamberger

**Co-Chairs of Foster Parents Association of Washington State:** Beth Canfield, Mike Canfield

**President of the Superior Court Judges' Association:** Judge Michael Downes

**President of the Superior Court Judges Association:** Judge Kitty–Ann van Doorninck (for Judge Michael Downes)

**Superintendent of Public Instruction:** Chris Reykdal

**Washington State Office of Superintendent of Public Instruction:** Martin Mueller (for Superintendent Chris Reykdal)

**Attorney General of the State of Washington:** Bob Ferguson

**Washington State Attorney General:** Assistant Attorney General Carrie Wayno (for Attorney General Bob Ferguson)

**NW Intertribal Court System Representative:** Raven Healing

**Foster Youth Representative:** Sabian Hart (2018)

**Chair of the Early Learning and Children's Services Committee, WA State House of Representatives:** Representative Ruth Kagi

**Chair of the WA State Senate Human Services and Corrections Committee:** Senator Steve O'Ban

**Foster Youth Alumni Representative:** Jeannie Kee

**Director of the Office of Public Defense:** Joanne Moore

**Parent Advocate Representative:** Tonia Morrison

**Executive Director of Washington State CASA:** Ryan Murrey

### Frequent Guests

**Children's Representation Program Manager at Washington State Office of Civil Aid:** Jill Malat

**Director of Public Policy of Partners for Our Children:** Laurie Lippold

### Staff

**University of Washington/Evans School of Public Policy and Governance:** Andie Uomoto (2018), Akanksha Jayanthi (beginning September 2018)

**Administrative Office of the Courts:** Mary Lou Boles (November - December 2018)

## **Organizational Updates**

### **Department of Children, Youth, and Families (DCYF)**

The Department of Children, Youth, and Families was created by statute in 2017. The responsibilities of the Children's Administration, including the roles and duties of the Department of Early Learning, merged into DCYF on July 1, 2018. Juvenile Rehabilitation will join the new agency in July 2019.

The budget for DCYF increased funding allocated for certain programs, largely influenced by Commission member Rep. Ruth Kagi's advocacy for Enrolled House Bill 2008 (passed in March 2017) which addressed the budgeting process for core state services for children. The bill mandates certain foster care and adoption support services are budgeted at the maintenance level, meaning the services receive appropriations from budget to budget, including adjustments for changing caseloads. Such support services include foster care maintenance payments, child care or relative placements for children when their foster parents are at work or school, court-ordered parent-child and sibling visitation, and sending social workers or related staff to respond to reports of child abuse or neglect.

In the formation of the new DCYF, Secretary Ross Hunter outlined his vision for the agency to be less managerial and more active in facilitating and creating regional partnerships for increased service capacity across the state. Many Commission members play active roles within DCYF or interacting with the agency.

The transition conjured some uncertainty given the magnitude of the overhaul, but the agency continually kept members up to date about decisions and processes, which helped all organizations continue to move forward with their work even in the midst of this massive change.

## **Commission Workgroups and Committees**

### **Normalcy Workgroup**

The Normalcy Workgroup was formed in May of 2012 from a need identified by advocates, foster youth, and alumni of care. The Workgroup's charter is to develop policies and practices that will provide children and youth in foster care with opportunities to participate in age-appropriate extra-curricular, enrichment, school and social activities, all to ensure "normal life" experiences. Work group members include youth from Passion to Action and the Mockingbird Society, a foster parent, and representatives from the Office of Superintendent of Public Instruction, Office of Civil Legal Aid's Children's Representation Program, Children's Administration, Division of Licensed Resources (DLR) and King County Superior Court. The group is chaired by the alumna of care representative on the Commission, Jeannie Kee.

In 2018, the Normalcy Workgroup expanded membership to include new alumni of care representatives from Passion to Action, Mockingbird Society, and International Foster Care Alliance. Much of the Workgroup's work in 2018 centered on school-based sexual health education for youth in care, particularly focusing on requiring medically accurate and trauma-informed curriculum that also addresses the unique needs and considerations for LGBTQ+ youth. These considerations are already incorporated in the FLASH curriculum, a sexual health education curriculum developed by Public Health – Seattle & King County, so the Workgroup is determining how to expand the curriculum statewide. Additionally, the Workgroup recommends DCYF include sexual health education in the education plan of youth in care, as well as create a navigator within Coordinated Care to serve as a "sex ed expert" to help families teach youth this information. They also recommend implementing an annual review of youth cases to verify the individual has received comprehensive sex education that meets the requirements of the WA Healthy Youth Act. The Workgroup offered these recommendations at the December Commission meeting. It is determining next steps on how to proceed with these recommendations. During 2019, the Workgroup will address steps on how to proceed with these recommendations.

The work of the Normalcy Workgroup has directly influenced SB 5395, the bill which would require inclusive, comprehensive sex education in public schools across the state, consistent with K-12 learning standards.

### **Dependency Timeliness Report Advisory Committee**

The Dependency Timeliness Report Advisory Committee reviews and makes recommendations about the measures of court processes and outcomes. Members are selected from the judiciary, the Attorney General's Office, the Office of Public Defense, the Court Improvement Training Academy, Children's Administration, DSHS Research and Data Analysis Division, the Office of the Superintendent of Public Instruction, Casey Family Programs, the Washington State Racial Disproportionality Advisory Committee, the Commission on Children in Foster Care, and the Washington State Center for Court Research. Suggestions from the Advisory Committee have proven beneficial and enhance the usefulness of the Annual Report for future performance improvement efforts.

The Washington State Dependency Reporting System is comprised of the annual Dependency and Timeliness and Outcomes report, online Interactive Dependency Timeliness Report, and publicly available dependency dashboards. The 2017 Annual Dependency and Timeliness Report was presented to the Commission in May 2018. New and notable to this year's report and approach are efforts to improve documentation and data collection to fill gaps of missing data. Additionally, the report outlined efforts to investigate racial disproportionality at CPS intake, as American Indian/Alaska Native Multiracial and Black Multiracial children are about twice as likely to be placed in out-of-home care. The report also notes working with the newly formed DCYF to make data collection, analysis, and reporting more useful at all levels.

One of the main takeaways from the report was the heightened number of intakes, referrals, and dependency filings. From 2010 to 2017, the number of intakes received annually increased by 31% overall, and there was a 51% increase in Child Protective Services reports requiring a face-to-face response and a nearly 200% increase in emergent cases requiring a face-to-face response within 24 hours. In 2017, 64% of children under age one were removed for reasons including parental drug abuse. Further, dependency filings in 2017 rose by 3% and remain near multiyear highs. While dismissals on dependency cases rose 6%, termination filings are at a seven-year high with an 8.7% increase, meaning children in care will on average remain in care longer.

In terms of case timeliness, the median number of months in out-of-home care prior to terminating parental rights decreased to 12 months in 2017, and the median number of months from dependency filing to legally free status has increased from 21 months to 23 months over the last five years. The median number of months from termination order to adoption was about 7.6 months. Statewide, the percent of cases with fact-finding hearings held within 75 days after filing a petition remains steady from prior years at an average of 65%, though there is significant variation between counties: King County reports 44% of cases have fact-finding hearings within 75 days, while Thurston County reports 70% of such cases. Thurston County's strong performance indicators were likely bolstered by the dedicated Family and Juvenile Court Improvement Coordinator. The statewide rate of compliance on cases with a permanency hearing within 12 months of placement remained unchanged at 85%.

Permanency outcomes for children in out-of-home care in Washington State are strongly affected by the actions of the dependency courts and the child welfare system. The Administrative Office of the Courts (AOC) and the DSHS Children's Administration (CA) are cooperating on joint projects to investigate barriers to permanency, sharing administrative data and meeting regularly to review performance and discuss practice improvements. For example, both CA and AOC have established a variety of metrics that track performance. These metrics, among others, include metrics that track the incidence and recurrence of maltreatment prior to placement, timeliness of permanency, and proportion of children reunified.

Additionally, a combination of the AOC and CA administrative data enabled analysis of the influence of a wide range of case characteristics. These characteristics include risk and assessment data for child and parent mental illness, substance abuse, criminality, economic stress, homelessness, and domestic violence, as well as basic demographic information.

### **Commission Oversight Activities**

#### **Office of the Family and Children's Ombuds**

The Office of the Family and Children's Ombuds (OFCO) conducts independent, impartial, and confidential reviews of Department of Social and Human Services actions and/or conduct. As part of this role, the OFCO is empowered to investigate complaints, induce DSHS to change problematic decisions, and to recommend system-wide improvements to the Legislature and the Governor. The OFCO publishes an annual report of their work and findings each year and makes regular presentations to the Commission regarding this report. Commission members provide insight on the systemic issues and recommendations in the Report.

In March, the OFCO presented its 2017 findings to the Commission. About half of the 956 investigations in 2017 were determined to have no basis for further action. Of investigations resulting in adverse findings (in which the OFCO finds evidence of a violated policy or law and the occurrence or potential occurrence for harm), the main issues include child safety, parents' rights, foster parent/relative caregiver concerns, and family separation and reunification. The Commission discussed the use of placement exceptions and how an increasing number of children with more acute needs are placed in placement exceptions. One of the Report's recommendations is to develop a continuum of placement options and hire more professional foster parents to meet the needs of young people.

The OFCO director is serving as interim staff to the Oversight Board for DCYF which will ensure the Department achieves outcome measures, complies with rules and statutes, and makes recommendations to OFCO and the Governor's office. The Board has the authority to handle appeals about administrative decisions regarding license providers (i.e. decisions not related to child safety) and can modify and overturn those decisions. The Oversight Board must also hold public community stakeholder meetings twice a year to receive feedback and provide its first annual report to the Legislature in December 2019.

#### **Foster Youth and Alumni Leadership Summits**

Each year the Commission on Children in Foster Care co-sponsors the Foster Youth and Alumni Leadership Summit with the Mockingbird Society. The Mockingbird Society develops an annual policy agenda with goals and priorities to reform child welfare and youth homelessness through changes in practice, policy, and budgets. Once a year, selected youth ages 14-24 from the Mockingbird Society's chapters across the state come together at the Foster Youth and Alumni Leadership Summit to refine policy objectives for improving the well-being of foster youth and alumni. At the Report Out on the final day of the Summit, youth present their policy recommendations to the Commission.

The 2018 Summit included 55 youth and young adults from around the state and more than 50 policymakers. Each Mockingbird chapter developed a proposal, which Mockingbird continues to refine until the 2019 legislative session. These youth-driven proposals include bringing youth engagement into planning SB 6560, which requires a plan to ensure no youth is discharged from a system of care into homelessness; mandating financial education for youth in foster care and those experiencing homelessness; increasing the proportion of youth homes receiving unannounced visits by the Office of the Inspector General; expanding opportunities for youth with lived experience to inform policymaking, including increased representation on the Commission to two young adults with current or recent lived experience with homelessness or foster care; improved transition planning; supportive foster care placements for LGBTQ+ youth; enhanced independent living skills opportunities; and eliminating youth detention for status offenses.

In addition to strengthening the relationship between child welfare administrators and foster youth, the Summit provides current and former foster youth an opportunity to develop leadership and presentation skills. As co-sponsors of the Summit, the Commission is responsible for documenting, discussing, and supporting implementation of the recommendations made by Summit participants.

Interesting to note is how the level of sophistication of presentations developed during the Youth Summit continually increases. Instead of only focusing on legislation and creating new laws, young people are exploring different avenues for policy change for, say, a departmental policy or an administrative rule. Young people continue to understand and leverage the nuances of creating actionable and systemic change.

### **National Adoption Day**

This year was the 14<sup>th</sup> year the Commission sponsored a statewide National Adoption Day celebration. Twenty-five counties participated in National Adoption Day celebrations, which is more counties than in previous years. Across the state, 213 children were adopted into new families at celebrations in county courts, including those at King County, Spokane County, Thurston County, Lewis County, and Snohomish County, among others.

### **Family Reunification Day**

In December 2017, the Commission created a Family Reunification Day Steering Committee to develop celebrations around June Reunification Week. Efforts for Reunification Week were born out of similar efforts surrounding National Adoption Day. The newly created Family Reunification Day Steering Committee supported existing Reunification Day celebrations across the state as well as bolstered support for new celebrations.

The Commission formally proclaimed June as Family Reunification Month in Washington. Committee members submitted op-ed pieces for publication in Seattle and Spokane, drafted newsletters, created certificates for courts to sign, and created a website with links to events in various counties and to the official proclamation.

Eight counties held formal celebrations of family reunification -- King, Mason, Pierce, Thurston, Snohomish, Spokane, and Yakima. The Committee reiterated its approach of changing the narrative surrounding families in dependency proceedings from one of negative events to a story of hope and redemption. Not only were the celebrations positive for families, but judges and social workers could see the positive effects of their work as well.

### **Emerging Issues**

#### **Foster Parent Bill of Rights**

The Commission continued its review of a Foster Parent Bill of Rights. In March, the Commission heard results from a mixed methods survey collecting foster parents' opinions on barriers to foster parent retention. One such barrier is the timeline to permanency and how foster parents want increased decision-making power as a child stays in their care longer, even if reunification is the primary permanency plan.

This work continues into the present.

### **Future/Continued Work**

#### **DCYF Transitions**

While the main transition for implementing DCYF has happened, there remain additional projects and challenges to iron out. Certain positions have been dissolved, while others have been created, and the department continues to navigate these changes. Further, the Department of Juvenile Rehabilitation is



scheduled to join DCYF July 1, 2019, which is likely to produce both expected and unforeseen challenges.

### **Comprehensive Sex Education**

Pending the outcome of SB 5395 and companion bill HB 1407, the Normalcy Workgroup and the Commission will continue to advocate for comprehensive sex education for children in foster care. The legislative process for this bill is expected to culminate spring 2019. The Workgroup is also addressing contingency plans in case the legislation does not pass.

### **More Youth Voice**

The Commission maintains its priority of listening to the youth voice to better understand the challenges they face as well as incorporate their perspectives and ideas into the policy-making process. From Foster Youth and Alumni Leadership Summits to the Youth in Care Representative on the Commission to youth input in the Normalcy Workgroup's work, the Commission continues to listen to youth and find more ways to meaningfully engage this population.

### **Child and Family Services Review**

The Commission has been part of developing the state's Performance Improvement Plan stemming from the findings of the Child and Family Services Review, a federal audit of standards and metrics assessing the work of state departments. The Commission will continue to monitor and review the Performance Improvement Plan in alignment with the findings of the CFSR, with a final report due to the federal government in September 2019.

Monday, December 3, 2018

## **Memorandum:**

To: Washington State Supreme Court Commission on Children in Foster Care

From: Normalcy Workgroup

Re: Sexual Education Recommendation for children in foster care

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According to youth and young adults in the Washington foster care system, many have missed or never received a comprehensive sexual health education prior to exiting the system. Lacking information leads to early pregnancies, sexually transmitted diseases, and issues around consent and assault. Young adults from foster care have shared they have experienced the following barriers when it comes to receiving sexual health education: multiple placements, changing schools, or missing the one time it was taught. To further complicate the situation, in the nearly 300 school districts in Washington sexual health education is optional, and the curriculums differ. And, about 20% of Washington schools teach no sexual health or provide less than 1 hour of instruction. Research shows that youth and young adults who receive a comprehensive sexual health education; are informed, can make safer choices, and have healthier outcomes. It is our duty to make sure that young people are taught these vital life lessons in our communities.

## **Recommendation:**

To improve access to Sexual Health Education, the normalcy workgroup is recommending that the state consider mandating sexual health education for all children enrolled in middle school and high school in Washington state.

We recommend teaching a comprehensive sexual health education to all students:

1. Age appropriate
2. Teach medically accurate information about reproductive and sexual health care
3. Be LGBTQ+ inclusive
4. Teach about healthy relationships including discussion on toxic relationships
5. Teach about consent
6. Teach about healthy boundaries
7. Teach about sexual assault and harassment
8. Teach prevention and disease prevention resources



The workgroup recommends that DCYF consider the following:

1. Include sexual health education into the education plan of those in care
2. Support youth and help remove barriers
3. Create a navigator within Coordinate Care to assist families "Sex Ed Expert"
4. Support foster parents/caregivers anytime; clarify rights and prudent parent standard
5. Educate stakeholders, community partners, caregivers, and youth/young adults in foster care that Medicaid to 26 covers reproductive health benefits
6. Coordinated Care share Sex Ed training curriculum with normalcy workgroup
7. Coordinated Care consider offering an online option for caregivers and social workers.

The workgroup recommends stakeholders teach children and youth about their "sexual rights".

Young people have the right to be informed about age-appropriate, medically accurate information about reproductive and sexual health care, ways to access reproductive and sexual health care services in their communities, including assisting in identifying barriers and needs.

Also training in Sexual health education for adults; social workers, caregivers, judges, attorneys, CASA Volunteers, and other community partners. To be trained in foster youth sexual health rights and support youth and young adults in foster care.

## Best Practice:

- Be trauma informed
- Consider the whole student
- Do not separate youth based on gender
- Aware that Sexual Health Education tends to be taught in heteronormative way
- Include life skills; family communication, avoiding coercion, making healthy decisions, sexual consent, harassment, sexual orientation, and more.
- Be flexible when lessons are taught. Ideally teaching new component each year building on the previous lessons. Rather than once in health class.
- FLASH curriculum is used in Seattle schools, and across the country as a comprehensive sexual health education starting in middle school through high school. Currently, only a few school districts in Wa use this curriculum.
- Use community partners such as: GLSEN, Planned Parenthood, WCSAP, WSCADV, Public Health Nurses
- Encourage school nurse to teach or support teacher when teaching Sex Ed. Youth asked for someone who isn't embarrassed to have the conversation
- Fund teacher training
- Each school have a school based health center to support students, and staff are trauma informed.
- For youth in care, a review of case annually and updated to verify youth has received comprehensive sexual health education that meets the requirements of the WA Healthy Youth Act
- Youth and young adults in foster care who have not met this requirement have a plan created to ensure they receive sexual health education prior to exiting care.
- Youth and Young Adults have a trusted person to have open conversations and can ask questions. Person to help answers the questions in a timely manner.
- Erin's Law training once implemented, could compliment sexual health education



## Washington State Office of Civil Legal Aid

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Jill Malat, Program Manager  
Children's Representation Program  
[jill.malat@ocla.wa.gov](mailto:jill.malat@ocla.wa.gov)

To: Representative Noel Frame

From: Jill Malat, Children's Representation Program Manager

Re: Grant County change in policy re appointment of counsel for children at shelter care hearing

Date: April 26, 2019 (Rev.)

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This is to advise that integrity and statistical reliability of the legislatively directed study on the impact of legal representation for children in dependency cases is being undermined by unilateral action being taken the superior court judges in one of the treatment counties – Grant County. I write to request your guidance and assistance to ensure timely appointment of attorneys for children as a matter of right consistent with the requirements of Laws of 2017, 3<sup>rd</sup> special session, ch. 20, section 28 (ESSB 5890). Below I provide background and context.

Under current law, there are three ways that children in dependency proceedings are appointed counsel. RCW 13.34.100(6) requires the appointment of counsel if they have been legally free as to both parents for 6 months or greater. If they are in Grant or Lewis Counties (the study's 'treatment counties'), section 28 of ESSB 5890 directs that children be represented effective at the time of the initial shelter care hearing. All other children, with a few exceptions (youth in extended foster care and youth who are petitioning for reinstatement of their parent's parental rights) must make a motion to the court requesting the appointment of counsel.

Pursuant to the recent Washington State Supreme Court decision in [In Re the Dependency of E.H.](#), the dependency judge must then do a legal analysis balancing three different factors in making its decision whether to appoint counsel. The court must weigh what are called the Matthews factors (after the U.S. Supreme Court's decision in [Matthews v. Eldridge](#)). These factors are (a) the private interest of the child; (b) the risk of erroneous deprivation of such interest through procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (c) the government interest in making its decision whether to appoint an attorney. This is an onerous process requiring each individual child to file a written motion and to make a legal arguments based on the particular facts of the case.

I have been advised that the Grant County Superior Court judges believe they are not required to appoint counsel to children at the initial shelter care hearing pursuant to ESSB 5890 because

there is no specific language in the legislation that requires them to do so. This information comes as a result of a telephone conference call I had on April 25, 2019 with Grant County Presiding Judge Antosz, Judge John Knodell, and Judge David Estudillo. During the call I was told that instead of appointing attorneys for all children at the initial shelter care hearing in accordance with the children's representation study protocol, and as had been occurring since approximately September 1, 2017, each child will now be required to make a motion for the appointment of counsel. Once a motion is made the dependency judge will undertake a Matthews analysis to determine whether an attorney will be appointed. Such a change in protocol substantially threatens the methodological soundness of the study and could, if left to stand result in the total waste of the \$1.3 million in taxpayer funding that the Legislature appropriated for the same.

During the call I asked the reason for this change of policy and was told that it was because the children's attorneys were clogging up the calendars by filing notices of disqualification against one of the judicial officers. This judicial officer is Judge Knodell.

Under RCW RCW 4.12.050 an attorney has a right to file what is called a notice of disqualification against a judge if that attorney feels that a particular judge cannot be fair. I have been advised by members of the Grant County bar that Judge Knodell does not hear criminal cases in Grant County because the Grant County Prosecuting Attorney's office has determined that he cannot be fair and they will not accept him as a judicial officer in criminal cases. This means that there are limited calendars on which Judge Knodell can sit.

Child welfare hearings in Grant County are usually heard by Commissioner Middleton. Over the past almost two years of the children's representation study the children's attorneys have been filing and arguing motions in front of Commissioner Middleton on behalf of their clients and have been prevailing on these motions. At times Judge Knodell has heard the child welfare calendars. Our highly trained contract attorneys advise that Judge Knodell demonstrates a consistent lack of appropriate temperament toward both the attorneys and the children they represent, and does not provide children in dependency hearings with a fair process. He has been vocal from the beginning of the children's representation study about his disagreement with children having attorneys.

Earlier in the week I received a call from one of the OCLA-contracted study attorneys. She advised me that she had filed a notice of disqualification against Judge Knodell in one of her cases. She filed this notice, as she had a legal right to do, so that a different judge, one that her child would receive a fair hearing in front of, would hear the case. Judge Knodell refused to accept the Notice of Disqualification and insisted on hearing the case. Our attorney is reviewing her options under applicable law.

The change in appointment policy and procedures during the middle of the study period significantly threatens the integrity and statistical reliability of the study itself. The bench apparently presumes that it can unilaterally thwart the will of the Legislature in midstream, and in the process deny children the effective legal representation to which they are entitled. Assuming the study is funded for an additional year, we anticipate terminating the appointment requirement in Grant and Lewis Counties effective December 31, 2019. We respectfully request your assistance in clarifying legislative intent and ensuring that attorney appointments continue to be made throughout the study period.



## Washington State Office of Civil Legal Aid

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Jill Malat, Program Manager  
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April 28, 2019

Hon. John Antosz, Presiding Judge  
Superior Court of Grant County  
35 C. Street, PO Box 37  
Ephrata, WA 98823

Re: Legislative Study of Early Appointment of Attorneys in Dependency Cases

Dear Judge Antosz,

I am in receipt of the letter you and your colleagues forwarded on Friday, April 26, 2019. That letter declares that the Grant County Superior Court will no longer appoint attorneys for children at the initial shelter care hearing as a matter of right. Instead, the court will require that motions be made which will in turn be considered under the standard established in *In Re The Dependency of E.H.*, 197 Wn.2d 872 (2018) and the requirements of RCW 13.34.100(6). Because such a change in the attorney appointment protocol will effectively terminate a legislatively directed and funded study of the impact of early appointment of attorneys in dependency cases, I am writing to request that the bench reconsider this action and return to the practice of appointing attorneys at the initial shelter care hearing through the period of the study – December 31, 2019.

In order to understand the implications of the unilateral action announced in the April 26<sup>th</sup> letter, I will take a moment to review the history of this multi-county study and the significant consequences that will flow from Grant County's premature withdrawal from the study protocol.

As you will remember, the Legislature enacted [Laws of 2017, 3<sup>rd</sup> Special Session, Ch. 20](#) (formerly known as ESSB 5890). Section 28 of that legislation directed the Office of Civil Legal Aid to work with the Washington State Center for Court Research at the Administrative Office of the Courts (WSCCR) and such other independent researchers as appropriate to undertake "a statistically reliable assessment of differential outcomes in dependency proceedings prior to termination of parental rights." The Legislature outlined its expectations with particularity, directing that:

The assessment must involve a randomized control test or other appropriate research methodology. The center may engage or otherwise associate with other researcher organizations, as appropriate, to help with data design, collection, and analysis. The assessment must compare impacts and outcomes for foster children who receive standards-based legal representation to those who are not represented by an attorney before termination of parental rights. The assessment must focus on dependent children in Grant, Lewis, Douglas, and Whatcom counties. The assessment must quantify differentials, if any, between the experience of children who are represented in the dependency proceeding and those who are not [in relation to permanency rates and other specific child welfare indicators].

The Legislature also appropriated \$1.3 million and directed the Office of Civil Legal Aid (OCLA) to recruit, contract with, train, and pay attorneys to provide standards-based legal representation for children for whom attorneys are appointed at the shelter care hearing in the treatment cases.

Immediately following enactment of the bill, OCLA worked with staff at WSCCR and later at the University of Washington School of Social Work to develop a methodological approach that would (a) be responsive to the legislative charge and (b) generate sufficient numbers to allow for statistically reliable results and conclusions as to whether and, if so, what impacts early appointment of attorneys would have in these cases. It was early determined that a control/treatment model would best accomplish these ends – with Grant and Lewis Counties serving as the treatment counties (where attorneys would be appointed as a matter of right at the shelter care hearing during the duration of the study) and Whatcom and Douglas Counties would serve as the control counties (where attorneys would not be appointed in dependency proceedings at the shelter care hearing).<sup>1</sup> The researchers developed comprehensive study methodology, logic models, and related protocols to guide the data collection and analysis as well as ensure a sufficient power number of treatment cases over the course of the study. These are set forth in the approved submission to the University of Washington’s Human Subject Research Institutional Review Board (IRB), a copy of which is attached to the e-mail transmitting this letter.

From the outset, OCLA sought to work respectfully and effectively with the courts in the two treatment counties to ensure (a) timely appointment of attorneys, (b) the availability of high quality legal representation for children for whom attorneys were appointed, and (c) administration of study protocols in a manner that imposed the least burden on the treatment courts consistent with the study’s purpose. To this end, OCLA recruited, contracted with, trained, and continues to support five attorneys who accept appointments to represent children in the study cases in Grant County. Because mandatory caseload standards required that they limit their outside practice, study attorneys had to forfeit other compensated legal representation in order to take on the Grant County children’s cases for the duration of the study period. These attorneys have legitimate expectations that, subject to sufficient legislative appropriations, they will have sufficient cases and income during the study period.

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<sup>1</sup> Of course, nothing in the model would preclude appointment of attorneys in Whatcom and Douglas Counties upon proper motion and a determination that such was required under the *Matthews v. Eldridge* test embraced by the Washington Supreme Court in *In Re The Dependency of M.S.R. and T.S.R.*, 174 Wn.2d 1 (2012) and most recently reaffirmed in *E.H.*

As we commenced the study and on more than one occasion since, I have personally visited Grant County to meet with you and the other judicial officers in an effort to ensure that the process and procedures developed would serve the ends outlined above, including the goal of minimizing administrative burdens on the Grant County Superior Court. Appointments of OCLA-contracted attorneys commenced in September 2017, and such appointments have been routinely made from that time through the date of your April 26<sup>th</sup> letter. These attorneys have actively and effectively represented their clients in a manner consistent with their responsibilities under the Rules of Professional Conduct and legislatively endorsed [Standards for Representation of Children in Dependency Cases](#). See RCW 13.34.100(6)(c)(i).

Prior to receiving a copy of your April 26<sup>th</sup> letter, I participated in a conference call with you and the other Superior Court judicial officers. During the call you advised that each child will now be required to make a motion for the appointment of counsel and that once a motion is made the dependency judge will undertake a *Matthews* analysis to determine whether an attorney will be appointed. I asked the reason for this change of policy and was told that it was because the children's attorneys were clogging up the calendars by filing Notices of Disqualification against one of the Superior Court's judicial officers.

As you know, under RCW 4.12.050 an attorney has a right (and often an ethical responsibility) to file a Notice of Disqualification against a judge if that attorney feels that the particular judge cannot be fair. While our attorneys would rather not invoke this right, they have a responsibility to effectively represent their clients; and when a particular judicial officer repeatedly demonstrates disrespect for and disregard of an attorney's client that attorney properly files a Notice of Disqualification. We expect nothing less of our contract attorneys; nor do the RPC's. From the discussion during the conference call it is clear that the Grant County judges have decided to withdraw from the study's appointment protocol in retaliation for OCLA-contracted attorneys doing their jobs. With all due respect, the answer is not to remove the right to counsel for children in these cases; it is to address the underlying problems giving rise to the filing of such notices.

Allow me to note that, while the notices filed by children's attorneys may contribute to, they are not the primary cause of the Superior Court's calendar problems. We all understand that these are primarily caused by the unwillingness of the elected county prosecutor to allow this same judicial officer to preside over criminal cases. We are also advised that Notices of Disqualification are often filed against this judicial officer in civil cases. These – and not the periodic notices filed by children's attorneys – are the primary cause of the docket and calendaring problems that were invoked during the April 25<sup>th</sup> conference call as the sole reason for terminating Grant County's participation in the study.

The Grant County Superior Court's unilateral withdrawal from the study's attorney appointment protocol will have the following direct and immediate consequences:

1. The necessary power numbers (N) will not be achieved thereby compromising the statistical significance of the study's results. In other words, Grant County's pulling out will effectively kill the study.
2. OCLA's contracts with its attorneys will be effectively impaired, possibly giving rise to civil causes of action.



3. Children for whom attorneys are to be appointed as a matter of right will not receive attorney representation; a number of whom can be expected to realize significantly poorer outcomes than had they received legal representation.
4. \$1.3 million in taxpayer dollars will have been wasted.

This does not have to happen. Throughout the process I have worked to ensure openness, transparency, and respect for the court and its processes. The Superior Court has been consistent in its support for our efforts to provide quality legal representation consistent with the Legislature's directive. I am hopeful that the court may not have understood the implications and direct consequences of the action discussed during our conference call and confirmed in the April 26<sup>th</sup> letter; and that this letter may help you and your colleagues appreciate the same.

I am confident that continuation of the attorney appointment protocol through December 31, 2019 (after which time no further appointments will be made) can continue without significant negative consequences to the administration of justice in Grant County. The study attorneys and I are happy to meet with you and the other judges to find ways for them to carry out their client representational responsibilities ethically and in a manner that does not significantly exacerbate logistical or calendaring problems being experienced by the court. I would appreciate the opportunity to work with you to schedule a face-to-face meeting at the earliest opportunity.

I will follow up this letter with a phone call on Monday, April 29<sup>th</sup>.

Sincerely,

OFFICE OF CIVIL LEGAL AID

Jill A. Malat  
Children's Representation Program Manager

C: Sen. Judy Warnick  
Rep. Tom Dent  
Sen. Steve O'Ban  
Rep. Noel Frame  
OCLA Grant County Contract Attorneys

The Superior Court of Washington  
In and for Grant County

DAVID G. ESTUDILLO, Judge, Dept. 1  
JOHN D. KNODELL, Judge, Dept. 2  
JOHN M. ANTOSZ, Judge, Dept. 3  
TOM W. MIDDLETON, Court Commissioner

35 C Street NW  
P.O. Box 37  
Ephrata, WA 98823  
(509) 754-2011

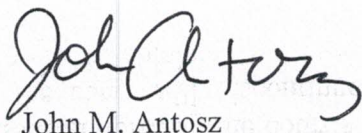
CRYSTAL BURNS, Court Administrator  
LYNETTE HENSON, Jury Administrator  
TOM BARTUNEK, Official Reporter

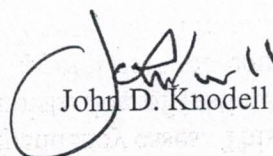
April 25, 2019

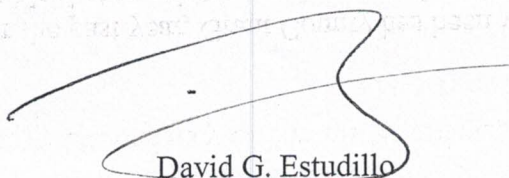
To All Dependency Children's Attorneys, Parent's Attorneys, AAG's, and GAL's:

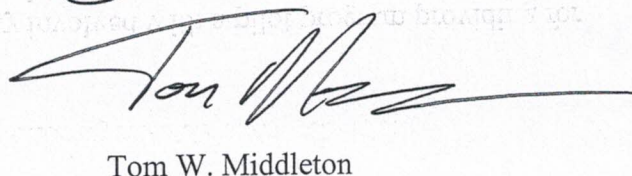
For the past year, Grant County has been voluntarily involved with a pilot program providing for the blanket appointment of counsel for all children in dependency cases. This program has created calendaring issues impacting the court's efficient administration of justice. In order to address these issues, the court will discontinue the blanket appointment of counsel for children in dependency cases. To obtain a court *Order Appointing Counsel for a Minor* in a dependency case, a proper motion will need to be noted on the court's docket. The court will consider all relevant legal authority brought to its attention, including, but not limited to *In the Matter of the Dependency of EH, 191 Wn.2d 872 (2018)* and *RCW 13.34.100(7)*.

Very truly yours,

  
John M. Antosz

  
John D. Knodell

  
David G. Estudillo

  
Tom W. Middleton



**To:** Jill Malat, Children's Representation Program Manager

**From:** Joseph A. Mienko, Principal Investigator, Dependent Child Legal Representation Evaluation

**Re:** Statistical concerns regarding Grant County change in policy

**Date:** April 29, 2019

The following information is being provided in response to a memorandum from Jill Malat, Children's Representation Program Manager to Representative Noel Frame regarding "Grant County change in policy re appointment of counsel for children at shelter care". In brief, it is my understanding from the memorandum that the Superior Court of Grant County intends to cease the appointment of standards-based legal representation (SBLR) to dependent children. As described below, the proposed changes represent a risk to the statistical *power* and *precision* of the Dependent Child Legal Representation Evaluation (DCLRE).

### **Statistical Background**

Sample size refers to the number of participants or observations included in a study. The size of a sample influences two statistical properties: 1) the *precision* of our estimates and 2) the *power* of the study to draw conclusions.

In the case of DCLRE, we are attempting to compare several outcomes of dependent children who receive SBLR with those who do not. Since it would be impractical to pilot the SBLR model across the entire state of Washington, the legislature focused our study on a smaller segment of dependent children; those children who have become dependent in Douglas, Whatcom, Lewis, and Grant counties since September of 2017. Children in Lewis and Grant counties would receive the SBLR model and would be compared to children who do not receive SBLR in Douglas and Whatcom.

#### *Precision*

Some of our outcomes can be measured using administrative data and some outcomes require the use of a survey tool designed to capture the experience of youth served by SBLR. No matter how careful we are in collecting data on children served by SBLR, there will still be some margin of error in the study results. This is because we cannot talk to everyone in the population of interest. For example, some children are too young to respond to the survey. Other children may be impossible for us to locate when conducting the survey. This measure of error is known as sampling error. It influences the precision of our description of the population of all dependent youth. Sampling error, though unavoidable, can be eased by sample size. Larger samples tend to be associated with high levels of precision, or a smaller margin of error.

#### *Power*

Power refers to the probability of finding a statistically significant result. In the DCLRE, power is the probability of finding a difference in outcomes (e.g. permanency outcomes) that is related to a child's receipt of SBLR.

The design of the DCLRE is based on several calculations known as *a priori* power analysis which use various alternative hypotheses to help us determine if our study can detect a meaningful difference between SBLR having no impact on things like permanency outcomes (the null hypothesis) and SBLR having a considerable impact on permanency outcomes (the alternative hypothesis). In general, a larger sample size gives more power.



### **Study Impact**

For over a year, the research team at the University of Washington School of Social Work has worked closely with the leadership of the Office of Civil Legal Aid (OCLA) and the Administrative Office of the Courts (AOC) to determine the minimum viable sample size for the DCLRE. Early on, we determined that the original design of the study, which terminated new attorney assignments on June 30, 2019, would have resulted in a study that was underpowered and imprecise. On our recommendation, expansion of study appointments through the end of December 31, 2019 was approved by the legislature in the FY 2019-21 operating budget. If historical dependency trends continue, this expansion should allow us to achieve a minimum viable sample size across the treatment and control counties.

Grant County represents approximately two-thirds of the SBLR cases in the DCLRE. As such, the continued assignment of SBLR in both Grant and Lewis counties is critical to the planned expansion of the study. Without continued assignment of SBLR in Grant County, the study will continue to suffer in terms of power and precision, and the research team will not be able to draw valid statistical inferences from the study.



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Jill Malat, Program Manager  
Children's Representation Program  
[jill.malat@ocla.wa.gov](mailto:jill.malat@ocla.wa.gov)

To: Representative Noel Frame  
Senator Steve O'Ban

From: Jill Malat, Children's Representation Program Manager

Re: Grant County Change in Policy Regarding Appointment of Counsel for Children at  
Shelter Care Hearing

Date: May 3, 2019

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This is to advise that the issue regarding appointment of counsel for children participating in the study in Grant County is resolved.

At the shelter care hearing on Tuesday, April 30, 2019, Commissioner Tom Middleton clarified the position of the court. He stated that although the court would not be routinely appointing counsel for children at the initial shelter care hearing, it would recognize Notices of Appearances filed by an attorney on behalf of children. By recognizing a Notice of Appearance, the court is allowing attorneys to appear on behalf of children in dependency hearings. The court is not requiring a motion for appointment of counsel to be noted and argued, nor is it engaging in a legal analysis under the U.S. Supreme Court's decision in Matthews v Eldridge.

There has been no interruption in the representation of counsel for children in the Grant County study, and the study has not been compromised in any way.





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