**Draft minutes from September 24, 2020 Court Orders Subcommittee Meeting:**

Meeting started at 2:03pm

Alan Abramowitz, Kelly Swartz, \*Maureen Honan, Judge Dawson, Jay Howell, Candice Brower, Lorena Vollrath-Bueno

Members Missing: Terrance Watts and Valerie Stanley

DOH Staff present: Marceller Hines, Erica Puckett

June 25, 2020 minutes were approved

Judge Dawson – Question for Alan regarding the Model Administrative Order Protocol for use of Facility Dogs. Is there a reason why would not be able to move forward in using this model? It is the concern of the best practices and being able to use what we have and let the full committee review and move forward to change the statute or the process.

Alan - I think we are done with the work of the model that could be used. I agree that there could be legislative changes. My thought would be that for now, let’s get administrative orders in place that have flexibility, giving the judge’s discretion.

Judge Dawson – should changes be passed off to court improvement? We could work with them if they wanted to create a subcommittee to work with them and do a blended subcommittee. I think that is where they could get traction from the legislature if they looked at it and said there might be a better way of doing it. How does the subcommittee feel about making this recommendation to the full committee?

Alan – our main committee ends at a certain time next year. June 30, 2021. The thought would be included in the reference to what we have to Office of State Court Improvement to consider

Candice - I sent the administrative order draft to the juvenile rules committee for comment. There was no formal comment, but good suggestions and concerns at the dependency meeting expressed. Since we are changing the statute to match the age of the children testifying in general, it wouldn’t be out of the ordinary to propose a rule based on this statute. I don’t have the minutes from that meeting yet but will report back when I review them.

Kelly - There is a concern of the praise approved providers process. direct cross, it’s not all testimony. What was that about?

Candice - when you use someone as a witness, that would apply. They don’t want it to be too limiting.

Alan - I would like to give it to the rules committee. I think their comments are good. The idea that are certain practice in place where they don’t do motions especially in dependency court where it becomes routine, that is an option. The defendant is a witness and they qualify. Putting this in their hands as a rule or form is not a bad idea. What do you all think?

Judge Dawson - I meet with chief judge tomorrow at 4pm. A statutorily required administrative order of the chief judge - I don’t know how they would react to a rules committee creating a rule or form for the judges to follow. Any rule must be approved by the supreme court. It’s not just the juvenile rules. There are child witnesses in a lot of other courts. Rules of judicial administration may be the best place for this to land. Juvenile rules committee would likely have the most people on it with experience in this. I think rules committees would be within their boundaries to take this up for a proposed form and/or rule. Is the juvenile rules committee willing to take it up?

Candice - there was no formal response. If this committee wants me to propose that to the Juvenile Justice committee, I think that is appropriate. As for the form - it would be a suggested form, not required.

Judge Dawson – would the subcommittee want to suggest to the full CFIAC committee need to vote on this going to the rules committee?

Jay - I think we should put the weight of the full committee behind the effort. Let’s put as much power behind as we can.

Alan - if the rules committee shares back with us their comment/suggestions before our report is created, we can include that.

Judge Dawson - is there a motion to submit this effort to the rules committee and juvenile rules committee and administrative committee? Motion & second, all members voted in support.

Kelly Swartz - will we also talk about presenting this to our Judicial Administration as well?

Judge Dawson - the motion is to refer this to the appropriate bar rules committees, specifically the juvenile rules as it seems to be the most appropriate place for it to be flushed out.

Judge Dawson: Model Chief Judge Child Interview Limitation Order - refer to copy of interview order produced by Lorena (see attachment in invite)

Lorena - this is based on the order we had in the 2nd Circuit. I reached out to anyone I could think of who a stakeholder in this would be to get their feedback. We came up with this order. One consideration, what does “interview” mean?

We may want to broaden the definition in the administrative order.

May want to include a best practices addendum in the administrative order

Keeping all requirements neutral & following with statute & rule.

“The Chief Judge has the authority to create administrative orders pursuant to the authority conferred by Rule 2.215, Florida Rules of Judicial Administration. That same rule requires that the chief judge report any “neglect of duty”. (h)Neglect of Duty. The failure of any judge, clerk, prosecutor, public defender, attorney, court reporter, or other officer of the court to comply with an order or directive of the chief judge shall be considered neglect of duty and shall be reported by the chief judge to the chief justice of the supreme court. The chief justice may report the neglect of duty by a judge to the Judicial Qualifications Commission, and neglect of duty by other officials to the governor of Florida or other appropriate person or body.Fla. R. Jud. Admin. 2.215(h).”

Maybe a “best practice” addendum.  Discussed challenges on specific cases that come up where child is interviewed without regard to rule.  With a good administrative order, it could address. What to do when violate administrative order – no case law.  The statute says 16 even though it became 18 after.   Need to change this provision.  Standard form to suggest to Rules of Judicial Administration.  Judge Dawson brought up whether there needs to be notice of the administrative order.

914.16 - Child abuse and sexual abuse of victims under age 16 or who have an intellectual disability; limits on interviews. The chief judge of each judicial circuit, after consultation with the state attorney and the public defender for the judicial circuit, the appropriate chief law enforcement officer, and any other person deemed appropriate by the chief judge, shall order reasonable limits on the number of interviews which a victim of a violation of s. 794.011, s. 800.04, s. 827.03, or s. 847.0135(5) who is under 16 years of age or a victim of a violation of s. 794.011, s. 800.02, s. 800.03, or s. 825.102 who has an intellectual disability as defined in s. 393.063 must submit to for law enforcement or discovery purposes. To the extent possible, the order must protect the victim from the psychological damage of repeated interrogations while preserving the rights of the public, the victim, and the person charged with the violation.

Form covers most of what the laws require. Will need to get in hands of appropriate Rules of Judicial Administration. Also, the process with the order suggestion supplied to all parties.

Judge Dawson - procedures under family court to file documents related to other cases. I’m wondering if we shouldn’t also suggest that any case that fits under the statute of child witness, should a copy of this administrative order automatically be provided to an attorney or other party representing the child.

Candice - excellent, agreed.

Alan - that would only occur in some circumstances. How many times can an asst. SA talk to a child before pressing charges?

Lorena - we have language in the investigative portion. All of your kids should have had a CPT forensic interview, then you would have the interview for purpose of deciding how to charge, then the interview to prepare for trial.

Judge Dawson - some of this happens after the case is filed, but other than providing the administrative order to everyone (leo, SA, DCF, etc..). Some attorneys take these cases that have no experience in this and do not know that there is an admin order out there. There is high turnover with DCF attorneys, SA’s etc. It won’t fix it all, but it would be helpful.

Also, the definition of “interview” is a challenge and critical. Lorena - agreed. Some jurisdictions have taken an overly strict view and some prosecutors are not having any contact due to this.

Judge Dawson - talking to children can result in unintentional interviews.

If we believe the definition is important, does everyone agree?

Getting a statue change is the most difficult.

Candice brought up a challenge of a rules committee coming up with a policy is a problem. Need to amend the statute – for child’s age and what an interview is.

Lorena - the order we have proposed defines what an interview is and isn’t.

Judge Dawson- a chief judge could define an interview in their court order and the court could decide if that’s within statute. In proposing a model order, we can give a definition that we think they should use, then they could do that. Going into a statutory change may result in getting into things that you don’t want to get into. Might be better to create a definition or use the included definition (Lorena read the definition from the order, see attachment)

Alan - if it gets there, at least it’s put in a place where they will realize that consensus is needed.

Kelly - does the “one investigative interview may occur” set that interview apart from other interviews?

Alan - as a committee we can ask that the legislature look at this to ensure that interview procedures are consistent with best practices.

Chief Judge could define but it could be appealable. Model order could have a definition, but the Chief Judge could use it. Maybe give to rules. Alan made Motion to pass on to the full committee as a form order that can be discussed and consideration to send to Rules Committees and Chief Judges as starting point. Lorena seconded the motion. Unanimous support.

Judge Dawson - we have two items to send on to the full committee and eventually end up in the hands of the appropriate rule’s committees.

**New Topics:** No new topics

**Public Comment:** None

**Next Steps:** Wait until after the main CFIAC committee.

**Next meeting Date:** Judge Dawson - do we need to meet again before the November meeting? None

 before best meeting

Marceller - do you all want to maintain using Microsoft Teams? Members - all in agreement to keep using this platform.

**Adjourn**: 2:55PM. Motion to adjourn – Kelly Swartz 2nd motion.