

First Supplement to Memorandum 92-55

Subject: Study F-1130 - Juvenile Court Law (Relocation of Juvenile Dependency Statute--comments received)

We have received several letters commenting on the proposal to relocate the juvenile dependency statute to the Family Code. The letters are attached as Exhibits and are from:

Los Angeles County Counsel

Orange County Counsel

Ventura County Counsel

San Diego County Counsel

Judicial Council Advisory Committee (some members and staff giving the Commission the benefit of a consensus of their views as experienced and knowledgeable persons in the field, not as a committee)

We have also received informal oral comments from a number of other persons involved in various aspects of the juvenile dependency process.

All the comments have opposed relocating the statute. Some of the common objections are summarized below.

(1) Different functions. The main reason for moving the statute to the Family Code is to harmonize the standards with Family Code standards. But juvenile dependency serves a different function from Family Code determinations and cannot ultimately be harmonized.

(2) Decriminalization doesn't require move to Family Code. A secondary reason for moving the statute to the Family Code is to get it away from the juvenile delinquency statutes, which give a criminal taint to it. But this can be achieved within the Welfare and Institutions Code, where it is still integrated with other statutes.

(3) Part of integrated scheme. The juvenile dependency statute is part of the juvenile court law, and is related to general provisions on child welfare and social services, all of which are located in the Welfare and Institutions Code. It would be illogical to pull this part

out and put it in the Family Code. Conversely, if it is moved, large related chunks of the Welfare and Institutions Code would have to be moved with it.

(4) Unrelated to family law practice. Juvenile practice is unrelated to family law practice; there is an entirely different bar involved. To add juvenile dependency to the Family Code is illogical, since there is no interrelation or use for it there.

(5) Too much change. The juvenile dependency statute has been subjected to continual and substantial revision over the years, and people can hardly cope with that. Spare them the need to now learn a whole new reorganization and numbering.

(6) Inadvertent change. Despite the Commission's best intentions, minor technical changes in the relocation process will inevitably cause problems or create litigation issues on previously settled matters.

(7) Disturb case law. There is an extensive body of case law interpreting every nuance of the juvenile dependency statute. It is not clear to what extent the case law would be preserved by relocation to a different context.

(8) Need revision, not relocation. Existing law is complex and the statutes are in need of revision. Simply relocating without revising does not serve a useful purpose. Any revision should only be done in collaboration with the many experts in the area.

(9) Expense. It will cost many people and agencies a lot of time and money simply to study the reorganized statute, reprint manuals and forms, adopt revised regulations, etc.

(10) Not enough input. This scheme is not maturely thought through. Before the Commission decides to proceed with this project, it should seek broader input.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

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October 20, 1992

Nathaniel Sterling
Executive Secretary
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Re: Relocation of Statute to Family Code

Dear Mr. Sterling:

Thank you for taking time to discuss the proposal to include the Welfare and Institutions Code dependency provisions in the Family Code. Based on our conversation and our review of the draft document, we believe that such an undertaking would not only be too time consuming but would result in conflict over the organization of the code provisions and the language used.

I understand that part of the impetus behind the inclusion of the dependency code in the family code was the desire to harmonize the different standards used in the various forums wherein child custody is decided.

As I mentioned in our telephone conversation, a number of Appellate Court cases are on review before the Supreme Court on the issue of the appropriate standard of proof to be applied in a parental rights termination case. We believe that this issue should be resolved in the court rather than by your Commission.

There are different standards for child custody orders in the different forums because of the different nature of the issues to be decided. For example, the issue in a family law child custody proceeding where the court needs to consider the best plan for custody based only upon the dissolution of a marriage is very different from the issues of abuse and risk of abuse considered by the court in a juvenile dependency proceeding. The legislature

Nathaniel Sterling
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specifically allowed for such varied standards precisely because of the different issues presented to the different courts.

Additionally, legal argument based upon the language of the code often involves interpretation of legislative intent. Should individual code sections now be separated into multiple sections the arguments currently used regarding legislative intent would be lost. Oftentimes the protection of children hinges on the ability to convince the court of the Legislature's intent when enacting specific code sections.

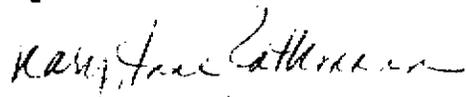
Finally, SB 243, SB 1125 and subsequent legislation has been instrumental in harmonizing the work between juvenile dependency court and Child Welfare Services. The Judicial Council has been working diligently to create standardized forms for petition filing, notices and minute orders which reflect the law as it is currently codified and findings the courts are required to make. A change in the code will result in many hours of revisions to forms which have recently been approved.

All of us who regularly practice in this area have successfully adapted to the new code numbers and content. A change at this time would needlessly cause confusion and interfere with the smooth practice in juvenile dependency court. This would result in confusion to the families and a disservice to the children.

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

Very truly yours,

DE WITT W. CLINTON
County Counsel

By 
MARY ANNE RATHMANN
Deputy County Counsel
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October 23, 1992
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Mr. Nathan Sterling
Executive Secretary
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Re: Relocation of Dependency Statutes
to Family Code

Dear Mr. Sterling:

Although your September 23, 1992 communication regarding relocation of the dependency statutes to the Family Code is directed to "Persons Interested in Juvenile Dependency Proceedings," we at the Orange County Counsel's Juvenile Court branch office did not receive that memo or the Law Revision Commission's draft of the proposed relocated sections. We did, however, receive copies via the Los Angeles County Counsel's Office, along with a copy of a letter directed to you by Deputy County Counsel Mary Anne Rathmann. We join in the concerns expressed by the Los Angeles County Counsel's Office and wish to add a few of our own.

We recognize that your memo points out that this draft is not a finished product and that you are soliciting comments on the concept and general approach. While we are somewhat loathe to speak negatively of a "concept," nevertheless at this point we must express our reservations regarding the Law Revision Commission's proposal.

Here in no particular order are some of our concerns:

1. An incredible array of agencies and components are involved in the Juvenile Court dependency system. The ramifications or ripple effect of the proposed relocation and renumbering need to be carefully considered. We question whether sufficient input has been obtained from a broad enough cross-section of "Persons Interested in

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Juvenile Dependency Proceedings." If not already received, the views of Juvenile Court judges, commissioners, referees, public defenders, contract lawyers, private attorneys, and county counsels need to be solicited and considered.

2. We note that the draft proposal encompasses 169 pages. While you are only inviting reactions to a concept, at some point it will be necessary for representatives of the aforementioned groups to read through the 169 pages. We would like the opportunity to do that but cannot accomplish the task by your October 27, 1992 deadline. One thing we notice is that many renumbered sections include the footnote that the section simply restates an existing code section "with no substantive change." Unfortunately, our experience is that too often what the draftsman sees as minor rewording or technical correction is later interpreted by some bench officer (or lawyer) as a substantive change.

3. This rapidly expanding, ever-changing area of dependency law and practice may not be able to absorb more changes at this time unless carefully thought out. The number and complexity of dependency cases have greatly expanded in the past five to ten years. Much confusion has been the result. No sooner do practitioners and bench officers get a grip on what the law and procedure is then it is changed (or rearranged), for example in 1974 by the Legislature when it tried to separate the code sections dealing with dependents from the 600 series of code sections dealing with delinquents, in 1982 or 1983 with the passage of Senate Bill 14, a major revision of the dependency scheme, in 1989 with the passage of Senate Bill 243, another major revision in the statutory scheme, and now, perhaps, in 1993 or 1994 with a rearrangement and renumbering of the code.

4. Add the recent spate of appellate court opinions, a number of cases pending review before the Supreme Court, and we have a continuing state of confusion which affects social workers, public defenders, the private bar, county counsels, judges, pro tems, commissioners, referees and court clerks who regularly rotate in and out of the Juvenile Court dependency system.

The foregoing are a few of the points which we can quickly marshal in an attempt to convey our concern about the possibility that this relocation and renumbering of dependency statutes will be announced as a fait accompli without sufficient lead and

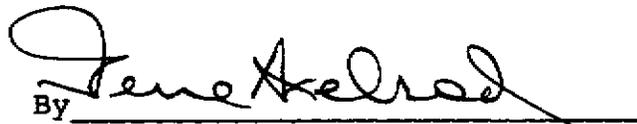
Nathaniel Sterling
October 23, 1992
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transitional time for input, redrafting of numerous forms,
preparation, and education of all of the "players" in the system.

Thank you for your consideration of these comments.

Very truly yours,

TERRY C. ANDRUS, COUNTY COUNSEL

By 
Gene Axelrod, Deputy

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cc: Mary Anne Rathmann, Deputy County Counsel
Los Angeles County Counsel, Children Services
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October 23, 1992

Mr. Nathaniel Sterling
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Relocation of Dependency Statutes to Family Code

Dear Mr. Sterling:

A copy of your memorandum soliciting comments on the draft revisions of juvenile dependency law was received in this office on October 21. It has certainly not been possible to review 169 pages in any detail, but a quick and rather cursory review raises a number of concerns.

First, the purpose of the proposed relocation of this body of law is unclear from the document. If the purpose is to provide consistency in the resolution of custody issues between the family law court and juvenile dependency court, it would be very difficult to accomplish such a resolution because the purposes of these are altogether different. In family law court, there are two available and able parents as between whom custody disputes must be resolved. In dependency court, minimally adequate parenting is absent and it is necessary to provide protection for the child while seeking to remedy the inadequacies of the parents. There does not appear to be any difficulty presently in coordinating these separate functions under existing law in the occasional case in which there is an ongoing custody dispute as well as a possibly neglectful or abusive situation.

If the purpose of relocating this body of law to the Family Code is to further remove juvenile dependency law from the shadow of criminal law, this could just as easily be accomplished by adding language to the code which specifies that this is not a

criminal proceeding. However, it seems unlikely that taint will ever be totally removed inasmuch as many of the events giving rise to dependency proceedings simultaneously give rise to criminal prosecution. Dependency proceedings also produce a taint of criminality in the loss of freedom which often results from the proceedings, such as when a parent is ordered to test for alcohol or drugs, to participate in various remedial activities, or when the parent's contact with the child is restricted.

In our cursory review of the actual content of the draft document, it appears that some changes have been made in the various juvenile dependency statutes, in addition to relocating them to the new Family Code. This is of concern because the change of a single word or comma can give rise to re-examination and ultimately to appeals of trial court rulings on the basis of disagreements as to the meaning of the new law. Such changes can invalidate existing appellate decisions which interpreted the previous, but differently worded statute. It appears that the draft document includes extensive changes, at least in the nature of splitting existing single statutory sections into more than one section, and likely including changes in punctuation and words as well. This would throw juvenile dependency law into a state of substantial uncertainty for a period of some years until there could be appellate clarification.

Years ago there was a similar change when juvenile dependency law was separated from juvenile delinquency law. It appears that every effort was made to carry over from the 600 series of the Welfare and Institutions Code into the 300 series every necessary and relevant statute, and yet even years after that shift was made, there remained sections in the 300 series with language clearly applying to delinquents and not to dependents. Even currently there are code sections which still could stand a little clarification. They may have made perfect sense to those responsible for the substantial overhaul provided by Senate Bill 243 and Senate Bill 1125, but the trial and appellate courts have found them to be confusing.

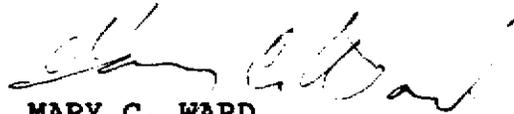
Another more practical concern is that renumbering and reshuffling the statutes will result in significant increase in the time to retrain appropriate personnel to present cases in juvenile court because of their unfamiliarity with the new statutes. At this time when budgetary concerns loom so very large at all levels of government, it seems ill-advised to pursue new legislation which will require more government-funded time and resources at every level, from investigation through trial and appeal, for an indeterminate period until those involved are able to thoroughly familiarize themselves with the new statutes and to resolve disputes over new language through the appellate process. This will also necessitate a complete revision of the rules for juvenile court proceedings.

It also appears that not all statutes affecting juvenile court have been included in the draft document. The 16000 series of the Welfare and Institutions Code, for example, includes sections regarding services for families which have not been included in the draft. There may be other code sections as well which should be included in a consolidation. It also appears that some of the sections which have been included in the draft have in fact been repealed. An examination of those sections would also be appropriate.

In conclusion, I would urge a reconsideration of the proposed relocation and revision of juvenile dependency law. If there is indeed some compelling reason for the proposed changes, then I would urge that the relevant statutes be moved and renumbered without any modification except to codify appellate decisional law (e.g., section 366.26 will be reviewed by the California Supreme Court in the near future, and may need to be changed, depending on the court's decision) and to clarify sections requiring "fine tuning." I would suggest that regular participants and judges in juvenile dependency court be included in this process.

If you would like to discuss this further, please feel free to contact me.

Very truly yours,



MARY C. WARD
Assistant County Counsel

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October 26, 1992

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Nathaniel Sterling
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Dear Mr. Sterling:

Re: Relocation of Juvenile Dependency Statutes to the
Proposed Family Code

This office has just become aware of the proposal to relocate the juvenile dependency statutes to a new "Family Code." While we are aware that in theory there may be potential benefits from the creation of a Family Relations Court and a Family Code, we strongly believe that in practice such suggestions would at this time be both costly and detrimental to this state's overall efforts to preserve families and protect children through our child welfare system.

Any comments we might make here are of necessity only first impressions since we have only just received information of the proposal and the draft language. We would note initially, however, that such a major and significant change should not be made without input from the offices and departments who would be most impacted by the changes. The Child Welfare Study Section of the California County Counsel's Association is a statewide group of deputy county counsels who specialize in the handling of juvenile dependency cases. These deputies work in the juvenile and appellate courts on a daily basis and are this state's legal experts in the very specialized field of dependency law. We believe that most of them have not been provided the opportunity to evaluate and comment on this proposal. We would urge you to take no further steps on this proposal without getting their detailed input. This office would be happy to provide you with a list of the study section members or you can contact the County Supervisor's Association of California of which the County Counsels Association is a part. Their phone number is (916) 327-7500. Either Kitt Berman or Carolyn Horne will be able to help you.

Of major concern is the current development of case law interpretations of the various dependency statutes concerned here. From October 1, 1991 to October 1, 1992, there were 72 published appellate decisions either directly arising from or relating to juvenile dependency law. This was only during a one-year period. Hundreds of other reported cases also exist. This large body of appellate case law relating to this area directly affects the day-to-day handling of dependency cases in our juvenile and appellate courts. It cannot be said that such case law will automatically transfer to a new family code. No doubt such a relocation of these dependency statutes would result in extensive new appellate litigation regarding changes in interpretation once the statutes are part of a different code with an arguably different overall purpose. It would, in all likelihood, take years for the dependency system to settle down within its new statutory location. The cost to children and families caused by such prolonged system instability, as well as the fiscal cost to the counties and the state would be enormous.

Finally, we would note that there are many inconsistencies and problem areas within our dependency statutes. These may or may not eventually be resolved through either appellate interpretations or through piecemeal statutory changes. To simply reenact these statutes in another code, however, will only perpetuate the inconsistencies and problems which currently exist. These difficulties should only be resolved through the work of a broad based group of individuals who are experts in the area of dependency law. We would strongly recommend that relocation of these statutes not be contemplated or attempted without the formation of and input from such a group.

There are many other concerns which will no doubt arise as we have more time to review the materials relating to this proposal. We urge you not to go forward with this project without more information as to the fiscal, legal, and practical ramifications of such a move. Please include this office on any list of organizations to receive your future mailings and materials on this very important topic.

Very truly yours,

LLOYD M. HARMON, JR., County Counsel

By 
SUSAN STROM, Chief Deputy

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Law Revision Commission
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OCT 28 1992

Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

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303 Second Street, South Tower • San Francisco, California 94107 • PHONE 415 396-9100 FAX 415 396-8348

TO: Nathan Sterling
California Law Revision Commission

FROM: Administrative Office of the Courts
Diane Nunn, Attorney

DATE: October 28, 1992

RE: Proposed Inclusion of Dependency Proceedings
Into the Family Code

Following is a consensus of views expressed by some of the members and staff of the Judicial Council Advisory Committee on Juvenile Court Law.^{1/} We hope these comments, by some of the most experienced and knowledgeable persons in this field, will be of assistance to the Commission.

1. No comparable need--have unified code

There is no comparable need for consolidating juvenile dependency proceedings into the Family Code. The rationale for consolidating all provisions pertaining to family law proceedings into one unified Family Code does not exist in this instance. Provisions relating to family law proceedings were found in different codes. This is not the case with juvenile dependency cases. Everything pertaining to a juvenile dependency proceeding is in the Welfare and Institutions Code. In essence, there already is a unified code.

2. Fiscal impact

- a. If dependency cases are moved into the Family Code without the wardship cases, there may be a serious negative fiscal effect, since federal dollars used for shared dependency/wardship placements will be at risk.

^{1/} The views of these individuals are expressed in their capacities as juvenile court law professionals at large, and are not necessarily the views of the Judicial Council or the juvenile court law committee.

- b. Retraining of judges, attorneys, probation officers, social workers, and private providers will be required.
- c. If the change is made, changes will also have to be made to the regulations promulgated by the State Department of Social Services and to the regulations of each of the 58 county welfare departments.
- d. All of the recently adopted Judicial Council rules and forms pertaining to juvenile dependents will have to be revised.
- e. There will be a diversion of resources from clients to facilitate the retraining and redrafting of regulations, rules, forms, etc.

3. Major substantive changes recently enacted

Recent legislation made major substantive changes to the juvenile dependency system. Effective January 1, 1989, the laws changed for children who were declared dependents on or after 1/1/89. There are many children, who were declared dependents prior to 1/1/89, who are still dependents. It is therefore already confusing for all participants (judges, attorneys, social workers, families, etc.) to follow the two-track system. Renumbering the relevant sections and making them part of the Family Code would add another unnecessary burden on an already overworked system.

4. Dependency/delinquency connection stronger and more prevalent than dependency/family law crossover

- a. Many more families are involved in the entire juvenile justice system (i.e. have parents and siblings that are involved in both dependency and delinquency proceedings) than are involved in both the dependency and family law proceedings.
- b. In most counties, attorneys practice in both juvenile dependency and wardship proceedings. Very few attorneys who specialize in juvenile dependency cases also handle family law matters on a regular basis.
- c. In many counties, the judges who are assigned to hear juvenile cases handle both delinquency and dependency proceedings. In the larger counties, judges assigned to juvenile court rarely hear family law matters.
- d. In many counties, juvenile court facilities are situated separate and apart from the main courthouse where family law proceedings are convened.

5. Dependency cases are civil/criminal (due process) hybrids

Although dependency cases are treated generally as civil cases, they have many due process elements.

DN:lam

**JUDICIAL COUNCIL ADVISORY COMMITTEE
ON JUVENILE COURT LAW^{2/}**

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Attorney at Law
Administrative Office of the
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^{2/} Only those members of the committee who were present at the meeting at which this issue was discussed are listed here.