

MINUTES
(Subject to approval by the Committee)
Foster Care Study Committee
Wednesday, October 26, 2016
9:00 A.M.
State Capitol, Room EW 42
Boise, Idaho

Co-chair Representative Christy Perry called the meeting to order at 9:04 a.m., and a silent roll was taken. Members present: Co-chair Representative Christy Perry and Representatives Lynn Luker and Melissa Wintrow; Co-chair Senator Abby Lee and Senators Bart Davis, Mary Souza, Kelly Anthon, and Cherie Buckner-Webb. Representatives Mike Moyle and Jason Monks were absent and excused. Legislative Services Office (LSO) staff present: Ryan Bush, Jared Tatro and Ana Lara.

Other attendees: Stephanie Miller, Chris Freeburne, Russ Barron, Michelle Weird, Gary Moore, Amanda Pena, Miren Unsworth, and Sabrina Brown, Dept. of Health and Welfare; Val McCauley and Brian McCauley, Foster Care Reform; and Jaime Hansen, Family Advocates.

Note: Presentations and handouts provided by presenters/speakers are posted on the Idaho Legislature website: <https://legislature.idaho.gov/sessioninfo/2016/interim/fostercare>; and copies of those items are on file at the Legislative Services Office located in the State Capitol.

Co-chair Perry began by discussing the agenda for the committee meeting. She reminded the committee that they are charged with addressing the guardianship issue, which they will do in the meeting in November. She informed the committee that the Office of Performance Evaluations (OPE) has been working on the foster care study, but the report will not be ready until January of next year. The committee may consider making a recommendation to the Legislature that the committee reform next interim. Co-chair Perry emphasized that, with the understanding that they will not have the OPE report until next year, and the committee is waiting for feedback from the courts regarding legislation they passed in the 2016 session, there are still some issues that they believe can be incorporated in legislation this year.

Co-chair Lee stated three things that the Legislature wanted to address: 1) judicial review 2) emergency moves (7 day notice and requirement to place the reason in writing) 3) time frames. Co-chair Lee went on the record to state that family connections are critical, but she would like the driving factor to be what is in the best interest of the child, and not necessarily what is best for the adults.

Representative Luker made a motion to accept the minutes of August 31, September 12, and September 30. Senator Souza seconded the motion. The motion passed unanimously.

Co-chair Perry began the committee discussion by asking the committee members if there were any topics that the committee would like to have clarified before they proceed. Senator Souza suggested that the committee consider modifying some terms and definitions (e.g., 'willing relative'), or changing the terminology from what is in the 'best interest' of the child to the 'least detrimental' for the child.

Representative Luker expressed his concern about the definition of 'neglect,' and all the settings/contexts the word is used in. He referenced federal funding and federal involvement in the foster care program, and stated his uncertainty about how much latitude the Legislature has to modify the definition of neglect. Representative Luker read the definition of neglect as "proper parental care and control" and emphasized the term's vagueness. He added that the term 'well-being' is also vague and broad. He opined that both terms need further defining. Representative Luker referenced safety plans, and inquired whether there are further alternatives to placing children in foster care.

Senator Davis questioned whether changing the term from 'best interest' to what is the 'least detrimental' would create major platonic judicial and legal shifts. He suggested instead that the committee consider this potential change later in the future. He also added that he would like to define 'best interest' further. Other concerns, topics, and thoughts that Senator Davis has include:

- Create a statutory notice that provides parents with basic information about what to expect in the process;
- Potential statewide CASA program;
- Better education/training for social workers and foster parents;
- Rules of evidence;
- Possibly statutorily require the DHW to provide certain information at the time the child is removed;
- Fictive kin standard; and
- Doe v. Doe decision regarding the co-guardianship.

Co-chair Perry agreed with potentially modifying the fictive kin standard and the definition of 'neglect.' She emphasized that it is important to look for ways to provide resources to families as early as possible in the process. Representative Luker opined that parents need more information before going into a protective hearing, such as an abbreviated form of discovery, or an obligation that the DHW provide certain items of information. He also stated that he would like to look into expanding the time frame that Code X allows.

Senator Anthon agreed with what was said about notices, and information in conjunction with notices. He opined that there is something counter intuitive in the fact that under Idaho Law, under the termination/adoption statutes, family members that have had little or no contact with the foster child are given the right to the child in the foster care system. He opined that in order to mitigate the damage of a child being removed from one home and placed in another, there should be a planned transition in which a child would be able to form a bond with the new family over time before a complete transition took place. He emphasized his belief that the general concept of reunification of families is a good standard, but believes there are exceptions.

Representative Wintrow suggested creating a continuum of care by addressing certain factors such as mental health, substance abuse, and education. Other concerns, topics, and thoughts that Representative Wintrow has include:

- What guiding philosophy is driving our practice;
- What informs our work;
- What is the culture of the DHW;
- What are the innovative ways to support DHW staff that are enduring trauma on an ongoing basis;
- What does the research and data say about attachment and what causes the least detrimental effect on children; and
- How do we create transparency, openness, and collaboration in the foster care system.

Senator Souza referenced her nursing background, and stated that the medical system acknowledges that communication between the caregiver and the patient is important, and the communication should also be placed in writing. Due to being in a stressful situation, patients will often interpret or hear information from their physicians differently. If they have the information in writing, they may be able to refer to it later when they are not feeling as stressed. This could also apply to parents who feel stress or trauma when their children are removed. She suggested that the DHW might consider providing documents and ongoing reports in an easily accessible manner (e.g., online) to the appropriate parties.

Representative Wintrow concurred with Senator Davis and Senator Souza about providing information in a written form. She added that the DHW provides a booklet that describes the process to parents. She explained that a written piece detailing the rights of parents should be accompanied with coaching from the DHW to ensure that there is understanding. Representative Wintrow advocated

for additional resources and support for the DHW. She suggested they examine their caseloads, and their ability to provide consultation and coaching to their employees, especially to newer social workers. She emphasized how crucial it is to have transparent and well planned transitions for all parties in order to mitigate the trauma for the children involved.

Co-chair Perry asked the DHW to provide the committee any information (i.e., notices, pamphlets, etc.) that is provided to parents. She inquired about what parental rights exist throughout the process, and stated her interest in knowing what access to information parents have.

Representative Luker asked how many petitions for removal are preceded by a shelter care hearing. Ms. Unsworth responded that it was her belief that when a petition is filed, unless there is a decision from the prosecuting attorney to withdraw that petition prior to shelter care, there is always a shelter care hearing as required by statute. She emphasized that this question would be best answered by the administrative office of the courts. Representative Luker followed up by asking if, generally speaking, there is no petition for protective care unless there has been an immediate removal for shelter care. Ms. Unsworth explained that a law enforcement official would make a determination about declaring a child in imminent danger and placing that child in the emergency removal status. That information, along with an affidavit from the DHW, would go to the prosecuting attorney's office who would decide if there is sufficient evidence to file a petition and move forward with the shelter care hearing. Representative Luker requested that the DHW provide the committee information regarding the number of safety assessments conducted in a year, and how many new entries [into foster care] there were in that year.

Senator Davis asked if the explanation of rights is provided voluntarily by the DHW, or if it was required by law. Ms. Unsworth responded that there are elements within the document that are required by IDAPA, and other elements are provided by the DHW voluntarily. Senator Davis requested that, along with the document, the DHW also provide reference(s) to the administrative rule and the statutory authority.

Co-chair Lee suggested the committee look at the Child Protection Manual which provides an overview of the process and references to statutes as well. She explained that there may be analogous laws (i.e., protection orders in domestic violence, etc.) that the committee can examine to ensure that it still meets the due process of the parent. Co-chair Lee referred to the definition of 'fictive kin' and the many definitions she has come across in IDAPA, the manual, and memos from the DHW. In IDAPA it states that "Kin is non-relatives that have significant family-like relationships with a child. Kin may include godparents, close family friend," but it doesn't specifically identify foster parents. In the Child Protection Manual, however, on page 48, under 4.7 Least Restrictive Setting and Placement Priorities for Relatives, the priority list separates foster parents from fit and willing non-relatives in the hierarchy. Co-chair Lee asked if the intent was to make a differentiation between non-relatives and foster parents. Ms. Unsworth responded that, while she could not comment about the intent, the priority list in statute first lists relative, then fictive kin (with the definition including the word 'prior'), then prior foster parent, and then current foster parent. She added that because there are two categories of foster parents underneath the kin definition, one could infer that foster parents are separate and apart from kin, which is how the DHW interprets the statute.

Co-chair Lee asked if changing the language to allow consideration for individuals who are not specifically identified would help the DHW to look at all the factors for determining what is in the best interest of the child or the least detrimental. Ms. Unsworth responded in the affirmative and emphasized that any additional clarity that can be provided in the statute is helpful for the DHW's practices. She added that the potential of removing the qualifier of 'prior relationship' from the fictive kin definition to create a broader perspective of that child's connections and relationships would support the work the DHW is trying to do in terms of making the best decision.

Representative Wintrow asked the following:

- What is the relationship between law enforcement and the social worker;

- How often do they disagree;
- Is the training for each equitable;
- Who is better suited to make the decision; and
- How often [are those decisions] collaborative.

Ms. Unsworth answered that it depends; there is quite a variation in what those relationships, collaborations, and the level of training look like. She explained that there are some law enforcement jurisdictions that have specific units that focus on child abuse and neglect. In some counties it may come down to what law enforcement official is available to respond to an allegation of abuse or neglect. The DHW is responsive and collaborative when they receive requests from law enforcement for consultation, but in some cases the decision has already been made by law enforcement (e.g., declaration has been made and parents have been arrested). Representative Wintrow followed up by asking if there was something the DHW would like to fix in their relationship with law enforcement. Ms. Unsworth emphasized that collaboration is always the best; the DHW may have information that would be helpful to law enforcement in making their decisions.

Representative Wintrow asked what opportunities exist for joint training and building relationships, and how the Legislature can support those opportunities. Ms. Unsworth responded that what is occurring is locally originated within counties based on their individual needs. She explained that there are multidisciplinary teams that receive trainings in counties. She opined that there is potential for a more organized effort across counties, and offered that the DHW could consider providing training at POST (Peace Officer Standards and Training) as they have done in the past.

Senator Anthon asked under what circumstances does the DHW pursue termination of parental rights, and if they seek adoption by a foster family in any of those situations. Ms. Unsworth responded that there are a variety of circumstances that would lead the DHW to recommend a permanency plan of termination of parental rights. Early in the case it is much more rare, she explained, as it would need to be due to aggravated circumstances, per statute in Idaho Code. If the court agrees that an aggravated circumstance exists, within 30 days the DHW would file a permanency plan that would include alternate permanency - most typically adoption. Outside the aggravated circumstances, if the DHW finds that there are poor prognosis indicators, the DHW may file for an early permanency hearing, and it is up to the judge to determine if it is appropriate. The DHW must file a petition to terminate parental rights at the 15 month mark, unless the court makes a determination that compelling reasons exist not to file a petition.

Senator Anthon asked if the DHW files the petition under either the adoption/termination statute component in Idaho Code, the Child Protective [Act], or both. Ms. Stephanie Miller, Permanency Program Specialist for the DHW, answered that the DHW utilizes the Idaho termination of parental rights statute. Senator Anthon asked if she had seen situations in which the biological parent consents to the termination [of parental rights] and the adoption [by a non-relative]. Ms. Miller responded that the majority of the terminations are done voluntarily by the birth parents. There have been cases where individuals who are not considered a party to the Child Protective Act have requested or filed a petition to adopt, which is then referred to the judge for consideration. In those cases, she explained, the judges have usually thrown out those requests, but there have been a few exceptions.

Senator Anthon followed up by asking if the priority for a permanency plan is to look for fit and willing relatives so they can be considered first for placement. Ms. Miller responded in the affirmative. Senator Souza asked if the DHW had considered the use of an outside agency that could search for connections, send the required notifications, and then follow up on those connections. Ms. Miller answered that they had considered this, but the financial cost is too great for the DHW to pursue this option. Senator Souza followed up by asking if it would be more cost-effective for the DHW to continue to conduct this process. Ms. Miller responded that at this time they have not done cost-analysis as to which process would be the most beneficial to use.

Senator Souza inquired about a potential time line, much less than 15 months, for relatives or biological fathers to respond. Senator Souza asked if potentially there could be a mandatory time line stipulated in notices that would provide a deadline for requesting custody. Ms. Miller explained that there have been frequent conversations regarding time lines within the DHW. One of issues is the time line in terms of identification of relatives or fathers. The challenges are that some times mothers decline to identify the father, or at times parents fail to disclose relatives initially, and will not disclose this information until much later. She added that once the permanency selection has been made though, they will not consider any additional requests for placement.

Senator Souza asked if it would create a more consistent environment if the definition of those priorities changed so that relatives, fictive kin, and foster parents could all be considered for placement on a fairly equal level. Ms. Miller answered that, even with that potential change, the DHW is still required to meet the federal standards for seeking relatives and considering relatives for priority placement. However, they are in the process of changing their placement selection process to allow both relatives and foster parents to be considered simultaneously. While placement priority will be part of the consideration, so will be the child's current connections and bonds to his foster parents.

Co-chair Lee asked if there are any analogies to what the DHW is doing in their foster care system in regard to time lines. Ms. Miller commented that her understanding is that, if the DHW does not continue to make efforts to identify the father and involve him, even if he is not on the putative father registry, the DHW may have a difficult time proving their case that they made reasonable efforts to reunify the father with the child. Ms. Unsworth also explained that there is an overlay in certain cases, particularly when it comes to the Indian Child Welfare Act, and what it means not just for 'reasonable efforts' but for 'active efforts.'

Co-chair Lee inquired about the DHW's policy to continue their attempts to identify a father, who has been absent for all of the child's life, and the child has been in foster care for 15 months, or even 12 months. Ms. Miller responded that this falls under the reasonable efforts piece in the child protection case. If they proceed to a termination hearing, the DHW needs to be able to tell the judge that they made all efforts to locate the father.

Senator Anthon asked for an example of a case where the DHW would seek termination of parental rights prior to the 15 month mark, and before being mandated by statute or the court to do so. Ms. Miller responded that the most common situations in this category involve very young children (toddlers and infants) whose parents have not been actively working on their case plan; the DHW may ask the court for permission to proceed with an early permanency hearing.

Senator Anthon asked if there is a requirement for the biological father to make child support payments during the course of a child protection action. Ms. Miller responded in the affirmative. Senator Anthon followed up by asking if there is a requirement for visitation during the course of a child protection act. Ms. Miller answered that visitation is typically required, unless it is deemed a safety concern for the child to visit the parent.

Senator Anthon referred to earlier testimony where it was said that, in cases where a third party initiates a termination/adoption proceeding during the course of a child protection action, courts will dismiss those cases, and asked if Ms. Miller knew the legal basis for which judges are dismissing those cases. Ms. Miller responded in the negative. Senator Anthon commented that the child protection statute seems to override other rights afforded to Idahoans in the adoption and termination statutes. He explained that if the DHW were to not become involved, almost anyone could come forward, present evidence of neglect, and adopt the child after some interworkings. He opined that once the DHW becomes involved, those people significantly lose the ability to do so. He stated that while this might have been the intent, it should be reviewed by the committee.

Senator Davis reminded the committee that after November 30, the committee would cease to exist, and suggested that the committee consider what their priorities should be. He added that once

the committee receives the OPE report, they may want to ask that the committee be reconstituted next year or the year after. He suggested that the committee consider allowing the changes contemplated, combined with the increased judicial oversight, to have some time to work, and then revisit these issues at a later date. He opined that it is worth the effort to allow the natural family to have some priority in placement selections.

Co-chair Perry asked Ms. Unsworth how the DHW prioritizes or determines which resource to use when they find conflict between what IDAPA rules, statutes, and the Child Protection Manual state. Ms. Unsworth responded that statutes will always be the first priority, then the rules, and then the manual.

Representative Luker asked, assuming the Legislature has the authority to extend the time frame in Code X, if the DHW had an idea of what time frame (e.g., 60 days, 90 days) would work best to give fit and willing relatives enough time to be identified, and attain their expedited foster care license. Ms. Unsworth responded that the DHW would appreciate more flexibility in this area. However, they would need to research whether they would continue to have access to NCIC (National Crime Information Center) to check criminal history, given that federal regulation explicitly states it can be used within the initial 30 days of placement, in the case of a placement disruption, and a couple of other circumstances. Representative Luker asked Ms. Unsworth to work with Mr. Bush to research the issue, and provide the committee with feedback at the next meeting.

Co-chair Lee emphasized that she would like to give the DHW flexibility to combine the second and third tiers in the placement priority list (fictive kin and foster parents, respectively) in cases where the priority for placement with a fit and willing relative is not possible. She would also like to provide flexibility for how quickly the DHW can proceed to considering next placement options. Co-chair Perry reminded the committee that there may be items in the OPE report that the committee will want to address (i.e., caseloads, communication within the department and with the public, etc.). She explained that notices and time frames were items that had been debated quite heavily in the legislation that passed last session. Co-chair Perry suggested the committee should consider whether to revisit these issues before the end of November.

Representative Luker referenced Section 16-1619, Idaho Code, regarding adjudicatory hearings, and voiced his concern regarding the short time frames allowed in this section. He added that he would like to see what information is provided to the parents in the investigative reports.

Co-chair Perry listed the actions items for the DHW:

- Research the use of Code X to see if the time frame of 30 days can be extended; and
- Provide materials that are distributed to parents in regard to the process, parental rights, etc. before the next meeting.

Co-chair Perry suggested that the committee members review the information and materials provided by the DHW on their own time before the next meeting. If the committee members have concerns or comments that they would like to discuss, she asked that they please share those with the rest of the committee members prior to their meeting in November. Co-chair Perry reminded the committee that a large portion of the next meeting will be spent addressing the guardianship issue. The rest of the meeting will be spent addressing the following:

- What potential issues the committee would like to address;
- What information (e.g., OPE report) they should wait for;
- What items they would like to allow more time to develop (regarding legislation that was passed last session);
- Potential legislation; and
- Resolution to ask that the committee be reconstituted in the future.

Co-chair Perry listed the following action items for the committee:

- List of items to be placed aside pending the OPE report;
- Concurrent resolution that reconstitutes this committee after next session;
- Possible legislation that collapses the hierarchal order in the priority list;
- Align statutes, IDAPA, and the Child Protection Manual;
- Time frames for notifications and investigative reports provided to parents;
- Informal hearings;
- Possible memorandum notice;
- Rules of evidence and possible Miranda notice; and
- Definitions of neglect, best interest versus least detrimental, fictive kin, consider, and fit and willing relative.

Representative Wintrow asked LSO staff when the committee might expect the minutes so to refer to them for the list of action items. Ms. Lara asked the committee for a week to prepare the minutes.

Representative Luker opined that the Miranda notice should be provided to the parents at the time the child is removed from the home, and that the discovery portions could be attendant to the protection hearing referenced in Section 16-1619, Idaho Code. Senator Davis agreed, and suggested a separate and augmented notice be provided in the second step of the process.

Co-chair Lee welcomed a discussion with the Child Protection Committee, and asked if they could identify why the hearings are so informal. She also asked what the impacts would be if the Legislature was to change the nature of those hearings. Co-chair Lee also welcomed the opportunity for Judge Bryan Murray to relay his perspective on informal hearings.

Co-chair Perry informed the committee that they would be reaching out to the courts to help address some of the action items. She also encouraged the committee members to inform the Co-chairs of any additional action items that they wish the committee to address in the next meeting.

The committee adjourned at 11:40 a.m.