



State Bar of Georgia Young Lawyers Division Juvenile Law Committee

EXECUTIVE SUMMARY

“A good law is the cornerstone of any state’s commitment to the rights of its children.”¹

PROJECT BACKGROUND

The Juvenile Law Committee (“JLC”) was approached in early 2004 with a request from then President of the Council of Juvenile Court Judges, the Honorable Robin Nash, to take on the task of revising Georgia’s Juvenile Code. The code was believed to lack clarity and organization and there was alarm that it did not reflect research-based best practices. More importantly, the code did not meet the needs of the Juvenile Courts and the practitioners who serve those courts.

In September 2004, the Georgia Bar Foundation awarded the JLC grant funds to begin the Juvenile Code Revision Project. The JLC hired Attorney Soledad McGrath to serve as the primary reporter. In early March 2005, the JLC held focus group meetings to identify specific areas of concern among practitioners. From fall 2005 to spring 2006, the JLC continued its code revision work through its participation in the legislative study committee on the juvenile code created by the Senate Resolution (SR) 161 and signed into law by Governor Perdue on May 5, 2005.

Following its participation in the study committee, the code project welcomed the assistance of Bartow County Juvenile Court Judge Velma Tilley, whose knowledge of and experience in Georgia juvenile law made her an invaluable addition as a secondary code reporter. In addition, renewed funding from the Bar Foundation during the 2006-2007 fiscal year enabled Ms. McGrath to continue her work in researching, drafting, and editing our proposed model code.

Along with grants from the Bar Foundation, the Code Revision Project received supplemental funding through Georgia Appleseed, which was awarded funds for a comprehensive juvenile justice reform effort through the Sapelo Foundation in November 2006. Georgia Appleseed, as well as Emory University Law School's Barton Child Law & Policy Clinic and Georgia Voices for Children together established the JUSTGeorgia

¹ Whitney Kernodle Frederick and Deborah L. Sams, A Child’s Right to Counsel: First Star’s National Report Card on Legal Representation for Children (2006).

Coalition, which advocates for improvements in juvenile justice and the underlying social service systems that serve Georgia's children. The additional funding allowed the JLC to welcome a third code reporter, Professor Lucy McGough of the Louisiana State University Paul M. Hebert Law Center. Professor McGough assisted in drafting the current Georgia Juvenile Code and directed revisions of the current Louisiana Juvenile Code, which has received nationwide recognition for its organization and content. The goal of the Juvenile Code Revision Project is to create a research-based, comprehensive, and well-organized model juvenile code for Georgia that reflects best practices in juvenile law.

RESEARCH

Extensive research began in November 2004 with a focus on investigating the strengths and weaknesses of the current code, researching model codes, and researching best practices in juvenile law. The current code is based in large part on the Uniform Juvenile Court Act of 1968 but there is no recent model code comparable to the Uniform Act that could serve as a complete or comprehensive guide. Although the search for a current model code yielded minimal results,² individual pieces of model legislation governing various issues were consulted. For example, the Juvenile Law Center developed model legislation governing the privilege against self-incrimination in screenings, assessments, and treatment in juvenile proceedings and the Center for Policy Alternatives developed several pieces of model legislation, such as legislation governing detention reform and transfers to adult court.

Several steps were taken to identify best practices including a review of academic literature, consultation with experts and practitioners throughout the country, and an extensive review of state statutes. Indeed, before drafting any individual provision or substantive section, research included 50-state surveys to determine other state practices in that particular area. Concerted efforts were made to ensure the various and often diverse perspectives of the many stakeholders involved in the juvenile system were represented. In addition, the significant reform efforts of several states proved instructive including those of Arizona, Illinois, and New Mexico.³

² In 1976, the American Indian Law Center at the University of New Mexico Law Center developed the Model Children's Code for use by Native American tribes. In 1987, the Rose Institute of State and Local Government developed a model juvenile justice code but this effort was inconsistent with the goals of this project. Ralph A. Rossum et al., Juvenile Justice Reform: A Model for the States (1987). In 2004, Professor Mark Ells developed a proposed model code for Nebraska which represents a significant revision of the current Nebraska juvenile code and which includes the goals of reorganization and consistency. See Mark Ells, A Brief Analysis of Some Elements of a Proposed Model Juvenile Code, 28 Hamline J. Pub. L. & Pol'y 199 (2006); Mark Ells et al., Unraveling the Labyrinth: A Proposed Revision of the Nebraska Juvenile Code, 82 Neb. L. Rev. 1126 (2004).

³ Arizona has made significant efforts to improve the coordination and collaboration of its agencies in dual jurisdiction cases. See Gregory J. Halemba et al., Nat'l Ctr. for Juvenile Justice, Arizona Dual Jurisdiction Study Final Report (Nov. 30, 2004). As a MacArthur model site, Illinois has been on the forefront of many reform efforts, most notably detention reform. See e.g., MacArthur Foundation, Models for Change: Systems Reform in Juvenile Justice at <http://www.modelsforchange.net/locations/IL/>. Within the last few years, New Mexico has achieved a substantive revision of its juvenile code in its entirety. See e.g., Patricia

CONTENT

The innumerable amendments made to the current juvenile code throughout the years have resulted in a cluttered and dated document that is weakened by its own discrepancies. The proposed model code represents a comprehensive revision of the current juvenile code to achieve the goal of creating a user-friendly, consistent, and comprehensible document. The drafting process was guided by three overarching themes: developing a new organizational structure, maintaining stylistic consistency throughout the code, and incorporating substantive revisions that reflect best practices.

Structure and Organization

The current juvenile code has been restructured in its entirety. The current code, Chapter 11 of Title 15, is divided into 6 Articles. Article 1 is further subdivided into nine substantive Parts. The proposed model code eliminates these Parts and is now divided into 12 independent articles. Each article is drafted to be as self-contained as possible. To accomplish this, the larger articles, such as those governing deprivation, delinquency, and children in need of services, contain their own purpose statements, their own provisions compiling the definitions relevant to that particular article, and their own custody provisions. While it may seem unnecessarily repetitive to include these individual provisions in each of the separate articles, it minimizes the number of cross-references to produce a more streamlined and efficient document.

To complement the new structure of the proposed model code, the numbering of individual code sections was altered to more easily identify a particular substantive area. Each code section begins with the number of the article in which it resides. For example, article 4 governs termination of parental rights proceedings and begins at P.M.C. § 15-11-401. Article 7 governs delinquency proceedings and begins at P.M.C. § 15-11-701. The use of “P.M.C.” in code citations refers to the abbreviation for “Proposed Model Code.”

Stylistic Consistency

To achieve stylistic consistency throughout the code, countless grammatical and other editorial revisions were made, archaic language was eliminated to the extent possible, and new terminology that is more concise and effective was incorporated. For instance, new terminology was incorporated throughout the document to quickly identify a specific substantive area within the new organizational scheme. Thus, what is currently called the “informal detention hearing” is now the “preliminary protective hearing” in deprivation proceedings, the “detention hearing” in delinquency proceedings, and the “continued custody hearing” in children in need of services proceedings. In addition, the hearing that must be held within 30 days of the filing of an agency report that does not

Torbet, National Ctr. For Juvenile Justice, Juveniles Facing Criminal Sanctions: Three States That Changed the Rules, U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention (2000).

contain a plan for reunification services⁴ had been known previously by various names including a permanency hearing and a non-reunification hearing. This hearing is now the “non-reunification hearing.”⁵

Substantive Revisions

Another of the main goals of this project was to revise the juvenile code to reflect best practices and to ensure compliance with federal law. This was, by far, the most daunting task because it involved not only identifying a best practice but determining whether its inclusion in the proposed model was appropriate. In general, there was no question whether a best practice should be included in the proposed model such as a child’s right to qualified and independent counsel. As the Supreme Court so succinctly stated in Kent v. U.S., 383 U.S. 541 (1966): “The right to representation by counsel is not a formality. It is not a grudging gesture to a ritualistic requirement. It is the essence of justice.”

However, there were instances in which provisions from the current code that did not necessarily reflect best practices were retained as a way to balance the goals of the project with the complexities of Georgia’s political landscape and to ensure that the proposed model would not be dismissed as wholly unrealistic and unachievable. For example, the designated felony statute is by no means model nor does it represent a best practice. However, the statute was revised to reflect better policies and procedures and its inclusion in the final product recognizes the legitimate need to provide a mechanism within the juvenile justice system to hold those children who have committed the most serious offenses accountable for their acts.⁶

Where a best practice was not immediately identifiable, current law remains unchanged or statutory language was crafted through a review of other state practices and the recommendations found in academic literature. For example, the issue of whether to open courts in all juvenile proceedings is still the subject of intense debate. This substantive area was not significantly revised because the issue remains so unsettled.⁷

Additional revisions were made to address issues unique to Georgia and to establish a baseline age. The best example of an issue unique to Georgia involves the transfer of probate cases to juvenile court for a determination of whether the establishment or termination of a temporary guardianship is in a child’s best interests. A new provision was crafted to provide the juvenile courts with procedural guidance upon receipt of these cases.⁸

The setting of age limits, either minimum or maximum, is necessarily arbitrary but for purposes of this project, the age of 14 was chosen as a baseline age for procedural

⁴ O.C.G.A. § 15-11-58(e).

⁵ P.M.C. § 15-11-343.

⁶ See comments to P.M.C. § 15-11-751.

⁷ See comments to P.M.C. § 15-11-1001.

⁸ See P.M.C. § 15-11-113.

and other more substantive purposes (except for the minimum age of juvenile court jurisdiction). For example, a child 14 and older shall receive summons in non-delinquency cases; a child 14 and older, under limited circumstances, may be eligible for transfer to superior court or for adjudication under the designated felony statute. The decision to set the minimum age at 14 is based on scientific findings that children younger than 14 years of age are likely not competent to stand trial owing to their developmental immaturity.⁹

The sheer scale of the number of revisions made in this document prohibits discussing them here in their entirety. When necessary, explanatory comments follow substantive provisions to assist the reader. However, there are several noteworthy revisions that are integral to the proposed model code and to a true reform of the current juvenile system. These include those that:

1. Increase the age of juvenile court jurisdiction to 18 for all children;
2. Provide for the right to qualified and independent counsel to all children;
3. Repeal SB440 and all other automatic waiver laws and allow only for discretionary judicial waiver of juvenile court jurisdiction through a transfer hearing;
4. Remove 13 year olds from eligibility for transfer to superior court and for adjudication under the designated felony statute;
5. Ban the secure confinement of children in adult correctional facilities;
6. Add three new articles governing independent living services, children in need of services, and competency in delinquency proceedings;
7. Ensure compliance with the requirements of the Adoption and Safe Families Act in delinquency and status offense cases;
8. Require the electronic recording of custodial interrogations in certain cases;
9. Provide for the reinstatement of parental rights; and
10. Establish a comprehensive procedure for the creation of subsidized permanent guardianships.

Finally, nearly every part of the current juvenile code was revised in some way. However, there are two areas which were determined at the outset to be outside the scope of this project: Article 3 governing parental notification and Article 5 governing the

⁹ See Thomas Grisso et al., Juveniles' and Adults' Competence as Trial Defendants, 27 Law & Human Behavior 33 (2002).

Office of the Child Advocate. Accordingly, these provisions remain unaltered and are not included in this document. However, they are noted in the table of contents in their new placement within the proposed model’s organizational structure as articles 9 and 12, respectively.

FURTHER RECOMMENDATIONS

The interstate proceedings provisions under Part 9 of current Article 1 have been repealed as outdated. The Interstate Compact on the Placement of Children (“ICPC”), to which Georgia is already a party, provides a sufficient mechanism to handle cases involving interstate issues. The interstate proceedings provisions are remnants of the Uniform Juvenile Court Act of 1968 and often depend on reciprocal laws in other states. Only North Dakota and Pennsylvania appear to have the requisite reciprocal provisions.¹⁰ While commentary to the Uniform Juvenile Court Act states that these provisions supplement the ICPC, they are rarely, if ever, used.

Accordingly, to further complement a newly revised juvenile code, the ICPC and the Interstate Compact on Juveniles should be transferred to Title 15 from their current placement in Title 39. These Acts are integral to the body of laws affecting children and belong in the juvenile code. Furthermore, this move would be consistent with the practice of a majority of states which house them within their juvenile codes.

CONCLUSION

The State Bar Young Lawyers Division Juvenile Law Committee believes a revised and reorganized juvenile code will better fulfill the purpose of the juvenile courts, which in turn will result in better outcomes for Georgia's children. The proposed model represents countless hours of researching, debating, and drafting to create a document that will initiate a positive and constructive dialogue for reform and that will provide judges and practitioners with the legal tools to better and more effectively meet the overarching goals of the juvenile code: to protect and restore the well-being of at-risk children.

¹⁰ See 42 Penn. § 6362 et seq.; N.D. Cent. Code § 27-20-40 et seq.