



SEN. CRAIG V. HICKMAN, SENATE CHAIR
REP. JESSICA FAY, HOUSE CHAIR

MEMBERS:

SEN. LISA KEIM
SEN. MIKE TIPPING
SEN. RICHARD BENNETT
SEN. JILL C. DUSON
SEN. JEFFREY TIMBERLAKE
REP. AMY ARATA
REP. H. SAWIN MILLETT, JR.
REP. MARK BLIER
REP. ANNE MARIE MASTRACCIO
REP. MARGARET M. O'NEIL

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
February 10, 2023

Call to Order

The Chair, Sen. Hickman, called the Government Oversight Committee to order at 9:30 a.m.

ATTENDANCE

Senators: Sen. Hickman, Sen. Keim, Sen. Duson, Sen. Bennett, Sen. Tipping,
Sen. Timberlake

Representatives: Rep. Fay, Rep. Arata, Rep. Mastraccio, Rep. Millett, Rep. O'Neil,
Absent: Rep. Blier

Legislative Officers and Staff: Peter Schleck, Director, OPEGA
Sabrina Carey, Secretary, OPEGA, GOC Clerk

Others: Todd Landry, Director, OCFS, DHHS
Christine Alberi, Child Welfare Ombudsman

Introduction of Committee Members

The members of the Committee introduced themselves.

New Business

(To watch this meeting - the recorded Live Stream can be viewed here: <https://legislature.maine.gov/Audio/#220>)

- **Meeting Summary**

The January 27, 2023, Meeting Summary was accepted as written.

- **OPEGA Report: “OCFS Case File Review: Safety Decisions and Actions Taken in the Case of Hailey Goding”**

Sen. Hickman invited OPEGA Director Peter Schleck to join the Committee to present the OPEGA Report: OCFS Case File Review: Safety Decisions and Actions Taken in the Case of Hailey Goding.

Director Schleck explained that this would be the first of four Reports that OPEGA will be issuing on cases in which there was some degree of Child Protective Services involvement with the family and where there was a child fatality. He explained that the Report could be found on the OPEGA documents page.

(A copy of the OPEGA Report can be found here: <https://legislature.maine.gov/doc/9715>)

Director Schleck presented the Report.

Sen. Hickman asked Director Schleck if OPEGA interviewed the reliable witness from the playground incident. Director Schleck answered that the Department had interviewed the witness so OPEGA did not.

Sen. Timberlake asked if the Director knew who the witness was and if there was any relationship known to the Goding's.

Director Schleck answered that it was a local school employee who was a mandated reporter, which may have added some credibility to the individual's account. He explained that it was clear from the record that the witness did know Ms. Goding and their children may have been playing together at the playground.

Rep. Mastraccio asked about the services that had been referred to Ms. Goding during the last year of Hailey's life.

Director Schleck answered that there was only one element of the referred services, trauma counseling, that was unavailable at the time.

Rep. Mastraccio asked for clarification that Ms. Goding had completed everything else the Department wanted. Director Schleck answered yes and explained that there were also three negative drug tests. Had Ms. Goding failed the drug tests, the Department would have evaluated it within the legal framework to perhaps consider asking a judge for an order to remove the child. The Department then has to show that they have made reasonable effort to keep the child with the mother, unless circumstances are not appropriate.

Rep. Mastraccio asked if the following reports in the series would talk more about the legal framework and the court process for removing a child.

Director Schleck answered yes.

Sen Keim asked Director Schleck if he felt there was anything of importance that may not be being reported publicly in this report due to confidentiality.

Director Schleck answered that it is OPEGA's professional judgement that the accounting provided by the Department in their public memo is consistent with the full record of this case.

Rep. Millett stated that the Appendices stated that there was evidence of drug abuse and multiple reports of neglect and repeated drug use with the mother prior to Hailey's birth and during the two years of Hailey's life. He asked if the Department was involved enough to allow them to have had questions about the mother's qualifications for parenting and the safety of the home.

Director Schleck stated that there is a statute that the Committee may want to explore further when discussing the legal framework of dealing with a so-called drug affected baby, where a baby is born with some impact of prior drug use. He explains that it is very fact specific regarding immediate harm to the child and understanding the current circumstances. Is the mother in legal treatment or taking drugs legally? The difficulty is also having the evidence in the moment in comparison with the potential allegations. There must be a present immediate harm to the child.

Rep. Mastraccio followed up, asking if it was not enough that the mother tested positive for marijuana and oxycodone when delivering the baby.

Director Schleck answered and emphasized that the Department went through all of their proper steps.

Rep. Mastraccio said that information is helpful to understand that the Department did everything they were legally allowed to do.

Sen. Tipping thanked Director Schleck for talking about the case in a respectful manner. He shared that this case happened in his community and his children have played on the playground to which the case is referring. He noted that the bottom of page four of the Report talks about how Ms. Goding was referred for counseling but never received it. He asked if OPEGA had looked into the availability of the treatment options and the broader systemic problem.

Director Schleck answered that this review was focused on this one single case file and trying to understand what literally happened. He referred the Senator to a previous Report from OPEGA about CPS Investigations. He explained that this case is one out of eleven thousand cases that get looked at to some level by the Department in a year. Service Availability was affected in this case, but Director Schleck was clear that this may not have been the reason Ms. Goding may have relapsed.

Rep. Millett stated that he was troubled by the early signs of fitness to parent. He suggested that the lack of knowledge of the identity of the father, the drug use prior to delivery and the services that were referred should have been circumstance enough to call attention to the fitness of the mother.

Director Schleck answered that it does depend on the precise facts at that moment. Is there real harm going on or threat of harm to the child? For this case, there was not enough evidence to take the child away through the court process. He explained that the Department can only do something within the limits of the laws and the judge's enforcement of it. There are times when there is not enough evidence and it limits what can be done.

Sen. Timberlake asked if OPEGA looked into why the service case had been closed if the Department knew she was unable to start those services.

Director Schleck suggested the Committee invite OCFS Director Todd Landry to answer more fully, but shared that OPEGA understands that the process is not designed to last forever. He explained that there is a practical limit once the investigation determines there is or is not a harm or threat if there is simply a referral to services that runs its course. He shared that this was the case for Ms. Goding with one exception (trauma counseling) but he could not say whether it would have made a difference or not.

Sen. Timberlake asked if OPEGA did any research on to why the Department dismissed the case (of services) without following up with the parent.

Director Schleck answered that the department followed through with the framework of the process as required, and suggested that if the Committee found that to be unacceptable, that could be an area to discuss.

Rep. Arata thought it was important to note that both Marijuana and Percocet are legal substances to take, even during pregnancy, although unwise. She asked if there was testing for Fentanyl at that time? She stated that she was alarmed that the Emergency Department where Ms. Goding first went with Hailey says they could only test for seven substances, and Fentanyl was not one of those seven. She asked if the Director knew why Fentanyl was not one of the substances that are tested for.

Director Schleck answered that he would have to look into that.

Rep. O'Neil asked if the Director could go through OPEGA's second recommendation in greater detail.

Director Schleck stated that during this case, it was clear that the Trauma Counseling services were not available to Ms. Goding. The suggestion is that there may be opportunity to improve service availability and enhance the Department's ability to ensure recommended services are provided. He noted that in the Department's response to the Report it is noted that service availability is a common challenge across multiple human services systems.

Sen. Timberlake stated that he was looking for more information that concludes what the specific thing was that happened, that went wrong during the Department's interaction, to end up with a child dead. He asked where in the Report was that answer.

Director Schleck answered that in OPEGA's opinion, the Department did what the process calls for. Parents have a constitutional right to raise and have control of their children and the Department is very limited in the circumstances that allow them to interfere with that. There are very specific circumstances that the Department itself cannot initiate unilaterally. There is an independent judicial officer who makes those decisions. He emphasized that the answer was not in the Report because it was not in the records. The Department did what they were legally supposed to.

Sen. Timberlake said that was concerning to him and stated that he believed there were conclusions to be found while reading the report. He wanted to know whether it was because there was a lack of follow up on counseling or drug test more regularly, or there weren't enough visits. He explained that this is why the Committee is in court for the right to look at the documents to be able to dig deeper into a certain subject of what went wrong. He wanted to know what the Legislature can do to fix it and to do that they need to know what went wrong.

Director Schleck answered that the drug testing is an issue that keeps being talked about. He explained that there are times in the process where the parent does not have to consent to drug testing. If there is no current proceeding for which the parent is under a requirement, they can shut the door on the case worker and say no to releasing records or drug testing. He suggested that may be an area that the Committee may want to discuss with the Department.

Sen. Hickman reminded the Committee that people generally have a right to their bodily autonomy and they can't just be compelled to do anything if that person chooses to say no.

Rep. Fay stated that she understood and shared some of Sen. Timberlake's frustrations, but reminded the Committee that this was only the first of four Reports. She hoped that during the conversations about the four Reports the Committee can find a thread where there can be interventions and policies put forth that will make things better and will make children safer.

Rep. Arata asked if it was scientifically possible if, through testing, the concentration of fentanyl in one's blood is consistent with accidental ingestion.

Director Schleck stated that to the extent that it came up in the Report, it is part of the conversation and could bring forth larger discussions of how prevalent and potent the pursuit of drugs is in our communities and how sophisticated the overall system is in identifying these things.

Rep. Arata suggested that if the Fentanyl in Ms. Goding's blood had been inconsistent with accidental ingestion, perhaps the department would not have closed the case after only five months.

Director Schleck shared that there could be countless scenarios, but the difficulty with hypotheticals is that those are not this case. He suggested that it would be harder for the parent to explain away how Fentanyl is in the home versus the possibility that someone left the drugs at the playground.

Sen. Hickman stated that he was stuck on page four of the Report where it talks about the eyewitness who corroborated Ms. Goding's account. He asked if during OPEGA's investigation they interviewed that eyewitness.

Director Schleck answered that one of the challenges of the work is trying to respectfully lay the outcome (the fatality) on the table and work back from what the case workers and others were encountering in the moment. He stated that it was reassuring to OPEGA that the Department's workers were highly skeptical of the story. The issue was that there was not evidence that could be shown to a judge. The person had been interviewed as done by appropriate practice by the case worker. The mother had also come up negative for drug testing and had brought the child in which is in contrast to the second scenario where there's a fatal outcome and she's deliberately hiding the child. The parental instincts to protect the child were still there in May 2020.

Sen. Bennett stated that there seemed to be two different approaches to the committee's questioning. One side is asking how the Department functioned and if they followed rules and protocols, which is what the Review is geared towards. He believed the committee is more interested in what might be wrong with those protocols and rules. He suggested that OPEGA maybe find a way to include more of the answers to those broader questions in the following Reports.

Rep. Mastraccio stated that she looked at the Report differently than Sen. Bennett. She stated that she actually thought OPEGA did what they were asked to do, which was to review the safety decisions and actions in the case of Hailey Goding. OPEGA put that forward and it is up to the Committee to take the report and look into it and find the theme. The Committee may not all agree on those results after the four cases. She stated that the reports aren't going to give a simple answer, as every single family is different. She found the Report helpful and stated she was looking forward to the work that the Committee has to do because she is hopeful it will end with something better.

Rep. O'Neil stated that it was important for the Committee to focus on both the granular elements of each case and what can be done better with government processes but then also be able to zoom out and see the entire system and shortcomings and focus on both things so that they can get the best outcome for everybody.

Sen. Duson stated that she has gone through some past reports and her focus is to understand that this is a sensitive balance between individual rights, family rights, rights of children and the responsibility of government to see to the safety of the citizens. The balance is struck by the Legislature in a public policy scenario but it is implemented by the Department of Health and Human Services. She stated that she has been asking herself if she can identify ways where the department only did what it felt its legal duty was or if they performed well and still have an unacceptable result. She is looking for areas to balance the policy or where the department needs more empowerment or additional work with experts. She stated that it was a very valuable conversation and she appreciated the questions and answers.

Sen. Hickman invited Director Todd Landry of the Office of Child and Family Services (DHHS) to join the conversation.

Director Landry stated that the death of a child is tragic and it is heartbreaking whether that fatality is due to accident, medical reasons or harm inflicted upon them. All of those fatalities are tragic, for the families, friends and extended communities. He thanked OPEGA for their Review, and the Child Welfare Ombudsman, Child Death and Serious Injury Review Panel, the Domestic Abuse Homicide Review Panel and Collaborative Safety in Casey Family Programs for their individual reviews of this case. He stated that OCFS appreciated OPEGA's identification of potential opportunities for improvement and agreed that they should always work to improve the resources available to staff and for this case specifically related to substance use. He explained that was an area that was also identified by one or more of the other reviews he mentioned. He stated that OCFS has taken

steps to begin to address that by implementing the first of three planned mandatory Child Welfare Staff Trainings on these topics. OCFS is working with MDEA and the Northern New England Poison Center on the remaining two trainings that will be implemented in 2023. He explained that OCFS continues to partner with the Maine CDC to ensure that lock boxes are available for safe storage of substances and other items that may be dangerous to children such as prescription drugs. District staff have and will continue to provide these so that it is available for distribution to families to support in this area. He stated that the second area of opportunity for improvement, identified by OPEGA, is regarding service availability. He explained that the Governor has advanced funding initiatives to address the state's health needs from infancy through adulthood, including behavioral health and substance used treatment needs and they look forward to continue to engage with the Legislature as they consider the Governor's budget initiatives. He reminded that OCFS always seeks to improve their services and takes it very seriously. He suggested it was a never-ending process of continuous improvement and learning from cases that are successful and those that are not as successful to improve the work and the outcomes for Maine children and families.

Sen. Timberlake thanked Director Landry for joining the committee. He explained that he believes it is the job of the Committee to look at these cases and try to figure out how to stop it from happening again in the future. He asked Director Landry if when looking back at the case, if there was anything that he thought OCFS should have done differently. He stated he wanted to know what went wrong so they can try to help make it better. He stated there are some things that need to happen besides just spending money.

Director Landry thanked the Senator for his comment. He explained that whenever they look back at a case, they try to look and guard against outcome bias, and make sure that they are looking at the case as it was at that time. They look at the case at these exact points in time and address whether everything was done appropriately according to policy and best practice, and what lessons can be learned that impact not just this case but other cases on a broader system scale. He shared that in the Child Welfare Annual Report it clearly points out and indicates that those are areas they want to focus on further improvements in the system. He hoped the Committee will take the opportunity to review those. He believed it is absolutely critical, in general, that the Department has an obligation and a responsibility to continue to improve the service ability across the state particularly as it relates to behavioral health services including Substance Use Disorder treatment services. He emphasized that he is not saying it would have changed an outcome in this case, but that enhancing the tools and resources available for OCFS Staff particularly in the area of substance use treatment knowledge and resources is an important piece to take away from this case.

Sen. Timberlake summarized that Director Landry was basically saying that they wouldn't have done anything different in this case. That lead him back to his original question about why the case was closed if she never received the services in the first place.

Director Landry stated that cases are not closed by looking at one specific thing. He explained that this is something that judges and the court system deal with everyday when it comes to reunification or termination of parental rights. They are looking at the totality of the case and not just a specific part of the case. There are situations where judges reunify even though a parent may not have completed every step in the reunification plan. The same could happen in termination of parental rights even if a parent has done some of the things in a reunification plan. He stated he has confidence the system level improvements will impact future cases while also acknowledging that sometimes even when everything is done and decisions are made appropriately and all processes are followed, that sometimes the outcome is not what is wanted.

Rep. Fay recalled a conversation during last year's budget process concerning the ending of the ARP (Alternate Response Program) and transitioning to Families First. She asked if that transition would have had any impact on Ms. Goding's ability to access those services. She asked how the transition to Families First is going.

Director Landry answered that the transition did not impact this case. He shared that they have begun to implement and grow on the work regarding the Families First Prevention service program. Maine was the first New England state to submit and be approved for their required federal plan. He explained that one of the biggest differences between the two programs is that if a parent is not following the prevention service plans the Department retains the full authority to keep the case open as a service case and can immediately move

forward with things such as a PPO request, if actions are not being followed. In the ARP situation it would've required a referral back to the Department where sometimes they would have to start with a new investigation. The new process is a more seamless approach to ensure follow up is done and that services are creating the necessary changes to positively impact the safety of the child.

Sen. Tipping stated his understanding of the work in examining these cases is to look for commonalities, policy structure, priorities and things of that level. He appreciated the Director's comments on the service availability and the systems there. He noted the budget of \$213 million to continue increased Maine Care reimbursement rates based on rate studies conducted in 2022 and payments to behavioral health providers for cost of living adjustments due to higher than expected inflation. He also noted the \$17 million to expand the range of behavioral health services available to children and families. He stated that in this case the ARP called for this counseling and Ms. Goding called and it just wasn't there. He asked if this investment in the budget is enough to guarantee that the services will be there for anyone that needs them.

Director Landry stated that he would be hesitant to ever make a guarantee of that nature given the geographic disparity and challenges that we have in Maine. He believed the increase in rates has already begun to have a significant impact in areas like the service availability. He noted that behavioral health providers have embraced those increased rates and are increasing their staffing which is a key aspect to delivery of services to be timelier and cover a larger area.

Sen. Tipping asked if there has been an assessment of what it would take to make sure that no one falls through the cracks.

Director Landry was not aware of an assessment that would get the Department to the point of using the term guarantee. He did not believe they would be able to meet one hundred percent of the needs in the future because they don't know what external factors there are that will need to be dealt with. He stated that they are always in a process of trying to deal with what those new external factors are. There are always going to be changes in that process of having to adjust and make changes.

Sen. Tipping stated that he was trying to get some kind of categorization of the current needs. He asked if the assessment will meet it, meet a percentage of the needs, or will more need to be done.

Director Landry stated that he hoped it would meet the most significant and pressing needs and will move the Department in the right direction.

Sen. Hickman followed up by asking for more clarification.

Director Landry stated that in his view it would move the Department a clear majority of the way there.

Rep. Arata noted that this all occurred during the Covid shutdown when one couldn't get a majority of service appointments. She asked if that had any impact on the availability of the services in this case.

Director Landry stated that he did not know if that had an impact on the specific counseling service that is referred to in the report. He noted that Covid did not have an impact on many of the other aspects including the in-person response by caseworkers to investigate this case and others.

Rep. Arata stated that she was concerned because of this hearing that people will have a new defense that they accidentally picked up drugs in the park. She asked if it was possible to have testing, instead of simply positive or negative, but to possibly gauge whether the ingestion was incidental or intentional.

Director Landry answered that not all of the Hospitals in the state can test for Fentanyl. He would have to do a survey to see what the current testing capabilities are to determine whether the Hospitals could differentiate between different levels of exposure. He noted that is why the Case workers looked at that with a level of skepticism and continues to do follow-up testing and proceeding with the investigation.

Rep. Arata asked if Ms. Goding was required to participate in the ARP or if that was optional.

Director Landry confirmed that it was technically a voluntary program. It could have factored into the decision making by the Department if she had not accepted and followed through on those services.

Sen. Duson asked if there was more data that she could look at regarding some of the performance audit activities of the department and how that tracks with the way OPEGA did sample testing in its (prior) review work. She was interested in the extent to which the system highlights particular areas of risk and concern and

the trend analysis. The cases where services were recommended and whether there is a trend that the services were actually obtained or not. She asked if there was a link or something to follow that gave her direction as to where to find the information.

Director Landry stated that they have a significant amount of data on their website that is required federally as part of their ongoing and extensive oversight of the programs.

Rep. Mastraccio stated that she was concerned about the numbers of parents who fall through the cracks because in an effort to protect their rights they refuse the services and the Department can't compel them. She asked if there were times when the Department wishes they could do things in a different way.

Director Landry emphasized that the Department works very hard to follow the existing statute and if there are opportunities where they see a need for change in statute they have opportunities through the existing legislative process to have the Department sponsor bills or Department drafted bills that are introduced on the Department's behalf. He stated that the number of cases where they do not have parental cooperation is incredibly small although it does happen. The cooperation is really important to the ultimate goals of assessing the safety of the child and what needs to be put in place to ensure that safety and support the family, as they prefer to see the family stay safely together. He stated that is why they are trying to move upstream and assist community partners and others to hopefully prevent the investigation from ever being necessary because the families are safe and their needs have been met. Prevention is an important part and a major discussion in their related policy committee (HHS Committee). He stated that the best way to help create child safety is by helping to create family success and family strengthening.

Rep. Mastraccio asked how many times is there a not great result or a tragedy when the parent or family refuses to cooperate.

Director Landry answered that would be hard to define but explained that when they recognize that sometimes if a family does not cooperate to the extent the Department is hoping, there are other avenues that may be available. They access collateral contacts such as neighbors, friends, school staff, childcare providers to provide assessment and data points. They will talk to medical professionals about any medical interventions that may have been put in place and about whether the child is receiving their checkups and meeting their medical needs. Sometimes the information from the collateral contacts provides enough in court to say that the Department has evidence to have the courts issue a protective order and bring the child into custody. Other times it may be the opposite and the contacts investigation may find that the child is safe and no further action is needed. He also noted another opportunity within statute that allows for a PPO for access which is done in cooperation, conjunction and consultation with the Office of the Attorney General to make sure they meet the standard the courts expect.

Rep. O'Neil brought up the issue of the failure of prevention and thought that the legislature needs to be accountable for failing to adequately invest in prevention. She asked for Director Landry's thoughts on the impacts of the failure in previous years to invest in prevention and how current proposals will help and the impacts of those.

Director Landry expressed that could be a lengthy conversation but agreed that evidence-based prevention services can go a long way towards helping all of the families in the state be successful and to help children be kept safe. The most specific changes would be the behavioral health changes. Studies are indicating that during the pandemic in particular children's mental health and behavioral health challenges may have gotten worse. He believed that those behavioral health and mental health supports are going to be very important both short term as well as long term. He added that during the HHS Committee meeting the previous week, the Department committed to partner with the Maine Child Welfare Action Network to develop a State Plan that will focus on prevention from the perspective of family and child safety and wellbeing. He stated that about fifty percent of the children that are in the care and custody in the state of Maine are under the age of five so focusing on that population in specific is important. He also thought that safe sleep was a critical issue as too many children in the State and across the country die because of unsafe sleep practices. There is a program through the Maine CDC that he hopes the Committee will share in amplifying the message about safe sleep as it is an important preventative effort.

Rep. O'Neil asked for a high-level recap of the impacts related to what is being proposed in the last two paragraphs in the Department's response to the Report.

Director Landry explained that \$213 Million has been proposed to continue increased Maine Care reimbursement rates based on rate studies. The rate studies are specifically designed to increase the rates to keep up with the cost of services, inflationary pressures, workforce challenges and the increased costs associated with that. The \$17 Million on Behavioral Health Services is focused on children, and he referred the committee to their annual Children's Behavioral Health Services report that was released in January where they detail all of the initiatives and where they come up with \$17 Million. The \$7 Million is dedicated to addressing substance use disorder in addition to the \$28 Million in opioid litigation settlement funds. The Office of Behavioral Health will be pushing forward those initiatives and he deferred to them for more specifics around both treatment as well as early intervention services for substance use disorders.

Rep. O'Neil asked if they could forward some that report and the opioid information for the Committee to review and understand.

Director Landry confirmed they would provide that.

Sen. Keim asked if drug testing is usual when a mom comes in to give birth, or if they need specific permission or what prompted the testing in this case.

Director Landry stated that he did not recall what prompted it in this case but stated that all birthing hospitals can and do provide testing, but did not know if it was done for every case or if it is based on concerns they may have. The testing can encompass both legal and illegal substances. He explained that in 2022 there were somewhere between 750 and 800 reports from birthing hospitals for what is generally called substance exposed infants. They get the calls for any and all substances.

Sen. Keim asked again whether the hospital needs permission or whether they just test everyone without their knowledge.

Director Landry stated he would like to get back to her to get the correct answers.

Sen. Keim asked how the Department receives these reports.

Director Landry explained that the reports are provided directly to OCFS through a portal so they can be electronically communicated to the Department or sometimes smaller hospitals will still call it in.

Sen. Keim asked if Director Landry could provide the legal framework around the hospital just sending the information off, as she was curious why they report legal substances as well. She asked for confirmation they send a report regardless of the substance's legality.

Director Landry answered yes.

Sen. Keim thought that was concerning. She then asked about the protocol to follow up on whether a parent accepted services, relating that Ms. Goding was referred to the Cradle ME program and accepted those services. She asked when the flag pops up saying that this may be something that needs to be followed up on.

Director Landry answered that when a report comes in from a hospital and indicates that there is no further report of concerns of abuse or neglect then in that case they would generally not proceed with any formal investigation or court action and voluntary services would be offered. The Cradle ME program is operated by the Maine CDC and includes different types of home visiting services and public health nursing is one of those.

Sen. Keim asked if the Department had followed up to see if Ms. Goding had ever been given such a prescription after testing positive for Oxycodone at Hailey's birth.

Director Landry stated that those would generally be things that the Department would have followed up on in cases like that.

Sen. Keim asked why in this instance there was no flag made that Oxycodone was present but yet there was no prescription.

Director Landry stated that he would need to go back and check whether that would have been noted and whether the Department can put that level of detail in a public document or not.

Sen. Keim asked what the process is for following up and producing random drug testing for parents who may have inappropriate substance use. She noted that the Ombudsman's Reports have flagged that as problematic as well.

Director Landry stated that she could refer to the statute, 22 MRS §4011 B, that discusses and governs the notifications of prenatal exposure and the mandatory aspects of that.

Sen. Keim asked if that would be the part that would discuss whether or not people are tested with or without their knowledge.

Director Landry stated that he would have to review the statute again to answer that.

Sen. Keim circled back on her question about the random drug testing protocols after a parent tests positive for drugs.

Director Landry stated that generally when a referral relates to a situation like the Senator is addressing, they would review that from the totality of the case because there may be other factors or issues or other components of that that need to be considered. If needed, there would be a formal investigation where they would get the additional level of detail including requesting health records and interviewing as necessary. It could include some further substance testing. In this case, there were three repeated random tests at that point in the investigation.

Rep. O'Neil asked if Director Landry could provide information about what is being proposed this session and the impacts including some kind of big picture map of how they are seeing opportunities to go further. She stated that could include some kind of study or something like what was maybe presented to HHS about the big picture opportunities.

BREAK (11:55)

RECONVENED (12:00 PM)

- **Child Welfare Ombudsman – 2022 Annual Report**

Sen. Hickman invited the Child Ombudsman Christine Alberi to join the Committee and present her 2022 Annual Report.

Ms. Alberi introduced herself and presented the Ombudsman's 2022 Annual Report.

(A copy of this document can be found here: <https://legislature.maine.gov/doc/9711>)

Rep. Mastraccio asked about the individual case of Hailey Goding and Ms. Alberi's recommendations for that case.

Ms. Alberi answered that their findings were very much in line with the OPEGA Review. In this specific case, the recommendations were that staff need better technical expertise in recognizing and understanding the substance use and the recovery treatments. She noted that their Annual Report does include the child deaths including this one but at the time of the drafting they did not provide any details. She stated that the Department more or less followed policy and procedure in this case. She stated that she thought this case was high risk but was referred to ARP instead of having a Department service case opened. This is no longer practice as ARP doesn't exist anymore but ideally this would have been an open Department Service Case with a caseworker coming into the home. An ARP had its limitations as to what it could actually do and couldn't hold parents accountable in the same way by taking them to court. She stated that in this case, the Department did all that they could do given the constraints on what can be done legally.

Rep. Mastraccio asked what the suggestion was and if it was mostly training. She asked if there are legal aspects to why risk is not being recognized in some cases until it's too late.

Ms. Alberi stated that in general, Maine has had the same Child Protective Statute for a long time and the fundamental pieces of the statute haven't changed but the practices have swung back and forth in practice. Removing more children, removing fewer children, waiting longer to file petitions, filing petitions more quickly. She thought there is room within the existing statutory framework to become more risk averse to act more quickly when it seems like things are not going well for a child or a family. She stated that it was a lot of things including culture change within the Department, education around drugs like Fentanyl. She related to the case of Hailey Goding where they at the time did not know whether it was an accident or not. She explained that it is difficult on the substance abuse front to decide whether a parent has had enough substance

use treatment, enough drug screens or enough time to say that the parent is probably going to be safe to have their child come home. Parent relapse is part of recovery and has a lot of complicated factors that go into it. She suggested that the more training given to staff, the better their decisions are going to be.

Sen. Timberlake remembered reading a section of her report that stated something regarding the fact that the supervisors need a quicker response time to the caseworkers and asked for Ms. Alberi's thoughts on that. Ms. Alberi did confirm that she recommended that supervisors receive more training. She explained that the supervisors have a unit of caseworkers that they supervise and it is inevitable that in any Child Welfare Agency there will be a lot of new case workers making the supervisor key to the shared knowledge and experience. She stated that the Department is working on a supervisory training with the Muskie School but was unsure when that implementation would occur.

Sen. Timberlake stated that a lot of the young college graduates being hired as caseworkers have never been a parent. He asked if Ms. Alberi knew whether they had to have a certain degree in order to work as a case worker and if they should take someone's life experience as a parent. He asked if the requirements to become a caseworker should be looked at.

Ms. Alberi answered that in order to be a child Protective or Child Permanency Social Worker you have to have a four-year degree and a related field to social work. They have to have a conditional social work license working towards becoming a licensed social worker. She stated that here are people who haven't gone to college who would be excellent case workers but also that there are 22-year-old caseworkers right out of University who don't have children but have the instinct. Sometimes caseworkers have experienced child abuse or neglect themselves as children.

Sen. Keim asked Ms. Alberi to explain what she meant when stating she hoped the Department would become more risk averse.

Ms. Alberi stated that there are districts where this is part of a consistency thing in the state where some offices are more risk averse and will file immediate court filings and there are others that would maybe wait and talk to the family and keep the case open waiting for a couple more things to happen before filing in court. She's seeing the same case scenario with the same set of facts where the more cautious case worker, supervisor and program administrator will make a different decision than the one who is saying they hope the family is going to be okay.

Sen. Keim asked if that meant she was seeing a discrepancy from district to district.

Ms. Alberi answered that she does not have the numbers to dial down to that but did note that there is a discrepancy from case to case.

Sen. Keim asked if she had the numbers on how many children are in custody or there is department involvement that the parent also has some history of drug use.

Ms. Alberi answered that she did not have those numbers.

Sen. Keim recalled one of the past Ombudsman's Reports mentioning that there was inconsistent drug testing that's random. She asked if Ms. Alberi is still seeing that as a problem.

Ms. Alberi answered that yes in some cases there are parents that will call a number and the person on the other end of the line tells them what color coding they are. If they are green, then they go test that day. There are cases where it happens twice a week. There are also cases where the caseworkers themselves are calling the parents asking if they can go for a random drug screen once a week. There are lots of different ways that it is done. She stated that if parents are asked to go and refuse, it creates evidence of its own.

Sen. Keim stated that it does not seem like much has changed in her Reports over the years yet there have been many programs, one after another that is supposedly going to have the answers and solve problems. She asked for Ms. Alberi's thoughts on why that might be.

Ms. Alberi explained that some initiatives like Families First target Prevention Services and Rate Studies are meant to target services, and other initiatives that are meant to target Child Welfare Practice. She stated that Child Welfare Practice is something her Report has focused on and there is an ongoing process for a new caseworker training from the Muskie School. She explained that in the last legislative session the Legislature funded the after-hours or standby case workers program as something to help current caseworkers do their

jobs. There are some efforts within the districts themselves to learn more about various things and have their own case workers do trainings, talking more about interviewing and those kinds of things. She answered that the training is part of the factors, but there are a lot of factors and it will take time.

Sen. Keim stated that there were many different programs and some overlap and yet the outcomes and the lack of consistency in checking up on the children during the process, that there were safety issues that were not being followed up on. She clarified that in the case they are looking at now it seemed that here was more follow up and it is not a great case to dive into but the Ombudsman's report outlines cases where there was clear threat of harm to children and there was not adequate follow up. The Ombudsman looked at cases that did not rise to the level of child deaths yet they are unearthing the same thing consistently. She asked Ms. Alberi what programs do the Committee need to be looking further into. She stated that the safety science and training should have addressed the issue of not checking up on children often enough.

Ms. Alberi answered that she thought the safety science reviews are excellent and a great way to review serious incidents and the people in the review and the wider agency can learn a lot from them. She stated that the problem with any type of review is taking the next step of using the findings of the review and then implementing that recommended change statewide. She believed that can only really be addressed by training and mentorship and supervising and recognition that things are going wrong and that need to be improved. She explained that it is going to take time in such a complicated job where there is a lot of turnover and a lot of things that are outside of the Department's control.

Sen. Duson asked if what Ms. Alberi meant by suggesting the Department has room to be more risk averse because the pendulum of the system has more room to err on the side of intervention versus the side of waiting.

Ms. Alberi confirmed yes.

Sen. Duson asked if the emphasis was more on supervisor training or the younger or newer and inexperienced case workers, in order to have a good confident source to go to with doubts or support in deciding on either side of the pendulum.

Ms. Alberi again confirmed yes. She explained, however, that the limits of her reviews are that she cannot tell why decisions were made the way they were. That is why she likes the Safety Science Reviews and the OPEGA reviews where the reviewer can go and ask the supervisor why they made certain decisions in this case. She also noted that supervisors are important for retention as caseworkers are more likely to stay if they feel supported by their supervisor.

Sen. Duson asked if the supervisors are in the position to help convey to their team of caseworkers that it is okay to err on the side of safety rather than waiting because they didn't think they had enough to intervene.

Ms. Alberi emphasized that it was important to keep in mind that those decisions are not ever made by one person. There are many people in the Department that are involved in a case.

Sen. Timberlake stated the Ombudsman's report indicated a lack of resources were available to make changes. He asked Ms. Alberi where the Legislature failed in the funding to allow a lack of resources.

Ms. Alberi stated that a lack of services is an issue in most cases, but is not always an important issue in the case that stops something from happening. Often her reports have involved lack of resources for older youth because there are not good solutions for older youth with significant behavioral issues or significant mental health issues. There are not enough highly skilled counselors that accept Maine Care. Another issue is with HCT services which are intensive in-home services for children with significant behavioral and mental health needs. Sometimes the service is there but there is a long wait list and having a delay may or may not be consequential, especially for safety issues. Another area is the lack of foster homes in Maine make it so the children go to whoever is available in that moment, not necessarily to the best placement for their needs.

Sen. Timberlake brought up the section of the Ombudsman's report that talks about Reunification where it talks about inconsistency in that not every case was treated the same or taken as seriously and some could have had better outcomes. He stated that throwing millions of dollars at the problem won't fix it. He asked what Ms. Alberi thought the Committee should focus on over the next couple of months that will have a positive impact on the whole system.

Ms. Alberi answered that is something that her office has been talking about and would need to get back to the Committee, because changing the statute is difficult and could have unintended consequences.

Rep. Millett stated that Ms. Alberi had focused a concern about stakeholders feeling like the pendulum needs to move toward more early removal of children and less reliance on family reunification. He stated that in the Goding case there probably is a need for more focus on not just observing and identifying but documenting the degree of jeopardy early on when there is a case of a child in an unhealthy environment rather than waiting and delaying, or becoming too risk averse, and getting that documentation is a key pivotal issue. He suggested they could reach a point where the training policies and commitment to document things are done sooner and act appropriately at the stage where it may signal a need for removal. Looking, also, at the family reunification issue that the state and the Department reunify too quickly when there is no evidence that the jeopardy that existed had been removed. He stated that documenting the jeopardy is the pivotal issue in both ends of the pendulum, and acting on it quicker. He asked if Ms. Alberi could speak to that.

Ms. Alberi agreed that the documentation is a good point. She stated that something they hadn't talked about yet was the history of a family. In the case example of Ms. Goding, it shows that maybe there was some substance use even when Hailey was born, so the history is incredibly important and that documentation and the understanding of what has happened with the family is really important. What a lot of caseworkers do is write things down, enter them into the system and try to leave a record that someone else can see and use going forward. The earlier you catch the families struggle the sooner they can offer services or do something about a child in an unsafe place. Most parents are struggling with a number of really difficult issues and if the children enter custody, leave and reenter custody and there are lots of investigations, that is also unfair to the parents. She suggested that having the first place of intervention happen in a decisive way maybe could even avoid the removal. She also emphasized that the focus of every single case where a child in state custody should be to do everything to put that child back with one or both of its parents. Reunification is absolutely what should be trying to be done. Children are the best off with their parents and if not, hopefully grandparents and the third choice is foster care. Foster parents are great but kids do better when they stay with family. The focus should be to make sure there is enough information during the reunification cases to make sure that when kids are sent back home, it is going to be safer for them. She explained that the pendulum does not need to swing very far as it is a narrow margin of high-risk cases where things may need to move a little bit. She believed the benefits would be enormous to the system and the burden on the system.

Sen. Hickman restated an example in the Ombudsman's report that states that parents subjected the children to years of severe neglect and abuse that included nonorganic failure to thrive. The parents showed no remorse and did not accept any responsibility for the serious harm done to the children. Despite this, custody was returned to the parents, where after custody was returned, evidence of continued neglect and emotional abuse was gathered but the case was dismissed and closed without further court action. He asked if Ms. Alberi has seen any evidence that there was disparate treatment of families based upon the family demographics.

Ms. Alberi answered that she could not say she has seen that particular issue regarding demographics, but that doesn't mean it is not occurring. She reminded that sometimes things are difficult for her to see why things occur the way that they do, although there have been instances where it has been a factor. She always forwards those concerns to program administrators for personnel correction. In terms of systemic issues, parents who live in extreme poverty are treated differently than parents who don't and some of that is because the parents who are not impoverished have more resources. There are issues with lack of interpreters for all of the recent immigrant population who speak all different kinds of languages. She stated there are a lot of struggles in the immigrant population because we can't communicate with someone who doesn't speak English the way they could someone who does.

Sen. Hickman asked what her recommended solutions were to the challenges she just identified.

Ms. Alberi stated that the cases involving recent refugees and recent immigrants can be really complicated because of these issues. She explained that upon review of those cases, she tends to find that the caseworkers and supervisors who are working with the families are sensitive that they may not understand all the cultural

differences and understand the problems with lack of translators. The lack of translators is an enormous problem that she did not know the solution for.

Sen. Hickman appreciated her response. He stated that when the Committee is considering all sorts of things and reading her report there are no descriptors other than what is there, for confidentiality reasons.

Rep. O'Neil asked if when they look at the cases, does her office look at a full range of cases or is it just based on what is brought or reported to them and if they are doing a general survey of how those cases are handled in general.

Ms. Alberi answered that their cases are entirely complaint driven, meaning anyone who is involved in a Child Welfare case can call them. They do not have the resources to open every complaint, so they use criteria to figure out what cases to open and fully review. She explained that sometimes they have to call back and let the person know they disagree and that their complaint is not valid, and sometimes they are. She explained that she can track a lot of the issues like how safety investigations are done, what services are provided to families, the quality of visits with parents and children, the Department's own internal quality assurance department tracks those issues and submits a report every year to track the progress on how they are doing with their own federal improvement plan.

Rep. O'Neil asked what kind of resources would they need to provide that kind of system wide review.

Ms. Alberi stated that the quality assurance reviews involve a certain number of investigation cases and a certain number of reunification cases. Those are done within the Department and they randomly select about a hundred cases a year. That information is available in the annual federal report which is very detailed and it is not flexible in what they can review but does provide a good year to year comparison of how and what things are improving or going downhill in practice or what is staying the same.

Sen. Keim stated that she did not fully understand the question Sen. Hickman posed about demographics, but caught that Ms. Alberi answered that there are instances where that is a factor. She asked Ms. Alberi to explain what she meant by that answer.

Ms. Alberi answered that there are cases where a family might have a more difficult time with the Department for various reasons, including maybe because they're an immigrant family or maybe the risk wasn't recognized because they were a family of a higher demographic. She stated that sometimes families in poverty struggle and it's less usual to have child welfare involvement with families with higher socioeconomic status.

Unfortunately, most children involved with child welfare are living below the poverty level.

Sen. Keim asked about when the Ombudsman gets complaints, and they turn around and let the Department know what they have found, is there a quick response from the Department to fix the issue.

Ms. Alberi answered that this is usually the case. She explained that sometimes she will get to a case and things have already happened, and sometimes the office disagrees.

Sen. Keim asked about an example where the case was dismissed and closed, would the Department potentially reopen the case if Ms. Alberi called and said there were still reports.

Ms. Alberi answered that generally the department will follow her individual recommendations on the case specific examples.

Sen. Hickman thanked Ms. Alberi for presenting her report to the Committee and joining them in discussion.

Sen. Hickman asked the Committee if there were any follow up questions that they had for Director Landry regarding the conversation with the Ombudsman.

Rep. Mastraccio suggested that they wait for the next meeting to allow the committee to digest some of the information before having Director Landry back.

Director's Report

Sen. Hickman explained that it was of intended during this meeting to begin discussing the OPEGA work plan and some other items that have been brought to the Committee's attention. Sen. Bennett, who had brought one of the issues forward, had to leave early so the Committee moved on to an issue regarding the Maine Veterans' Homes. He explained that OPEGA received a concerning report from a former employee of the Maine Veterans' Homes.

Director Schleck explained that he had ben working with the Chairs about these concerns from a former Maine Veterans' Homes employee who was in the type of position in the overall financial operations and control structure where she would know and understand certain things. This person expressed a range of concerns about the financial and accounting practices and is willing to go on the record. OPEGA has spent some time in an initial phone conversation and Sen. Hickman had the opportunity to talk with the former employee as well. He stated that they are the type of issues that he believed the Committee would find highly relevant in the context of current and emerging issues with Maine Veterans' Home's funding concerns. He proposed that the Chairs send a letter to the law firm for the MVH Board of Trustees, letting them know the Committee is aware of concerns and understand that some investigation was to happen and ask if they have any information that can be shared with the Committee.

Motion: to direct OPEGA to do some preliminary research regarding Maine Veterans Homes via letter written by the Chairs that can be reported back on at a future meeting
(motioned by Rep. Mastraccio, seconded by Rep. Arata, unanimous)
(Sen. Tipping, Sen. Bennett, and Rep. Blier voted on the motion in the allowed time frame in accordance with the GOC's rules)

Unfinished Business

None.

Next GOC meeting date and planning

The next GOC meeting is scheduled for March 10, 2023. This meeting will hold the Public Hearing on the Report presented by OPEGA titled OCFS Case File Review: Safety Decisions and Actions Taken in the Case of Hailey Goding.

Director Schleck explained that Director Landry will be invited back for follow up, and the OPEGA Budget will need to be discussed along with the work plan.

He reminded that at the March 24 meeting OPEGA will present one of the reports of the tax Expenditure Reviews, on Maine Film Incentives.

Director Schleck shared that he had fulfilled Rep. Millett's request for a list of all legislation that might relate to the GOC and noted that it will continue to be update as the legislation moves through.

Rep. Mastraccio asked if the Committee could start earlier at 9:00 AM to make it easier for people who have other commitments in the afternoon.

Sen. Hickman confirmed it may be a long day for the Committee and so those who schedule other Meetings on Friday should know that this Committee is going to have to do work on March 10th as the public will be there. He stated that the Committee should be prepared for a long day by bringing their own lunches.

Adjourn

The Chair, Sen. Hickman, adjourned the Government Oversight Committee meeting at 1:30 PM on a motion by Rep. Mastraccio, Second by Rep. Fay.