

Memorandum 71-24

Subject: Study 30 - Child Custody

Summary

The staff has reviewed the problems involved in drafting legislation to effectuate the consultant's recommendations concerning child custody. We have concluded that it will be necessary to substantially reorganize the existing statutes relating to guardianship and adoption in order to effectuate those recommendations. If we are to undertake this task of reorganization, we believe that it is desirable that we obtain authority to make other substantive revisions in the law relating to guardianship and adoption so we can generally clean up these areas of the law. To attempt to retain the existing law in any reorganization of the statutes would probably be as difficult as to prepare a clean, well-organized statute governing guardianship and adoption. Accordingly, we recommend that we obtain authority to expand the child custody study.

Analysis

A basic problem in attempting to effectuate the consultant's suggestions is that the various statutes that must be revised are a disorganized mess.

Guardianship. The provisions dealing with (1) guardianship of the person of a minor; (2) guardianship of the estate of a minor; (3) guardianship of the person of an incompetent; and (4) guardianship of the estate of an incompetent are hopelessly commingled. (In addition, the conservatorship law overlaps with the guardianship of the estate law.) Obviously, the same considerations do not apply in determining who should be appointed the guardian in each of these situations, and there is therefore a need to sort these provisions out and

clearly state the criteria applicable in each situation. Moreover, to effectuate the consultant's suggestions relating to guardianship of the person of a child is next to impossible without reorganizing the provisions relating to guardianship generally.

The Uniform Probate Code contains an article on "Protection of Persons Under Disability and Their Property." The article is divided into five parts:

Part 1. General Provisions

Part 2. Guardians of Minors [only guardianship of the person]

Part 3. Guardians of Incapacitated Persons [only guardianship of the person]

Part 4. Protection of Property of Persons Under Disability and Minors
[conservators]

Part 5. Powers of Duty [powers of attorney]

We think that the Uniform Probate Code provides a good indication of the approach that should be taken in revising the guardianship provisions. Some reorganization along the lines of the Uniform Probate Code will be needed if we are to take care of the child custody problem; and, as previously indicated, we believe an overall revision would be the most efficient way to deal with this body of law.

Adoption. The law relating to adoption is likewise in great need of reorganization. Basically, there are three types of adoption:

(1) Stepparent adoption--a relatively simple procedure

(2) Agency adoption--covered by special provisions

(3) Independent adoption--with its special requirements

Here again, however, the law is commingled and effectuating the consultant's recommendations will necessitate some reorganization. We believe an overall revision would be the most effective way to deal with this body of law.

Freedom from parental control. The law in this area also is in need of reorganization.

Staff Recommendation

The staff recommends that the Commission request authority to study whether the law relating to guardianship, adoption, freedom from parental control, and related provisions should be revised. We believe it would be desirable to submit a concurrent resolution at the current session to request such authority.

Respectfully submitted,

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Executive Secretary