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Memorandum

Minutes of meeting with El Paso County Department of Human Services and Fort Carson representatives on October 27, 2011

Meeting began at 3:30 and ended at 5:15 PM MDT

Attendees

Dr. Charles E. Corry, President, Equal Justice Foundation

Paulette Vaughn, Treasurer, Equal Justice Foundation (in lieu of Ruth Ann Dodson)

Richard Bengtsson, Director, El Paso County Department of Human Services

Karen Logan LCSW, Child Welfare Manager, El Paso County Department of Human Services

Jill Nugin, Family Advocacy Program, Fort Carson

Barbara Hardy, LCSW, Deputy Chief Family Advocacy Program, Fort Carson

Major Javier Rivera, Chief Administrative Law Officer, Judge Advocate Office, Fort Carson

Agenda

Dr. Corry prepared an agenda and it was distributed to all attendees in advance of the meeting.

Primary topics on the agenda were:

- **Child abuse — definition and what constitutes abuse;**
- **Threatening mothers with taking their children away if they won't agree to divorce their husbands;**
- **Misuse of 10 USC § 1059 to cover expenses of spouses whose husbands are separated from service after a conviction for a “dependent-abuse offense;”**
- **Inconsistency in handling child protective service cases;**
- **Ignoring reports of child abuse where women are reported to be the perpetrator;**
- **Extralegal actions restraining movement of parents and their children without court orders.**

While the meeting did not proceed in exactly the above order these minutes are grouped under these topic headings for clarity and easy reference. These minutes are based on notes made during the meeting by Paulette Vaughn. Dr. Corry has supplemented her notes and provided some references. If errors are found or corrections needed please notify Dr. Corry at ccorry@ejfi.org.

Child abuse — definition and what constitutes abuse

Definition. There was considerable discussion about what constitutes child abuse to the level that EPCDHS should, or must become involved. Dr. Corry presented his youngest son, who managed to break 16 bones by the time he reached age 16, as an example of a daredevil child who was not abused and did not justify intervention. Karen Logan put forward the example of her daughter, who ran into a heater and suffered second- and third-degree burns over the front third of her body, as the type of accident children suffer in the course of growing up. However, the current Memorandum of Agreement between EPCDHS and Fort Carson defines (p. 3, here entered into the minutes):

“i. A serious case of child abuse is abuse which results in any of the following: death, internal injuries, brain damage/skull fracture/subdural hemorrhage, bone fracture, dislocation/sprain, poisoning, burns/scalding, severe cuts/lacerations, multiple or serious bruises, sexual abuse (by sibling, parent, relative), failure to thrive, life threatening neglect, and any other physical injury that seriously impairs the health or physical well-being of a child...”

Dr. Corry noted that this is overbroad and that the examples he and Ms. Logan presented would both result in child abuse charges under this definition. He also noted that only Fort Carson, of the five military bases in the county, uses such a broad definition of child abuse.

No consensus was reached on what constitutes actionable “child abuse” under either EPCDHS or Fort Carson guidelines. That lack of a clear definition is a serious and unresolved problem.

Under current practice a report of child abuse or neglect comes into EPCDHS and then “findings or assessments” are done by a case worker to determine if this valid concern or not. Karen Logan stated that findings of “true and conscious harm” are a very small percentage of calls/reports received. However, what constitutes a finding of such harm presently seems to be quite subjective.

Jurisdiction. Jurisdiction was a topic of some discussion. Director Bengtsson had emailed copies of the Memoranda of Agreement or Understandings that exist between EPCDHS and the Army and Air Force bases in El Paso County to Dr. Corry prior to the meeting. Dr. Corry and Major Rivera had also exchanged emails on this topic prior to the meeting as the Army grants EPCDHS much broader discretion and definition (quoted above) of child abuse than the Air Force bases do.

Fort Carson’s position is that the Child Advocacy is a team effort with El Paso County Department of Human Services (EPCDHS). Fort Carson has many resources to assist military families that are not available to civilians in town. They provide services to active-duty military, as well as children or dependents of active-duty soldiers.

The consensus is that if an alleged offense is committed by active-duty military personnel or their dependents on base that the military will process the initial complaint. If the alleged offense by active-duty military personnel or their dependents is committed off base, El Paso County and the Fourth Judicial District will handle the case. It isn't likely that they will release jurisdiction for military authorities to handle although the Fort Carson base commander has said that in some cases he has requested and been granted such jurisdiction. Major Rivera quoted the

case of Army combat medic Spc. Thomas Delgado as an example of where the Army requested jurisdiction but were denied by the Fourth Judicial District Attorney.¹

It was also noted that the Fourth Judicial District Attorney has no authority in dependency and neglect cases, which are deemed civil issues under Colorado law and are investigated by EPCDHS and brought forward when justified to the Fourth Judicial District courts.

Dependency and neglect cases. The issue of Dependency & Neglect (D&N) cases was discussed at some length. Criteria military/civilian each perform family evaluations and address safety issues to mitigate, protective oversight. Fort Carson has the authority to take steps on the soldier, but civilian EPCDHS in conjunction with the state courts, takes steps for the child.

If military personnel and their dependents are found to be involved in child abuse or neglect the soldier may be required to attend Anger Management Classes, Fathering Classes or other classes on base as determined what the needs are on a case by case basis. (note that it appears to be assumed the father is at fault).

How do we reduce D&N cases? The meeting was arranged by El Paso County Commissioner Sallie Clark, who has oversight of EPCDHS. One of Commissioner Clark's concerns is the cost to the county of the many D&N cases currently being brought forward by EPCDHS. In seeking ways to mitigate the problems it was noted that the safety of the children is the number one concern. Some ideas put forward involved:

- Clearly defining the problem of child abuse and neglect, and educating the community;
- Providing prevention programs in a joint effort with Fort Carson and EPCDHS and, presumably, the other military bases;
- Examine trends to determine whether the efforts of EPCDHS are working;
- Mitigate whenever feasible the circumstances that lead to child abuse;
- EPCDHS participants noted that Colorado is working on a differential response to these problems and trying to change their approach;
- When circumstances demand removal of the child from their parents provide expedite placement to insure the child is in a permanent home, preferably with another family member, e.g., grandparents, sister, etc., within one year and not in foster care indefinitely.

Fort Carson representatives noted that these services for military members are there. And none of these ideas seem likely to reduce costs to the county in the near term. One suggestion to reduce costs is to provide a clear and concise definition² of what constitutes child abuse and neglect so that case workers have a quantitative basis for judging cases they investigate, which should help reduce the number of costly specious cases brought before the courts.

1. The case of Army Spc. Thomas Delgado is presented in detail at <http://www.ejfi.org/DV/dv-42.htm>. Dr. Corry also interviewed Delgado's wife, Shayla, about the incident while investigating the case.

2. In reviewing the definitions used by the Air Force in their MOU's with EPCDHS Dr. Corry notes that the one used by the 21st Space Wing on Peterson AFB might be a candidate for adoption. On p. 2 they define "Suspected 'Abuse' or 'Child Abuse or Neglect:' Any occurrence, which after reviewing the facts, would lead a reasonable person to believe that a child has been abuse or neglected (emotionally, physically, or sexually)..." and goes on to review and quote Colorado statute definitions as well.

Threatening mothers with taking their children away if they won't agree to divorce their husbands

Both the EPCDHS Director and Child Welfare Manager denied that it was their policy to threaten mothers with taking their children in domestic violence or any other cases.

EPCDHS reports that of the domestic violence (DV) calls related to child abuse they handle approximately 10% are active-duty military. They have also recently established a military unit to deal with only active-duty military problems of child abuse.

If the DV case is dismissed or the defendant is acquitted the child abuse charges also fail. The issue of fast-tracking child abuse cases where domestic violence is alleged to bring the D&N case to trial prior to the DV case was discussed with no resolution.

Veteran court. The issue of post traumatic stress disorder (PTSD), traumatic brain injuries (TBI), and other combat veteran traumas resulting in numerous arrests of veterans, commonly for domestic violence, was brought forward. Questions as to how much the current veteran court could help with these problems were discussed.

Dr. Corry noted that presently only 40-60 veterans enter the current veteran court a year and that they must enter a guilty plea to a felony to be admitted. As the federal Brady Bill³ and the Lautenberg Amendment thereof, as well as state law, prohibits proximate or possession of weapons or ammunition of a person convicted of a felony or domestic violence, or subject to a permanent restraining (protection) order for domestic abuse, a guilty plea usually results in a discharge from military service.

It was noted that some state judges are now making an exception in domestic violence cases and allowing for use of a weapon while on duty for military and police personnel. In some cases soldiers granted such exceptions are allowed to remain in the military. A felony conviction in a civilian court, however, results in discharge often under less than honorable conditions in which the veteran commonly loses their benefits and retirement.

Major Rivera noted that Fort Carson does not limit use of weapons or ammunition for soldiers under a permanent restraining order. The readiness of some magistrates to issue restraining orders on a flimsy basis was noted.

Expansion of the veteran court to include misdemeanor cases was also discussed. County Judge Dan Wilson has been appointed to this court but it is not operational yet. Problems with scaling were noted in that this court would need to deal with between 1,500 and 2,000 cases a year based on available veteran arrest statistics.

Dr. Corry pointed out that District Attorney Dan May has initiated a very successful pre-plea investigation program for DV cases and that has reduced the number of such cases going forward. However, that program simply dismisses the case and does not provide for treatment of wounded warriors when indicated.

Treatment for wounded warriors. Fort Carson personnel noted that soldiers with PTSD, TBI, and other combat traumas are being treated both on base and with contract agencies in the community.

3. Brady Handgun Violence Prevention Act (Public Law 103-159, 107 Statute 1536), 18 USC § 922. The Equal Justice Foundation was intimately involved in the case of Dr. Tim Emerson, who was prosecuted and convicted under this law. See <http://www.ejfi.org/emerson.htm>.

Also, the implementation of the Warrior Transition Unit, now a battalion, under Major General Graham on Fort Carson has greatly improved treatment of wounded warriors.

However, the problems with overmedicating some soldiers remains and the Army has recognized the problem and is moving to correct it. Major Rivera also noted that the Army has zero tolerance for illegal drugs despite demonstrated efficacy of medical marijuana in treating such problems as PTSD.

Misuse of 10 USC § 1059 to cover expenses of spouses whose husbands are separated from service after a conviction for a “dependent-abuse offense.”

10 USC § 1059 provides compensation, including medical and dental care, for spouses and their minor children, if their husband (or presumably wife though no instances of that are known) is separated from military service after a conviction for a “dependent-abuse offense.” The compensation continues until the end of the husband’s current enlistment. The intent of the federal statute is to provide transitional compensation to abused spouses of military personnel.

Dr. Corry expressed concern that EPCDHS case workers, perhaps in conjunction with victim advocates (particularly with non-profit organizations) are using this to pressure or coerce wives to testify against their husbands in DV cases, as he has received reports to that effect.

Jill Nugin explained that transitional compensation is only rarely offered by Fort Carson and they are extremely careful when mentioning this allowance. Any case they consider for such compensation is reviewed in great detail. They only offer this program in five or six cases per year.

How often such compensation may be mentioned by non-profit organizations, e.g., TESSA, pushing for DV convictions remains unknown.

Inconsistency in handling child protective service cases

Concern of employee turnover at EPCDHS and lack of consistency to cases was put before Director Bengtsson.

EPCDHS recognized this as a problem in the past but they have implemented a method called “Pair Teams” that should help with new case workers and existing cases.

Concern was expressed by Dr. Corry that new case workers were unfamiliar with previous history of the case. Parents have repeatedly told him they had to essentially start over with each new case worker. EPCDHS personnel present stated that all case workers should be familiar with the history of the cases they are responsible for. No resolution of how that would be assured was provided although additional training programs were apparently being implemented.

Ignoring reports of child abuse where women are reported to be the perpetrator

EPCDHS brings numerous cases of dependency and neglect against mothers and other women each year.

Despite repeated reports of this occurring made to Dr. Corry, EPCDHS was unaware of any instances where child abuse was reported by a male and then ignored. However, the majority of reports of child abuse result in a finding of “unfounded.”

Extralegal actions restraining movement of parents and their children without court orders

Dr. Corry noted that he has received many reports from parents that EPCDHS case workers, apparently acting on their own, have restricted their movements and contacts with one another without a court order.

EPCDHS Director Bengtsson was emphatic that case workers have no authority to restrict or restrain parents without a court order.