

LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

Presentation

Tuesday August 25

Psychological Evaluation and the Courts

-Kenneth C. Kenney, Ph.D., MSW

Mr. Chair and members of the committee:

I am pleased to make a presentation to the Legislative Health and Human Services Committee. I want to welcome you to Lincoln County and to our beautiful village of Ruidoso.

My name is Ken Kenney. By training, I am a clinical psychologist and a social worker. I have a doctorate in clinical psychology, a master's degree in Social Work, and an additional master's degree in developmental psychology. I am in private practice in Ruidoso; I have lived and worked here for almost 10 years. I have been a New Mexico resident for the past 33 years. I see clients in my Ruidoso office for 6 days each month. For the rest of the time, I conduct psychological evaluations, almost all of them in matters that focus on the area where behavioral health and the courts converge. I perform evaluations for CYFD, both on children in custody and on the parents and caretakers with whom CYFD has become involved. I also do evaluations on children in the juvenile justice system. These are evaluations that address issues of competency to stand trial, competency to waive Miranda rights, and amenability to treatment. I perform evaluations for Social Security to assess disability status. I perform evaluations on disabled adults, most of them senior citizens, both in private estate matters and for The Aging and Long-Term Services Department to help determine whether someone needs a court-appointed conservator or executive. I also conduct custody evaluations in complex and disputed child custody matters.

I propose to make some general comments about psychological testimony in the courts and the need for such evaluations in our state. I would then like to offer my personal advocacy for several of the agencies and organizations that provide services supporting behavioral health interventions and psychological evaluations in the courts. Finally, I want to propose a specific action for examining and improving the provision of psychological evaluations in New Mexico courts.

The Need

As we all know, we are a very poorly resourced state. New Mexico Kids Count provides information that relates to the overall need for behavioral health services. In Lincoln and Otero Counties, 30% of the children live in poverty. 42% of all the people in these counties lack secure employment. 33% of children live in single parent families. These indicators describe the need for behavioral health services. Substantial numbers of these children and families will require psychological evaluations. However, we do not know the cost of these evaluations to the state, the percentage of the covered populations who require these evaluations, or alternatives that may exist to these evaluations.

Every behavioral health provider can be called upon to present information to the Courts. I want to focus my comments on the role of psychologists because that is where there is a special need and where I have some foundation to speak.

The American Psychological Association estimates that based on the population of New Mexico, the state needs approximately 750 psychologists; there are approximately 250 licensed psychologists in our state, a third of whom no longer practice. Based on these figures, New Mexico's coverage by psychologists is at approximately 17% of the need.

Not all psychologists are interested or qualified to practice in juvenile justice and child welfare, dependency, and (CYFD) cases. In the Southeast quadrant of New Mexico, there are fewer than half a dozen psychologists who work in these areas. The result is that it takes a long time to schedule psychological evaluations for CYFD and the courts; and it takes an even longer time to write up the final reports and get them to the people who need them to make decisions. Scheduling testimony is difficult and it imposes a burden on the already limited resources that are available.

The fields of law and psychology both try to understand and examine human behavior. Part of the law tries to regulate human conduct. Psychology is the science of human behavior. Forensic psychology is the application of psychology to the law. Psychologists are invited to participate in the civil and criminal justice systems. Psychologists can contribute to the discussion in court, and assist the judge, the attorneys, and the jury in deliberations and decision making.

Psychologists who seek to work in that murky area where the law and behavioral science overlap require specialized training and experience. This extensive training is one of the key reasons that contribute to the scarcity of forensic psychologists.

The specter of court testimony keeps many behavioral health providers from working in juvenile justice or child welfare matters. The specter of unreimbursed testimony, which is a reality in juvenile forensic matters, keeps away many more providers. In addition to the stress and specialized training involved, testimony also devours a practice day, especially in this area of the state where substantial travel distances and time are involved.

Lack of access to psychological evaluations has left people with mental illnesses confined in jails and prisons. This is a needless waste of human potential, a considerable cost to the state, and a frequently litigated violation of personal rights.

Advocacy

I would like to add my advocacy to the many agencies and organizations that contribute to behavioral health services throughout New Mexico. These groups include:

CYFD,

The NM Judiciary,

The Office of the Public Defender,

Kids Count,

Voices for Children,

The NM District Attorneys association,

Pegasus Legal Services

The Administrative Office of the Courts

The Juvenile Justice Advisory Committee

The University of New Mexico Children's Law Center,

The Aging and Long-Term Services Department,

and all the other people and organizations throughout our state who make it possible for behavioral services to thrive..

Proposal For Memorial

I would like to endorse a Memorial or some other relevant action to ask CYFD to appoint a task force that would examine the use of psychological evaluations in juvenile justice and child welfare matters.

I would recommend that this task force include stakeholders from all the relevant agencies and professions that touch upon the use and performance of these evaluations.

I would recommend that this task force examine the existing statewide cost of these evaluations, the establishment of criteria that can be applied to determine the need for an evaluation, possible trainings that could be offered to develop a core of staff within CYFD to accomplish some of the assessment goals that now fall to the psychological evaluation, and model formats for writing the evaluation that address current forensic and legal standards.

I would recommend that this task force report back to the Legislative Health and Human Services Committee.