

Judiciary Committee

Testimony Presented by Lisa Fair McEvers Justice of the Supreme Court September 14, 2022

Chair Koppelman and members of the Committee. For the record, my name is Lisa Fair McEvers. I am a justice of the North Dakota Supreme Court, and I am the Chair of the Juvenile Policy Board. I also serve on the Children's Cabinet created by SB 2313 in 2019. Thank you for inviting me to speak about the Court's recommendations for the Children's Cabinet.

Senator Heckaman, Chair of the Children's Cabinet, asked me to provide the Cabinet with five recommendations that will enable the courts to improve the lives of children and their families. The following recommendations were made in consultation with the Chief Justice, Jon J. Jensen, and State Court Administrator Sally Holewa. To implement some of the recommendations, the Court would need additional resources, including funds and staff. Other recommendations would require additional resources for executive branch agencies. The recommendations for the Children's Cabinet were: 1) support new judgeships across the state; 2) create FTE's for the Court Improvement Project; 3) expand the use of case aides with high risk youth in juvenile court; 4) support additional resources for Indigent Defense; and 5) support additional funding for the expansion of in-home family therapy and drug and alcohol treatment for youth, and address the recruitment barriers for mental health and addiction treatment providers.

NEED FOR ADDITIONAL JUDGES

At the top of the list is the need for additional judges. You may wonder why more judges would improve the lives of children and their families. Children's needs change quickly. As such, very short and relatively strict deadlines, both statutory and by rule, require handling juvenile cases

without delay. Our judges' dockets are full. Adding additional judges would reduce the time children and their families wait for hearings. It would also allow the judge's more time on each individual case, resulting in better decisions. For example, under N.D.C.C. § 27-20.3-20(1)(c)(2), parental rights may be terminated if the court determines the child or children are in need of protection and they have been in foster care and in the care custody and control of the department or human service zone for 450 out of the last 660 nights. The purposes of the statute are obvious. Children need stability and permanence, and parents need to address their issues causing the need for protection in a timely fashion. Children shouldn't have to wait forever for their parents to get their acts together. Unfortunately, we are seeing too many cases that are exceeding these time frames. In an opinion issued in June, we had a case on appeal where the children had been in foster care 1,233 days at the time of trial. When you add the time for appeal on that case, the children waited over 3 ½ years to be eligible to be adopted. In a similar case, in an opinion issued in March, the child had been out of the home for 1008 days. While the reasons for delay are many, when the parties ask for more time and continuances, there is often a backlog to get back on a judge's trial calendar. In 1992, we had about the same number of judges we have now (51 then, 52 now). However, the caseload of the district court has increased significantly over the same time, from 24,169 total cases, to 60,548 (not including traffic court). While the caseload of the juvenile courts has been more stable, the district court judges have less time to spend on their juvenile court dockets. The court's weighted caseload study shows several of our judicial districts are experiencing a shortage in judicial officers. Long story short, we need more judges, which should result in shorter wait time for children and their families.

NEED FOR FTE'S FOR THE COURT IMPROVEMENT PROGRAM

The Court Improvement Program promotes the continuous quality improvement of child welfare court hearings and reviews; legal representation for parents, children, and the state welfare agency; and, the collaboration among and between the judicial branch of state government, the title IV-B/IV-E agencies, and tribes to improve child welfare outcomes. Due to budgetary constraints, the CIP staff positions have been in a temporary position status for 12 years. These positions are critical to the youth and families of our state. It is time to grant the FTE's necessary to give the positions full-time permanent status. The CIP staff provide training and resources to court stakeholders, including judicial officers, state's attorneys, defense attorneys, guardians ad litem, juvenile court officers, and human service zone staff, allowing them to evaluate and enhance court processes in response to the needs of children in the child welfare system. The CIP staff also provide data analysis for the child welfare system and the juvenile court, and, in doing so, supports and coordinates the statewide Dual Status Youth Initiative. The CIP staff also oversees and supports pre-petition legal representation work, which assists families at risk for having children being placed out of the home to maintain their children in the home. The CIP staff also provide training and resources to implement ICWA compliance within the court and the child welfare system.

EXPANDED USE OF CASE AIDES

The Court supports the expanded use of case aides for high risk youth to address the complex needs of youth and their families to improve outcomes and reduce recidivism. Case aides can serve many purposes: focusing on unique needs identified in juvenile assessments; promoting positive growth and community connections; bringing resources to rural areas lacking resources; and addressing the needs of minority populations.

SUPPORT FOR INDIGENT DEFENSE

Youth deserve competent representation. Represented youth are more likely to fully participate in the process. Unrepresented youth too often make admissions to delinquent acts without a real understanding of the long-term consequences of their actions, or whether they may have had a legitimate defense to the allegations. The collateral consequences of an adjudication for a delinquent act may extend into and adversely affect adulthood. Juvenile cases are different from adult criminal cases, and children need attorneys specifically trained for juvenile cases. In 1967, the United States Supreme Court recognized in *In re Gault* that children have a constitutional right to competent counsel for delinquent acts. Shortly thereafter, the North Dakota legislative assembly also made it a statutory right. The court supports additional resources for indigent defense for children and their families.

EXPANSION OF SERVICES FOR IN-HOME FAMILY THERAPY, DRUG AND ALCOHOL TREATMENT AND ADDRESSING BARRIERS FOR RECRUITMENT OF PROVIDERS

As I mentioned early, the needs of children change quickly. There is currently a six-month wait for in-home services for delinquent youth and their families. Our judges are frustrated by the lack of resources available to meet the needs of the youth appearing before them, including the right type of addiction or mental health treatment. The shortage of providers appears to be partly related to training and certification requirements that are burdensome. Too many of the current available services are not geared to the delinquent juvenile population.