Juvenile Code Revision Work Group:

JUVENILE CODE SPLIT SUB WORK GROUP

SB 233

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Report Approved at
Oregon Law Commission Meeting
January 18, 2005

Introduction: Sub-Work Group Composition and Mission

The Sub-Work Group had the benefit of participation of an inclusive cross-section of the juvenile court community, including representatives from the Department of Human Services, the Attorney General's Office, the courts, juvenile departments, Court Appointed Special Advocates, and attorneys representing children and parents.

The Juvenile Code Split Sub-Work Group has been in operation for the past two sessions and has concerned itself with "cleaning up" the statues. The group has not previously seen itself engaged in substantive change of any statute.

Background: Two Dynamic Bodies of Law Diverging From One Another

Although this Sub-Work Group has previously dealt with highly technical changes to the three chapters of the Oregon Revised Statutes commonly known as "The Juvenile Code," it found this time that there are conflicts between some individual statutory provisions and the policies that underlie the statutory scheme(s) as a whole. It is common to find that statutory provisions within a particular body of law "conflict" with one another. In the case of juvenile law in Oregon, however, conflicts resulted from an uneven implementation of conscious efforts at wholesale reform in the past. The result is that the business of addressing juvenile delinquency could, currently, be compromised because some of the statutes that govern such cases retain language that should have been changed in the course of the divergence, over the past fifteen years, of delinquency and dependency law.

This body of law, commonly known as "The Juvenile Code," was contained in a single chapter in the Oregon Revised Statutes until 1993. This single chapter, ORS 419, contained statutes governing both delinquency and dependency (child abuse and neglect) cases. That was because it had come into being when a single policy governed both kinds of cases, which were seen as different manifestations of a single social problem or set of social problems. Delinquency and dependency cases were approached with a common set of assumptions and values, and were thus governed by a common body of law. The guiding principle, the underlying policy, of this body of law was "the best interest of the child."

In fifteen intervening years, however, dependency and delinquency law have diverged markedly. Society no longer sees these as two manifestations of a single problem or set of problems, and federal and state mandates have thus changed the underlying policy in each area.

This process of divergence began in 1993 when ORS Chapter 419 was divided into three separate chapters, ORS 419A (containing statutes pertaining to both dependency and delinquency cases), ORS 419B (containing statutes pertaining to dependency cases) and ORS 419C (statutes pertaining to delinquency cases).

This division, which was done by a group consisting of a cross section of the juvenile court community, presented problems. Many discussions centered on whether this statute or that pertained to delinquency cases or dependency cases or both. Since the work proceeded on a consensus basis, many statutes ended up in both the dependency and delinquency chapters because members of the group could not agree or because it was not immediately apparent what use either system might make of a provision. (An example were the expunction statutes. Clearly expunction was related to delinquency law but the possibility still remained that a young child committing a delinquent act might well be brought under the jurisdiction of the court under ORS Chapter 419B–as a dependent–and therefore might, at a later age, want to apply the expunction statutes to that case).

This group understood that as time went on changes would be made and that provisions assigned to one or the other chapter might well be eliminated or modified.

In general, the approach adopted by this group and applied to dividing Chapter 419 in 1993 was consistent with the development of American law and social policy since: Dependency cases have remained centered around "the best interest of the child," and have retained a family centered focus while delinquency law has left that standard behind as a guiding principle and has adopted an approach based on public safety, offender accountability and reformation. In 1995 Senate Bill One, a wholesale revamping of the juvenile delinquency system in Oregon, created a "philosophy statement" for the delinquency statutes. This statement, found in ORS 419C.001(1), provides as follows:

> "The Legislative Assembly declares that in delinquency cases, the purposes of the Oregon juvenile justice system from apprehension forward are to protect the public and reduce juvenile delinquency and to provide fair and impartial procedures for the initiation, adjudication and disposition of allegations of delinquent conduct. The system is founded on the principles of personal responsibility, accountability and reformation within the context of public safety and restitution to the victims and to the community."

Although the shift in policy is clearly stated here, and was manifest in many other changes that were

made in ORS Chapter 419C by Senate Bill One, there were some statutes that were left unchanged and, therefore, left "behind" in the sense that what they required had been appropriate when the best interest of the child was the guiding principle but was less so when public safety, accountability and reformation were being pursued.

It is therefore possible, and necessary, to make substantive changes to some delinquency statutes that will conform them to current policy and prevent them, in their present form, from frustrating pursuit of that policy.

Since this substantive change is being done under the aegis of "cleaning up" the statutes this Sub-Work Group has proceeded on a principle of unanimity, ensuring that the proposed amendments work toward the well established and well defined policy goals of the body of law, as a whole, and remove impediments to the carrying out of that policy.

1. The problems Addressed by LC 1142 (SB 233)

Section One: Language remains in ORS Chapter 419C.486, regarding case planning in delinquency cases, that was written when both delinquency and dependency law were based upon the best interest of the child standard. The policy of the delinquency system has shifted from the best interest of the child to public safety, offender accountability and reformation. The requirements of this statute (which is identical to the case planning statute in ORS Chapter 419B.343(1) which governs case planning in dependency cases) are now at odds with the underlying policy of ORS Chapter 419C as a whole.

Sections Two and Three: Editorial changes are proposed to clarify the meaning of the two statutes there addressed.

2. Analysis of proposed amendments

Section One of the bill is intended to ensure that the Oregon Youth Authority is not hampered in its case planning by being required to use a model of case planning that is not appropriate for youth offenders.

The language of ORS Chapter 419C.486 provides that a case plan for a youth offender should be rationally related to the findings that brought the youth offender within the court's jurisdiction. It should also be based on an assessment of the family's needs. The statute finally provides that whenever possible the family should be involved in designing the treatment plan.

This language has a history, the relating of which may help to show why its application to delinquency cases is not appropriate. It was placed in the statutes to resolve a specific controversy that had arisen in the practice of child abuse and neglect law.

Prior to 1993, some practitioners and judges believed that once a court took jurisdiction over a child, the child protection agency was free to design a case plan to address any problem that it perceived in

the family. The scope of that intervention was limited only by the oversight of the court.

Other practitioners and judges believed that the intervention of the executive branch of government, in the form of the child protection agency, should be limited to fixing the problem that the parents either admitted interfered with the safe parenting of their child or that were proved to interfere with that parenting, at trial.

The dispute was resolved by the legislature in 1993. The language "rational relationship to the jurisdictional finding" was used to express agreement with the latter interpretation. Parents whose children were in need of protection because, for example, of a parental substance abuse problem could only be required to comply with a case plan designed to deal with substance abuse or something rationally related to substance abuse. There could be no other prerequisite for return of the children. If the child protection agency or the court believed that the parent had other problems these had to be alleged and proved or admitted by the parent before they could form the basis for continued removal of a child.

At the same time that this change was working its way through the process some members of the legislature believed that the child protection agency, at that time, was not as "family friendly" as it should be. They added language to the case planning bill mandating involvement of the family in case plan design and assessment of the family's needs as key components of case planning.

Meanwhile, ORS Chapter 419 was being split into its three separate chapters during this same legislative session. The new provision regarding case planning was placed in both the dependency and delinquency chapters.

In 1995, however, Senate Bill One changed the face of delinquency law in Oregon. While the "rational relationship" and the family friendly case planning remain important in dependency law, the ground has shifted in delinquency law, where treatment plans now center more on the youth offender than on the youth offender's family, and a more global approach is necessary to deal with the situations created by the youth offender's delinquency.

While it makes sense to limit case planning in a dependency case to prevent overreaching on the part of the executive branch (for example, prohibiting requirements that family members undergo sex offender treatment when the jurisdictional allegations center on drug use or mental illness) it does not make similar sense in a delinquency case. For example, a youth offender may come into the jurisdiction of the court as the result of assaultive behavior. Chronic alcohol abuse may well be a contributing factor to this assaultive behavior, but the assault for which he is taken into custody may not result in an alcohol charge.

The plain meaning of the language of ORS 419C.486 may well prevent the Oregon Youth Authority from requiring a youth offender to complete alcohol treatment prior to parole if an alcohol offense were not part of the jurisdictional basis, as the Department of Human Resources would be prevented

from requiring someone to complete sex offender therapy prior to the return of their child from foster care if sex offending behavior were not a part of the jurisdictional basis.

Public safety, offender accountability and reformation all require global and comprehensive treatment plans for youth offenders and the limited time such an offender may be deprived of liberty distinguish the delinquency situation from that of the dependency, where jurisdiction is far more open-ended.

Likewise, the involvement of the family in a youth offender's case planning is different than the involvement of the family in a treatment program designed to ameliorate the shortcomings of the family as a whole. The involvement of the family, thus, is proposed to be appropriately limited and to be consistent with youth offender's situation.

Finally, recognizing that there are many social service agencies and government entities that may be involved with a particular youth offender, and that continuing such involvement may be consistent with the custody of the Oregon Youth Authority, the Authority is reminded to incorporate the efforts of these into its own planning.

Section Two of the bill is a far more simple and technical amendment. It changes language regarding "combined facilities," to ensure that dependent children/wards and delinquent youth offenders are not mixed. If a facility is configured to house or accommodate both, the "youth care center" is where delinquents will be housed and only following a court review of the admission.

Section Three is an amendment relating to the statutory scheme for differentiating among the statuses of young people who are involved in the dependency or delinquency systems.

ORS Chapter 419A.112 provides that "mature children" may have access to reports about their case in the course of the Citizen Review Board process. This statute was written at a time when "children" meant both those whose cases had been resolved to the effect that they were within the jurisdiction of the court and those whose cases were pending adjudication. When children in the former category were defined as "wards" by statutory change they were not included in this statute as among those entitled to reports. This amendment changes that exclusion.