**Summary of Evansville Listening Session 3/20/18 Transcript Summary**

**Task Force Members**

Larry Landis

Judge John Daniel Tinder (Ret.)

Dr. Jeff Papa

**Attendees:**

Stephen Owens

Hon. Judge Brett Niemeier

Hon. Judge Nathan Verkamp

Connie Whitman

Jon Schaefer

David Bunner

**SUMMARY**

**Stephen Owens, Chief Public Defender for Vanderburgh County.**

The biggest issue is the lack of Revenue coming into the counties with a budget that is growing disproportionately. (Tr. P. 5). The number one thing from his standpoint is that “the state somehow provide some relief for the public defender offices.” (Tr. PP. 5-6). He recognized that there are competing items for county funds; simultaneously, his office is being mandated to bring matters such as CHINS/TPR cases into compliance with PD commission standards. (Tr. P. 6).

The specific form of relief he would like is to have the State take over the entirety of capital defense, rather than have counties do it. (Tr. P. 7). Hiring decisions made by Owens must be approved by the public defender board in his County. (Tr. P. 9). It is a struggle for Owens to find qualified people to fill positions as public defenders. (Tr. P. 10). This is true as to full-time positions; however, for part-time positions, an abundance of applicants exists. (Tr. P. 11).

Owens’ office has a support staff of one full-time investigator, two full-time secretaries, an executive assistant, two paralegals. (Tr. P. 14). Additionally, experts may be hired on an as-needed basis with funds drawn from a supplemental public defender account. (Tr. P. 14). Conflict issues are resolved through the farming out of cases to private attorneys. (Tr. P. 16).

Owens would like to see the public defender more board more engaged in the activities of the public defender's office. (Tr. P. 18). Furthermore, Owens believes that CHINS/TPR cases should not be involved in or should not be part of the public defender office. (Tr. PP. 18-19). He believes that such cases are substantially different than public defender cases. (Tr. P. 20). Additionally, Owens was a public defender in Circuit Court in Vanderburgh County before the public defender office was started. (Tr. P. 20). He never felt he never felt that he was held back by the appointing judge, even though they did not always get the resources they shought. (Tr. P. 20).

He does not have an idea as to what better system exists for handling CHINS and termination cases, but he would like to see the State take it over as he believes that would be a better fit. (Tr. PP. 20-21). Owens carries a 50% of a full-time caseload and supervises his attorneys by seeing them in court very frequently. (Tr. PP. 22-23).

Owens reiterated that he would like to see the State take over capital litigation. He would also like to see the State take on payment of Chiefs and Chief Deputy public defenders, as they do with prosecutors. (Tr. PP. 22-24). Owens further stated that some judges in the surrounding counties are strongly opposed to adopting Commission standards. (Tr. P. 30). One reason for this opposition is that it will cost more money to participate in the standards or program than to maintain the status quo. Another reason or opposition to the commission system is that it would require the judges to give up control, whereas they like the way their system is working. For these reasons, there is no incentive for them to come into the commission rubric. (Tr. PP. 26-29).

He also believes that a regional or district system might deliver some benefits. (Tr. P. 30). At some point, the level of reimbursement from the State to the county would be so high that the County Council would be induced to accept the public defender commission standards. Owens does not know what that point would be. (Tr. P. 84).

**Hon. Judge Brett Niemeier, Vanderburgh Superior Court, Juvenile Division**

Judge Niemeier has served on the bench for 18 years and previously served as a prosecutor for 15 years. (Tr. P. 32). During his time as a judge, active CHINS/TPR cases have increased from 215 to over 1,000, while the number of CHINS/TPR attorneys has gone from two to four part-time defenders; Commission standards demand six full-time public defenders. (Tr. PP. 32-33).

He acknowledged a spike in CHINS/TPR cases as well as a lack of resources to handle these cases. (Tr. P. 34). Due to this lack of resources, many CHINS/TPR defendants and parents are disappointed with their representation. (Tr. PP. 34-35).

If an attorney affirmed he cannot provide effective assistance of counsel, the final recourse is to instruct county council to appoint additional public defenders; however, prior to this, the public defender is instructed that he or she must take the cases on according to local ordinances. (Tr. PP. 35-36).

The lack of resources is worse in CHINS/TPR cases as their caseload is higher and the pay is lower. (Tr. P. 36). An additional issue with part-time public defenders is that they are able to handle a full private practice as well as their PD practice; this is because the standards for caseloads need to be adjusted. (Tr. P. 37).

However, the Judges and the county council are satisfied with the public defender’s office and the part-time public defenders who also work 40 hours in private practice. (Tr. P. 38). The Judge also stated there is not a need to separate CHINS/TPR from the public defender’s office, and other judges within the county agree. (Tr. P. 40).

Judge Niemeier affirmed that the increase in CHINS/TPR caseload is wholly independent from the state takeover of DCS. (Tr. PP. 41-42). He opined the best solution to funding would be state funding with local control over hiring and assignments. (Tr. PP. 42-43). Also, a multicounty system would be less beneficial as this would detract from the local benefit of knowing the community well. (Tr. P. 43).

With regard to conflicts, he stated that parental conflicts are handled regularly in the public defender’s office, are a big problem, and such conflicts may arise with regard to modifications for custody or support in cases involving CHINS/TPR matters. (Tr. P. 44). Additionally, state funding without local control, such as the system in place with DCS, causes conflicts between the different judges, private counsel, and public defenders. (Tr. PP. 44-45). Public defenders need oversight, but did not have suggestions for a system. (Tr. PP. 45-46).

**Hon. Judge Nathan Verkamp, Dubois County Circuit Court**

Judge Verkamp operated in private practice for 14 years, and most of his practice was public defense; he has been a judge for three years. (Tr. PP. 47-48). Generally, smaller counties face different difficulties due to their size regarding funding and staffing. (Tr. P. 47). Smaller counties have lower requirements to be able to try major felonies and the process is generally different; attorneys in those counties are able to try more cases. (Tr. PP. 47-38). Furthermore, Dubois County does not participate in the reimbursement program and the judges hope to maintain their existing and cost-effective system running as they do not want to deal with the same problems as the larger counties. (Tr. PP. 48-49). The Judge’s background as a public defender makes him sympathetic to the public defenders in his court and he is not opposed to migrating to the reimbursement program. (Tr. P. 50).

Their PD system is comprised of two contract public defense attorneys reporting to each court in the county who have a general practice (including CHINS/TPR) and eight attorneys on rotation for conflict work. (Tr. P. 49). Local control also allows public defenders to try cases as they see fit regarding budgetary restrictions and the county council allows the courts to “run [their] own show.” (Tr. P. 50). Additionally, he does not feel a reluctance from public defenders in his courtroom to file additional meritorious motions because of their relationship to the bench. (Tr. P. 51-52).

The Judge illustrated an example showing that when additional funds are needed in the budget to appropriately cover complex cases such as homicides in his county, additional funds are made readily available. (Tr. PP. 53-54). Attorneys within the county are also appointed at the initial hearing.

However, if a defendant cannot make bond, that defendant must wait a week before the pretrial hearing, at which point in time the public defender may motion to lower the bond. (Tr. PP. 55-56). The Judge also stated he has seen a four-fold increase in CHINS/TPR cases, and recognizes that more resources are needed, but reiterated Judge Niemeier’s statement that the DCS model should not be followed; local control is essential in his opinion. (Tr. PP. 54-57).

Because of the size of the county, criminal defense attorneys also working on CHINS/TPR cases is “part and parcel” of small-county practice. (Tr. P. 58). Additionally, pooling resources among various counties in multicounty systems could be beneficial if it’s done right as it would relieve the smaller counties of some funding issues. (Tr. PP. 60-61). Judge Vanderkamp attributed the rise in CHINS/TPR cases to Methamphetamine and other drugs. (Tr. P. 61).

**Connie Whitman, Civilian**

Ms. Whitman discussed her son’s incarceration and affirmed he was wrongfully sent to jail due to mental health and PTSD. The final disposition of her son’s case was a plea bargain and she was therefore not allowed to appeal. She appreciates the work done but does not believe it is fair or right for public defenders to lack independence from the judges. She further affirmed that defendants should not be held on bail because pretrial incarceration “is unconstitutional.” Ms. Whitman provided a written submission. (Tr. PP. 62-70).

**Jon Schaeffer: Assistant Public Defender for Vanderburgh County**

Mr. Schaeffer pointed out that there is a bond statute that allows the court to apply a bond to certain fees and restitution. (Tr. P. 72). He suggested that the statute be amended to provide priority for the collection of funds for application to the public defender fees. (Tr. PP. 72-73). This would provide a source of funding for public defender expenses. (Tr. P. 73).

**David Bunner: Contract public defender for Vanderburgh County.**

He recounted the view of one public official in Vanderburgh County that public defenders do not have to be good attorneys and that it would save the County money if it selected attorneys willing to provide services at the lowest bid. (Tr. P. 75). Mr. Brunner expressed his opinion that this was not the proper way to run a public defender system. (Tr. P. 75). In response to a question from the Task Force Chair, Mr. Brunner stated his view that the State needs to have a greater contribution toward public defender expense reimbursement than does a local county. (Tr. PP. 75-76).