Courts and Legal System Workgroup Update to the Juvenile Services Committee

September 2016

The Courts and Legal System Workgroup, chaired by Christine Henningson (Center on Children, Family and the Law), was convened to create recommendations related to the court and legal process for youth involved in the juvenile justice system. The group has met two times and has gathered information and held discussion to begin creating preliminary recommendations. A list of members is included as Attachment A.

Law Violations Originating in Juvenile Court

The group discussed the current legislation requiring all filings to originate in juvenile court with the exception of Class I, IA, IB, IC, ID, II, or IIA felonies. Work has been done to compile a list of all Nebraska felony offenses for review. The preliminary list is available for review at this link. The group determined that due to recent statutory changes, the issue should be monitored before additional changes are recommended.

Next Steps:

- The Workgroup plans to compare statistical data from the Administrative Office of the Courts from the last three years to identify any impact of the recent statutory changes regarding juvenile justice filings. Information from this effort would lend to the discussion surrounding increased costs of all youth violations originating in juvenile court.

Legal Counsel for Youth

Workgroup discussion emphasized this area as a priority in the upcoming legislative session. Consensus was that there was need for a requirement that all youth should have legal representation. Barriers to the issue were noted and efforts were made to gather information on diversion efforts, potential funding mechanisms, and identifying a rural county judge to assist in spearheading the movement.

Discussion Themes and Issues for Feedback and Guidance:

- **Change statutory language to require that all youth have legal counsel and appropriate adequate funding for that requirement.** Funding for youth legal counsel would be maintained at the county level.
- **Require that diversion be offered to youth pre-filing.** Information from a 2014 Crime Commission survey showed that out of 52 county respondents 18 filed on juveniles prior to offering diversion options, 9 indicated that it depended on circumstance, and the remaining 25 of them offered diversion pre-filing. The group discussed at length the possibility and barriers of requiring that diversion efforts be offered to youth prior to filing in court.

  Arguments against this step included a negative reaction that could lead to diversion programs being eliminated in areas. Conversely, if there was a requirement for legal representation to be provided, it could limit the number of cases filed in court unnecessarily and encourage the use of detention pre-filing.

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- **Perform a pilot study providing legal counsel to all youth within a rural area to examine the impact on resources.** A suggested recommendation included a pilot study in a county not currently required by LB894 to provide legal counsel to all youth in order to collect data on the long term effects of youth accessing legal counsel. A funding mechanism would need to be identified in order to incentivize areas to participate.

Separate Juvenile Courts

While the recommendation to establish separate juvenile courts in all counties was included in the Phase I recommendations, it has not been a Committee priority. The group noted that county judges had the burden of a covering a wide range both geographically and in areas of expertise. To implement this recommendation, a change in statutory language would be required. Prior to forming recommendations on the issue, the Workgroup felt that additional information needed to be gathered.

Next Steps:

- The group will be gathering information on the varying existing models from other states.
- Representatives with the Court Improvement Project would assist in the outreach to judicial representatives throughout the state to gather input on the potential for separate juvenile courts.

Sealing and Expungement of Juvenile Records

Members also discussed the sealing and expungement of juvenile records as a potential recommendation issue. Concerns were raised as to if juvenile records were being appropriately sealed. The group noted that additional education may be necessary to ensure standard procedure is followed statewide. The expungement of records was a topic of much debate with no consensus. Due to recent statutory changes surrounding the sealing of juvenile records, the group agreed that additional input should be gathered prior to the formation of recommendations.

Next Steps:

- With the consent of the Committee, the group discussed outreach to the county attorneys to determine their standard processes for sealing juvenile records.
- The group will continue the discussion and research on the impact of expunging juvenile records.

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