

Memorandum 93-05

Subject: Study F-1130 - Juvenile Court Law (Relocation of Juvenile Dependency Statute--further input)

BACKGROUND

At the October 1992 meeting the Commission had before it a staff draft of a statute to relocate the juvenile dependency statutes from the Welfare and Institutions Code to the Family Code. Also before it were comments supporting such a relocation from Mikki Sorensen, Assembly Judiciary Committee consultant, and Judge Leonard Edwards of the Santa Clara County Superior Court. Opposed to the relocation were comments from Frieda Daugherty of the Women Lawyers of Los Angeles, the county counsels of Los Angeles, Orange, Ventura, and San Diego counties, and the Judicial Council Advisory Committee on Juvenile Court Law. The Commission's staff had mixed feelings about the project.

Arguments in favor of relocation of the statute included:

- (1) It would help decriminalize juvenile dependency cases.
- (2) It would improve the structure of the law.

Arguments against relocation of the statute included:

- (1) Juvenile dependency involves different functions and different standards from family law determinations.
- (2) Decriminalization can be achieved without moving the statute.
- (3) The statute is part of an integrated scheme in the Welfare and Institutions Code.
- (4) Juvenile practice is unrelated to family law practice.
- (5) Juvenile dependency law has gone through several major revisions in the past few years and people can't cope with more now.
- (6) Relocation will generate inadvertent changes in law.
- (7) Extensive case law under existing statutes could be affected.
- (8) Juvenile dependency law requires revision not relocation.

(9) Relocation will impose substantial time and expense on many persons and agencies.

(10) The Commission needs broader input before it proceeds.

At the October meeting the Commission made an initial decision to pursue the matter further, including the possibility of providing physical separation of dependency proceedings in court as well as relocating the dependency statute to the Family Code. The staff was directed to solicit further input more broadly from practitioners and others on the concept of relocating the juvenile dependency statute. Commissioners Plant and Skaggs opposed the decision to go forward; Commissioner Byrd abstained.

NEW COMMENTS

The staff has solicited further input from experts and other persons actively involved in all phases of juvenile dependency proceedings. We anticipate several of them will appear at the January 1993 Commission meeting to give the Commission the benefit of their views. We have also received oral comments from Professor Michael Wald, a respected authority on and draftsman of the California juvenile dependency law, and written comments from the Orange County Juvenile Court Administrator (Exhibits pp. 1-2), the Santa Clara County Counsel (Exhibits pp. 3-5), the Children's Advocacy Institute (Exhibits p. 6), and the County Welfare Directors Association of California (Exhibits pp. 7-8). All of the commentators oppose relocation of the juvenile dependency statute.

Professor Wald sees some value in statutory redrafting, but does not believe either this or relocation would help achieve decriminalization. He is sympathetic to the position of those who would let the statute rest a little--it has been continually churned in major ways over recent years and a settling period would be desirable. His bottom line is that unless we have important structural changes in the court system to implement, we probably ought to let the statute be.

The Orange County Juvenile Court Administrator echoes the professor's comments that the system has not yet coped with recent legislative overhauls. She believes that a relocation and renumbering

would result in major costs to all involved, without real benefit. She sees little overlap in Orange County between juvenile dependency and family law matters, and substantial overlap between juvenile dependency and juvenile delinquency matters. This is true of the Orange County Bar as well--few handle both dependency and family law cases, whereas many handle both dependency and delinquency cases. Finally, she is aware of several pilot projects to obtain data relating to a "family court". "It may be prudent, before implementing any changes, to at least wait until the outcome of these pilot projects is known."

The Santa Clara County Counsel points out that dependency issues differ from custody issues significantly, and the family law standards and presumptions are inapplicable. The dependency provisions are interrelated with other Welfare and Institutions Code statutes on support and reunification. Juvenile dependency is a special proceeding with its own procedures, rules, and cases, and is not susceptible of integration with civil family law. The dependency bar is quite different and requires different law and experience than civil custody practice. Many non-lawyers are involved with the juvenile dependency system, and are familiar with the Welfare and Institutions setting; relocation to the Family Code will cause confusion. "Combining two areas of law with extremely different foci is not in the best interest of the practicing bar nor courts who must understand, implement and apply the particular law."

The Children's Advocacy Institute is concerned about the effect of separating the juvenile dependency statutes from the interdependent Welfare and Institutions Code provisions relating to court appointed special advocates, the juvenile court, and the obligations and programs of the Department of Social Services for families and children.

The County Welfare Directors Association of California opposes relocation of the statute because dependency proceedings are already unified in the Welfare and Institutions Code, the effects of other recent major substantive changes have not yet settled and relocation would be unnecessarily disruptive and confusing, and relocation would have adverse fiscal impacts and impair the connection between

dependency and delinquency law. They concur with the comments of the Judicial Council Advisory Committee on Juvenile Court Law on these matters.

ISSUE FOR DECISION

We have received the additional input requested by the Commission and anticipate receiving more at the January meeting. The issue for Commission decision is whether to proceed now with this project.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

Superior Court of the State of California
County of Orange

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Key: _____

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KARI SHEFFIELD
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December 24, 1992

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Mr. Nathan Sterling
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Re: Inclusion of Dependency Statutes
in Family Code

Dear Mr. Sterling:

This letter is a follow-up to a telephone conversation we had a few weeks ago regarding the proposal to remove all statutes relating to dependency matters from the Welfare and Institutions Code and renumber them into the Family Code. During our conversation, I expressed dismay over this proposed concept. While I have not seen the actual written proposal, I would like to comment on the concept.

Over the past few years, the dependency system has undergone two major legislative changes. The last change to the system has created a two-track system whereby minors who were declared dependent children prior to January 1, 1989, are dealt with under different code sections than minors declared dependents after January 1, 1989. While it is hoped that someday, the older cases will be out of the system, this has yet to occur. In addition to these major changes, there were numerous pieces of cleanup legislation passed, and then the various appellate court opinions followed.

It would seem that just as the courts, support agencies, and attorneys have finally adapted to these new sweeping changes, another major change is being proposed: A complete change in the code numbering system, with maybe some "minor" revisions to the codes themselves.

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County of Orange

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While, I understand that the codes would read basically the same, nevertheless, a change of this magnitude would result in major costs being incurred by the courts, the attorneys who practice in this area of the law, and agencies that provide support services to the court (i.e., new law books, new forms, etc.).

Persons with whom I have talked to regarding this proposed change cannot seem to give me any logical reason for the change. It is my impression that this change is for the sake of change only. Normally, changes are made to reduce costs, expedite matters, or to better the system. I do know that there seems to be a pervasive idea that there are a great many cases which overlap in both the Family Law and the Juvenile Courts. Experience in the Orange County Juvenile Court indicates that is not the case; only a handful of cases fall into this category, and there are code sections already in place, as well as established policies and procedures, on the handling of cases in these situations.

Cases which cross boundaries more frequently, at least in Orange County, are delinquency cases and dependency cases. Currently, the codes for both of these types of matters are contained in the Welfare and Institutions Code. Additionally, in Orange County, there are few attorneys who practice both in the Family Law and Juvenile Courts. There are many attorneys, however, who do practice in both the areas of delinquency and dependency.

I am aware of a couple of pilot projects which are currently underway where the purpose is to obtain some data relative to the idea of a "Family Court". It may be prudent, before implementing any changes, to at least wait until the outcome of these pilot projects is known.

Thank you for allowing me the opportunity to comment on this proposal.

Very truly yours,



Kari Sheffield

2 Juvenile Court Administrator

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October 27, 1992

Nathaniel Sterling, Executive Secretary
California Law Revision Commission
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Re: Relocation of Welfare and Institutions
Code Sections to Family Code

Dear Mr. Sterling:

I was forwarded a copy of your September 23, 1992 letter to Persons Interested in Juvenile Dependency Proceedings and a copy of the Family Code draft which appears to have been dated September 21, 1992, for review and comment. Pursuant to my review, I would like to draw your attention to a number of serious problems that I believe the relocation would cause.

First, the presumption in Family Court custody decisions is that there are two parents who are equally capable, concerned and willing to care for and protect the child. The primary reason that a custody issue arises is because the marital relationship between the parents is being terminated. The Family Court is therefore called upon to determine how EACH parent can maintain a close positive relationship with the child and the CHILD can maintain a close nurturing relationship with each parent.

In Juvenile Court there is at least one parent who has been abusive and/or neglectful of the child. The court is therefore called upon in those circumstances to decide if, in fact, there is even one parent able to protect and nurture the child. There is not hterefore the same kind of presumption with respect to the parent's ability to care for the child.

Second, ther have been recent legislative efforts to ensure that the dependency sections of the Welfare and Institutions Code, hereinafter W&I, are operating in concert with W&I sections 16000 et seq. The services, frequently referred to as "reasonable

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efforts", mandated by the dependency sections to support and/or reunify families are defined and expounded upon in W&I sections 16000 et seq. It would appear not only to undermine the efforts previously put forth in coordinating these sections, but also to minimize the importance of the coordination of these Sections.

Third, juvenile dependency matters are "special" proceedings with both state and federal provisions for confidentiality. They are neither purely civil nor criminal in nature, yet many of the hearings require that there be advisements of rights. There is a separate, significant body of case law interpreting the dependency statutes, and the Judicial Council has published separate Rules of Court for the Juvenile Courts, separate rules for juvenile cases in the Appellate Courts, separate Standards of Judicial Administration regarding attorney practice standards in Juvenile Courts and specific Judicial Council Forms thereby highlighting the significant differences between juvenile dependency and other custody matters.

Fourth, the reality of practice is that very seldom do the same attorneys appear in Family Court matters and Juvenile Dependency matters. Occasionally, if a case is referred from the Family Court to Dependency Court, the same attorneys will remain with the case. Otherwise, the practice of Juvenile Dependency Law requires significantly different training and experience than do other child custody matters. In order to adequately emphasize the fact that Juvenile Court is a different forum with different standards and different presumptions it is important that attorneys be able to clearly and adequately find and access the law which is applicable. To this end the Legislature has specifically stated in appropriate W&I sections that certain Civil Code, i.e. Family Law, provisions and presumptions regarding child custody DO NOT apply to dependency cases.

Finally, many non-lawyers in social services agencies, such as court officers and dependency investigators, who have a social work background must be able to easily and readily access the law in order to adequately perform their functions. I believe that placing juvenile dependency law in a general family code will lead to increased confusion and misunderstanding not only by lawyers and judges, but also by those who must work intimately with the Juvenile Court on a regular basis.

In summary, I believe that even though the original intent was for the dependency sections to be incorporated in the Family Code, combining two areas of law with extremely different foci is not in the best interest of the practicing bar nor courts who must understand, implement and apply the particular law.

Thank you for the opportunity to comment on this proposal. If you have any questions, please contact me directly.

Very truly yours,

STEVEN M. WOODSIDE
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DIANE L. BENNETT
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DLB:jrf



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Children's Advocacy Institute

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January 11, 1993

California Law Revision Commission
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Dear Members of the Commission:

Although you requested comments not later than January 8, I hope you will include these comments on the reorganization plan and the domestic violence provisions.

Children's Advocacy Institute is a nonprofit legal research and advocacy organization affiliated with the University of San Diego School of Law. We advocate for the health and well-being of California's children in court, before the Legislature and regulatory agencies, and before the public. One of our major concerns is child abuse. The statutes we are most familiar with (and have successfully proposed amendments to) are the Welfare and Institutions Code (W&I) sections 300 et al., relating to the juvenile dependency administrative and judicial system.

In general, we have concerns about including the dependency statutes in the proposed code with statutes relating to family and probate court. One of our concerns is the effect of separating the W&I supporting provisions in section 100 et al. (Court Appointed Special Advocates), section 200 et al. (general provisions relating to juvenile court), and the later sections which describe the obligations and programs of the Department of Social Services for families and children.

However, specific to the revisions of the domestic violence provisions, we are relieved and delighted that the current draft includes violence against children in the definition of domestic violence (section 6211). We look forward to the final draft of the domestic violence provisions also including children as possible victims.

Sincerely,

K. Murphy Mallinger, JD, PhD,
Staff Counsel

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January 11, 1993

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Mr. Nathaniel Sterling
California Law Review Commission
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Dear Mr. Sterling:

In response to your memo dated December 2, 1992, I am writing to provide you with the position of the County Welfare Directors Association of California (CWDA) regarding the proposed inclusion of Dependency Statute in the Family Code.

CWDA has considered the proposal and opposes it for several reasons:

- Dependency proceedings are already "unified" in the Welfare and Institutions Code, and we therefore see no need for placement in the Family Code.
- Recent major substantive changes to the dependency process have recently been enacted (i.e., SB 1125), and dependency professionals are still just getting used to operating under the new Welfare and Institutions Code sections. We believe that any further changes aimed at "unification" would be unnecessarily disruptive and confusing.
- Additionally, we concur with the arguments made by the Judicial Council Advisory Committee on Juvenile Court Law (contained in their October 28 memo to you) regarding fiscal impacts and the connection between dependency and delinquency law.

We therefore would urge you to delay any unification of dependency law into the Family Code at this time.

CWDA Executive Committee: President: William H. Gundacker, Kings • Vice President at Large: Richard R. O'Neil, Santa Clara • Executive Officer: Charlene A. Chase, Santa Barbara • Secretary/Treasurer: Dan Corsello, Napa • Vice President of Administration: Raymond J. Merz, Placer
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Thank you for the opportunity to provide our input.

Regards,



Frank J. Mecca
Executive Director

cc: Meg Sheldon, Director of Social Service Department, Yolo County
CWDA Vice President of Services
Diane Nunn, Judicial Council
Don Dudley, Director of Department of Human Services, Kern County
CWDA Chairperson, Childrens' Services Committee