

Members

Sen. David Ford, Chairperson
Sen. Richard Bray
Sen. Anita Bowser
Sen. Billie Breaux
Rep. Michael Dvorak
Rep. Vanessa Summers
Rep. Cleo Duncan
Rep. Brent Steele
Karon Perkins
Bruce Pennamped
Cynthia Ayres
Carol Bramham



INDIANA CHILD CUSTODY AND SUPPORT ADVISORY COMMITTEE

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

Andrew Roesener, Attorney for the Committee
Kathy Norris, Fiscal Analyst for the Committee

Authority: IC 33-2.1-10-1

MEETING MINUTES¹

Meeting Date: August 31, 2001
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington
St., 233
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Sen. David Ford, Chairperson; Sen. Richard Bray; Sen. Anita Bowser; Sen. Billie Breaux; Rep. Vanessa Summers; Rep. Cleo Duncan; Bruce Pennamped; Carol Bramham.

Members Absent: Rep. Michael Dvorak; Rep. Brent Steele; Karon Perkins; Cynthia Ayres.

Call To Order

Sen. Ford called the meeting to order at 10:05 a.m. The committee members introduced themselves. Senator Ford then asked the speakers on the agenda to present their information.

Family Court Pilot Project

Lilia Judson, Executive Director of the Office of State Court Administration began by giving

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

a general description of a family court program (see Exhibit 1). The family law court is utilized when a family unit has multiple cases pending in different courts. The family law court brings all of these cases together under one cause number or before one court. This gives the judge the benefit of seeing all of the issues the family is confronted with at once, instead of dealing with these issues separately. She indicated that the single case, adversarial approach found in most other types of litigation is not always effective in these types of situations.

An example of such a situation was provided. A father has a possession of marijuana case pending in criminal court. The mother has initiated a divorce, and asked for a protective order against the father. Instead of dealing with these issues independently in the various courts, the family law court would consider all of these issues together. The court has flexibility in terms of how it will accomplish this, but the following two approaches are most common: (1) The pending cases are brought before one court for one judge to consider (This is the model used by Johnson County). (2) The pending cases are kept in separate courts, but a case coordinator is utilized so that all the cases are overseen by one person.

A history of the family court project was then presented to the committee. The project began with a \$400,000 appropriation from the General Assembly in July 1999. Applications were accepted from counties for grant money, and the Indiana Supreme Court decided which applicants would receive grants. Porter, Johnson, and Monroe Counties were selected. (Putnam County was not selected to receive a grant but has implemented a family court project). Additionally, the Supreme Court passed special trial rules that apply strictly to courts participating in the Family Court Pilot Project (see Exhibit 2). Recently another grant has been acquired by the Office of State Court Administration. The proceeds of this grant are being used to conduct an independent evaluation of the efficacy of the family court system. The evaluation is ongoing, but no results were available at the time of the meeting.

Sen. Ford asked if there were any positive changes based upon the use of the family court system. Nancy Gettinger, Director of GAL/CASA at the Office of State Court Administration responded to the question. She noted that she has personally visited the courts, and has witnessed the enthusiasm in the family courts. She stated she has heard success stories based upon the family court approach. She has also spoken with bar associations, and has learned that the bar is happy because the use of a family court reduces the number of conflicting court orders. Additionally, both judges and courts like the use of the family court because of greater efficiency in resolving cases as well as bringing people and parties, who previously had not been talking, together to resolve cases. As an example of this she cited the inclusion of mental health professionals and the Indiana Department of Corrections is discussing matters at issue in these cases.

Sen. Bray then asked if Allen County has a family court. Jeff Bercovitz, Director of Juvenile and Family Law at the Indiana Judicial Center, indicated that Allen County does utilize a family court type of approach, but it is not participating in this project. Mr. Bercovitz stated that he would respond more fully to Sen. Bray's question later in the presentation. Sen. Bray then followed up by expressing a concern about how much a criminal case could truly be implemented into a civil proceeding.

Sen. Ford asked how situations were addressed when actions within a family unit occur in other counties or other jurisdictions. Sen. Ford cited an example of a juvenile case in which a son (not old enough to legally consume alcohol) in a family gets caught with a beer at Deer Creek (Hamilton County). As a result of underage consumption of alcohol a criminal proceeding is initiated in Hamilton County. However, a divorce proceeding

between the mother and father is pending in Blackford County, and the parents do not want to have the case venued in another county. Lilia Judson responded that a case coordinator is the best solution. A case coordinator is the person responsible in a family court for overseeing all of the cases. Ms. Judson noted that the son or family member would have to make the case coordinator aware of the pending case. Nancy Gettinger then noted that a state wide computer network for all pending cases would be of great assistance in a situation like this one.

Sen. Bowser asked what approach is taken in border counties. For example, a divorce is pending in Clarksville, Indiana, and the son gets into criminal trouble in Louisville, Ky. Ms. Judson, Ms. Gettinger, and Mr. Bercovitz all indicated there is no easy solution for such a situation.

Sen. Bray noted that venue in a criminal case is guaranteed in the constitution. (See Article 1, Section 13 of the Indiana Constitution).

Sen. Ford asked the presenters if any of them wish to have a bill prepared for the upcoming legislative session. Ms. Judson responded affirmatively, but indicated that she would make a request at a later date.

Court Mediation Program

Jeff Bercovitz, Director of Juvenile and Family Law at the Indiana Judicial Center, provided a handout to the committee (See Exhibit 3). Mr. Bercovitz's presentation followed his handout entitled "Compilation of Presentations to Domestic Relations Committee on Mediation/Facilitation in Family Law Cases". This handout provided a brief synopsis of testimony provided to the domestic relations committee by counties and courts using mediation and facilitation in family law cases.

Sen. Ford asked Mr. Bercovitz to explain to the committee what is mean by mediation. Mr. Bercovitz explained that mediation differs from traditional litigation in that it is not an adversarial process. Parties work towards an agreement through the use of a third party (the mediator or facilitator).

Mr. Bercovitz then moved through his outline and gave a brief desription of each of the mediation programs in the state.

Parenting Time Guidelines

Mr. Bercovitz noted that the genesis of the parenting time guidelines began with a discussion of problems with visitation in paternity and dissolution cases. It was noted that inconsistencies in visitation occurred between counties and even in different courts within the same county. Due to these problems forum shopping became an issue as well. The idea of supplanting the previous visitation model with parenting time guidelines arose from these discussions.

A grant was applied for and received by the judicial center. The grant was used, in part, for a survey that was sent to judges, attorneys and other designated professionals. The responses in the survey were used to assist in the development of the parenting time guidelines.

Mr. Bercovitz explained that the parenting time guidelines were developed using a child centered approach (see Exhibit 4). Indiana is at the forefront, Mr. Bercovitz explained, in using this approach. He further noted that the guidelines do not apply in family violence

situations. The guidelines do apply in divorce, paternity and custody situations. One of the features of the guidelines is that deviations are anticipated, and a hearing is not required to deviate from the guidelines. The parenting time approach has taken the place of visitation, and Mr. Bercovitz stated that there may be a request for legislators to consider a bill that would replace the term visitation with parenting time.

The guidelines are premised on a few general rules. These include communication, implementation, and resolution of problems. With regard to resolution of problems, the guidelines offer a model that begins with parties negotiating, then mediating (if negotiations are unsuccessful), and litigating only when negotiating and mediating fail (see Exhibit 5).

Other provisions address how parenting time is structured. For example, parenting time with infants and toddlers stresses the frequency of parenting time over duration. Children three and older are provided with parenting time periods that are less frequent, but longer in duration. Parenting time during holidays and extended visits is set forth as follows: (1) Holiday parenting time trumps regular parenting time. (2) Extended parenting time trumps regular parenting time. (3) Neither parent gets more than two consecutive weekends. Mr. Bercovitz noted that abatement of support is not addressed in parenting time guidelines.

After Mr. Bercovitz's presentation Sen. Ford asked committee members if there were comments on the guidelines. Committee member Bruce Pennamped, a non-custodial parent and family law attorney, said the guidelines are very effective. Committee member Carol Branham commented that the guidelines are effective in that there is more participation by each parent. Sen. Bray commented that the guidelines are very well structured. Rep. Duncan asked if the guidelines apply in situations where the parents of a child were never married. Mr. Bercovitz replied that the guidelines apply in paternity cases.

Future of Family Law Trial Court Organization

Ms. Judson stated that a multi-county, district based mediation program either as part of the family law court project or as an independent program should be considered. Mr. Bercovitz added that a \$150,000 grant is being sought for the purpose of studying mediation efforts to determine if the process saves time and money. Another approach considered is using senior judges as family law mediators or case coordinators. Mr. Bercovitz concluded by stating that additional money will be needed if development of district based mediation is sought. He added that his organization will address the Indiana Supreme Court with funding ideas about how to implement and pay for such a program.

Adjournment

Sen. Ford stated that the next committee meeting would be on October 2, 2001 at 10:00 am. The topic will be the centralized support system at FSSA. Sen. Ford adjourned the meeting at 11:55 a.m.