

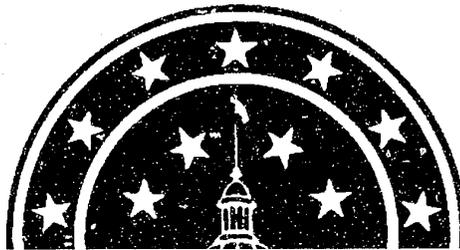
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**1992 REPORT
OF THE
JUVENILE LAW COMMITTEE**

NCJRS

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**Indiana Legislative Services Agency
Room 302, State House
Indianapolis, Indiana 46204**

November, 1992

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October, 1992

I. STATUTORY DIRECTIVE

Public Law 78-1992 created the Juvenile Law Committee to "study issues of concern relating to the juvenile laws and make recommendations for their revision and improvement". The Committee is required to make annual reports concerning the Committee's findings and results before November 1, 1992, and November 1, 1993.

II. INTRODUCTION AND REASONS FOR STUDY

The number of violent criminal offenses committed by juveniles has increased dramatically in recent years. This increase has occurred at the same time numerous problems concerning the provision of services to Indiana juveniles through state juvenile justice programs, education programs, social programs, and welfare programs persist. The Juvenile Law Committee was created to analyze state laws that affect juveniles (especially IC 31-6 "Juvenile Law"), analyze the ways in which these state laws intermix, and recommend any improvements that may be made to these laws.

III. SUMMARY OF WORK PROGRAM

The Juvenile Law Committee held four meetings during 1992. The Committee heard testimony from a number of different people involved with the juvenile justice system, the education system, and various social and welfare programs in Indiana. Testimony was taken from representatives of the Department of Correction, Department of Education, Family and Social Services, Indiana Public Defenders Council, Indiana Prosecuting Attorneys Council, Indiana Criminal Justice Institute, Indiana Soldiers' and Sailors' Children's Home, Indiana Advocates for Children, Family Works Incorporated, Indiana Youth Services Association, Indiana Foster Care and Adoption Association, Indiana Association of Residential Child Care Agencies, National Medical Enterprises, Indiana Mental Health Association, and the Indiana Judicial Center. The committee also heard testimony from several Indiana judges, former Judge Frank Orlando (Director of Center for the Study Youth Policy at Nova University in Fort Lauderdale, Florida), public defenders, prosecutors, and parents.

IV. SUMMARY OF TESTIMONY

At the first meeting, Chris Debruyn from the Department of Correction testified that additional regional centers dealing with juvenile corrections had been and will be opened around Indiana and that programs providing alternatives to the placement of juveniles in adult corrections facilities had been increased. Mr. Debruyn also testified that efforts over the last three years had helped decrease the number of juveniles detained in adult facilities in Indiana from 7,000, the worst in the United States at the time, to approximately 400. Mr. Debruyn added that a partnership involving the judiciary, advocacy groups, and state agencies was necessary for Indiana to continue to make progress towards creating a comprehensive juvenile justice system.

Carol Eby from the Department of Education testified that when a local school system cannot serve a student because of such things as the student's mental health problems or social services problems, the local school system may submit an application to the Department of Education to have the child placed in an alternative or residential service education program. She stated that alternative

education programs allow a student to stay in the student's home or home community while residential service education programs require a student to be removed from student's home and taken to a facility of some kind. Ms. Eby also stated that a major problem with these education programs concerned a lack of understanding and cooperation between local and state agencies that need to be involved with a child.

Katherine Gregory from Family and Social Services testified that only about 95 of the 2,300 beds in seven state psychiatric facilities are allocated for children and adolescents. She stated that most children and adolescents in state facilities came into the facilities through either involuntary civil commitment or voluntary placement involving a child's parent or guardian or a child's parent or guardian and a county department of public welfare. Ms. Gregory said that while the legitimate demands for space in state facilities far exceed the current capacity, the demand for the space is also artificially inflated by certain statutes in the Indiana Code (including IC 12-21-2-4, IC 12-21-5-2, IC 12-26-2-9(b), IC 12-26-8-8, and IC 12-24-13-6) that combine to give local government agencies a strong impetus to shift the costs of mental health treatment to the state. She said that these laws also give private for-profit psychiatric facilities the ability to engage in the emergency commitment of a patient from those facilities to state-operated facilities when the patient's health insurance expires. Ms. Gregory added that these problems could be addressed by placing provisions in the Indiana Code commitment statutes that require patients to be given a community mental health center screening before they are committed and placed in a state facility.

Rachel McGeever from Family and Social Services testified that Family and Social Services serves all children in the state who are at risk of abuse or neglect. She stated that some of these services include Child Protection Services, the Institutional Child Protection Services Program, the Family Services Program, the Foster Care Program, implementation of the Interstate Compact on the Placement of Children, the Title IV-E Foster Care Program, the Adoption Program, implementation of the Adoption Opportunities Grant, the Title IV-E Independent Living Program, licensing of child caring institutions, group homes, day care homes, and child placing agencies, and providing child welfare training and foster parent training.

Cathy Graham from Family and Social Services testified that the state's involvement in the federal Title IV-E Foster Care Program had been greatly expanded and that federal matching funds coming into Indiana had increased from \$2,000,000 to \$3,000,000 annually to \$10,000,000 to \$12,000,000 annually. She stated that, despite this increase, Indiana was still not at maximum participation in the program.

Larry Landis, Executive Director of The Indiana Public Defenders Council, testified that what was currently being done at the Indiana Boys School was not reducing crime. Mr. Landis stated that there was virtually no vocational training at the Boys School because, after a court mandate concerning the provision of vocational training at the Indiana Women's Prison, all vocational education equipment and training programs had been transferred from the Boys School to the Women's Prison. Mr. Landis questioned whether the purpose of the Indiana Boys School and the Indiana Girls School was to warehouse children or to rehabilitate children. He stated that if the goal was rehabilitation, not enough was being done. He added that an example of this was the fact that the schools offer little or no

treatment for such things as sexual abuse and alcohol and drug abuse problems.

Richard Turner, Chief Public Defender from the Marion County Juvenile Court, testified that the four attorneys in his office had handled over 3,000 cases during 1991. He stated that he had noticed an increase in violent crimes committed by juveniles and a decrease in the average age of the juveniles his office deals with. Mr. Turner said that most juvenile public defenders would argue against lowering the age at which a juvenile could be waived into the adult judicial system. He said that many first-time juvenile offenders are waived into the adult system because there are not enough alternatives for juvenile offenders. He added that prison does not seem to be the answer to the problems in the state.

Dick Good, Executive Director of the Indiana Prosecuting Attorneys Council, testified that the concerns among prosecutors include the apparent growth of violent crimes being committed by persons who are 15 to 18 years of age and the increase of repeat offenders of serious crime in the same age group. Mr. Good stated that many prosecutors were interested in giving adult criminal courts jurisdiction of offenders over the age of 16 or at least increasing the list of offenses under IC 31-6-2-1.1(d) that are not within the jurisdiction of juvenile courts. Mr. Good added that prosecutors were also interested in clarifying whether the attempt to commit a crime listed under IC 31-6-2-1.1(d) is under adult criminal court or juvenile court jurisdiction, addressing the issue of jurisdiction over traffic offenses including operating a vehicle while intoxicated, amending the waiver statute to facilitate more waivers to adult criminal court of appropriate violent juvenile offenders, reexamining the waiver rights statute under IC 31-6-7-3 (especially as it relates to emancipated minors) and requiring HIV testing in the juvenile justice system. Mr. Good concluded by saying he also felt it was time to reexamine the entire Indiana juvenile code.

Catherine O'Connor, Executive Director of the Indiana Criminal Justice Institute, testified that the Criminal Justice Institute is the state agency responsible for administering federal grant money received from the federal Office of Juvenile Justice and Delinquency Prevention as a result of Indiana's participation in the Juvenile Justice and Delinquency Prevention Act. She stated that the Act requires states to remove status offenders from secure detention, remove juvenile criminal delinquent children from adult jails and lock-ups, and keep juvenile offenders and adult offenders "sight and sound" separated when detained in the same facility. She stated that, after 14 years, Indiana is finally in compliance with the federal laws concerning juveniles held in adult facilities.

Sheila Zwickey, Rush County Prosecutor, testified that prosecutors need to have a better working relationship with state and local welfare agencies. She stated that many children are involved in two different confidential systems without either of the two systems being aware of the other system's involvement. She added that more money was not necessarily the answer to juvenile problems because she felt the resources were in place. She said that the problem was taking the children to the resources or bringing the resources to the children. She concluded by stating that some consideration needs to be given to juveniles who are chronic runaways and young people with emotional problems.

Bob Molnar of the Indiana Soldiers' and Sailors' Children's Home testified that while the Home was a residential facility primarily serving the educational and

vocational needs of children, the Home took a holistic approach when dealing with children. He stated that the typical child at the Home was from a dysfunctional family, was one to one-and-a-half years behind the child's peers in school, and had probably received some out-patient psychiatric or psychological care before coming to the Home. He said that two-thirds of the children at the Home were there by parental choice and one-third were either wards of the court or on probation.

Judge Edward Theobald from Knox County stated that he endorsed a complete revision of the Indiana juvenile code. He also stated that parents must be held accountable for their children. He added that children who are removed from their families and do well in various institutions end up returning to the same troubled family situation. He continued by stating that while training and rehabilitation are needed for the families of these children as well as the children, most of the families he deals with are poor and cannot afford to pay transportation and other services. Judge Theobald stated that judges must be given more authority and discretion in the Indiana Code concerning counseling and rehabilitation for parents and stepparents.

Judge Don Leicht from Cass County also stated that he would like to see the Indiana juvenile code rewritten because the juvenile code did not seem to have any kind of goal, it needed to be family oriented and not triggered by the act of a juvenile, and over the last several years it had become confusing and difficult to use.

Judge James Payne from Marion County testified that a juvenile court should have the philosophy that it was in the accountability business and hold society responsible for what happens to young people. He stated that juvenile courts get problems when the problems cannot be solved elsewhere. Judge Payne also stated that the Indiana juvenile code was basically unreadable because it has been so heavily amended. He added that society had changed since the current juvenile code was enacted and it was time for the code to change. He concluded by stating that the most effective juvenile programs he has seen not only allow and encourage family involvement but require family involvement.

Becky Pryor from Indiana Advocates for Children testified that the guardian ad litem and court-appointed special advocates program operated by the Indiana Supreme Court Administration Office was a voice for children who are receiving services in Indiana. She stated that for an annual budget of about \$400,000, the state receives approximately \$15,000,000 worth of voluntary services through the program each year. Ms. Pryor stated that if the juvenile code is revised, the focus should be on services to children and that the law should require agencies responsible for children to work together. She stated that perhaps one agency should act as a child services coordinator. She added that the state should provide matching funds for counties concerning services for children to those counties that are accountable, keep statistics, and can show measurable success with the children they serve.

Judy Kendrick from Family Works Incorporated testified that family preservation services organizations originated in Indiana in 1984 in response to federal legislation that made federal dollars available to fund efforts to help prevent removal of children from their homes. She stated that these services are provided in the client's homes to all members of the family. She said that she believes that most parents are doing the best that they can for their children even

though, in some families, the best isn't good enough. She stated that it was important to find a way of providing services to a family with the philosophy that the family is capable of dealing with its problems. She stated that the services should be provided in the home with the involvement of the entire family and that parents should be assisted in obtaining resources to help keep families together.

Jim Killen from Indiana Youth Services Association testified that youth service bureaus are community-based organizations that focus on prevention of problems to keep youth out of the juvenile justice system. He stated that out of the \$10,000,000 youth service bureaus received in Indiana last year, most of the money came from the United Way. He continued by stating that last year youth service bureaus provided services to 30,000 juveniles and received only \$320,000 from the state compared to the \$72,000,000 the state spent on community mental health programs to provide services to 27,000 juveniles. He stated that he feels that children that appear in court should have priority service at community mental health centers.

Dick Malcolm from the Indiana Foster Care and Adoption Association testified that one of his concerns was the heavy workload of caseworkers involved in foster care and adoption. He said it was important to limit the number of cases in which a caseworker is involved. Mr. Malcolm also stated that reimbursements to foster parents must be increased because most foster parents do not "break even". He stated that decreased caseworker caseload and better foster parent preparation would improve the problem of children being placed improperly in foster homes.

Sally Nye from the Indiana Association of Residential Child Care Agencies testified that 145 group homes and child caring institutions licensed by the state provide 2,859 child care beds in Indiana. She stated that most residential child care providers are either private not-for-profit facilities or county-administered agencies. She continued by stating that each facility develops a program to meet the need of a specific client population. Ms. Nye stated that Indiana needs to start using available federal money. She also stated that there was a need for better assessment of children before they are placed in service programs. She also expressed concern over the lack of legal provisions concerning the voluntary placement of children.

Jim Sullivan from National Medical Enterprises testified that for-profit free-standing psychiatric hospitals do not force people to enter them and they do not treat children and adolescents that do not need help. He continued by stating that primary referral sources for these hospitals include attending psychiatrists and physicians, nonattending allied health care providers such as psychologists or therapists, the judicial system, schools, human services agencies, and friends and former patients. Mr. Sullivan continued by stating that the majority of reimbursements to these psychiatric hospitals involve private pay or insurance. He stated that, as for reimbursement from Medicaid, inpatient treatments must be authorized before they are administered and only certain preauthorized outpatient services are allowed. He also stated that day treatment, partial hospitalization, and in-home services are not reimbursed by Medicaid. He added that Medicaid reimbursement should be permitted for other services within the psychiatric continuum of care. Mr. Sullivan concluded by stating that public and private providers need to work together and cooperatively to improve the system, and money should follow the needs of the patient as opposed to the treatment following the

money.

At the second meeting, Judge Frank Orlando, Director of the Center for the Study of Youth Policy at Nova University in Fort Lauderdale, Florida, testified that the Center promotes using a "balanced approach" to youth corrections administration. He explained that this balanced approach in a juvenile justice system emphasized public safety while using the least restrictive setting for youths that was necessary to ensure that public safety while establishing accountability for behavior. He said that he felt that Indiana was one of the states that was moving in the right direction toward this balanced approach.

Judge Orlando also testified that current trends in the United States concerning juvenile justice include the lowering of the age that juveniles are waived into the adult justice system from 18 years of age to as young as 12 years of age, the use of statutory exclusions to automatically waive juvenile offenders into the adult justice system, and granting prosecutors instead of judges the discretion to waive juvenile offenders into the adult system. Judge Orlando stated that studies had shown that there was no significant benefit in removing juveniles from the juvenile justice system and placing them in the adult system. He continued by stating that this removal may even have a negative effect by contributing to higher recidivism rates.

Judge Orlando also stated that there was currently a great interest in the perceived increase in juvenile violence. He stated that additional studies had shown that the number of juveniles committing violent offenses actually decreased in the 1980s. However, he stated that the age of juveniles committing a first violent offense had lowered while the level of violence had increased. He said that juveniles who were committing violent offenses usually "live in violence". He stated that these juveniles typically have easy access to guns, come from dysfunctional families, and are "children born to children".

Judge Orlando stated that effective juvenile justice systems must approach the real causes of violence. He stated that juvenile justice systems are only one small component in dealing with the problems of youths at risk and that other components included education, social services, community services, and mental and physical health services. Judge Orlando stated that a recent survey concerning juveniles and juvenile crime found that while a majority of respondents favored trying juvenile offenders in adult courts, most respondents felt juveniles should not be sent to adult penal institutions unless the juveniles were violent or chronic offenders. He stated that the survey also showed that most respondents preferred smaller community-based approaches to juvenile corrections instead of the use of large centralized institutions.

Judge Orlando stated that it takes legislative will to redirect state appropriations away from large institutions and into community-based alternative sentencing programs. Judge Orlando continued by stating that whether probation services were operated by a county or the state did not matter if enough money was appropriated and caseworkers were competent. He stated that he favored a statewide network of juvenile services and state-operated probation services with uniform criteria.

Ruth Alewine of the Division of Family and Children discussed problems with

the Juvenile Code in categorizing a child as a "child in need of services" (CHINS) and providing and paying for the services. Ms. Alewine also discussed a task force that had been formed in Hancock County to form an alternative school system for children who had been "pushed out" of traditional public schools.

Wayne Addison, Hancock County Probation Officer, testified that there had been an attempt to start an in-home status offender program in Hancock County but money had not been available for the project. Mr. Addison continued by stating that county probation systems could benefit from additional state assistance.

At the third meeting, Bob Marra, Assistant Director of the Division of Special Education of the Indiana Department of Education, testified about developing services for students with multiple needs. He stated that the appropriate delivery of services must be based on the needs of the individual student. He stated that the commitment and participation of education, mental health, public welfare, juvenile justice, corrections, family services, and other entities are necessary to coordinate the provision of appropriate services to Indiana students.

Mr. Marra stated that six major initiatives are currently underway in Indiana to develop appropriate services for students with multiple needs. He said that the initiatives include recent legislative changes concerning the provision of alternative and residential services and the creation of "barrier-free" pilot sites, a regional service initiative, a comprehensive service personnel development training initiative, the implementation of Project Connect including development of local and state multi-agency problem solving, the implementation of the Challenge Education initiative which combines components of outdoor education, affective education, and academic instruction into a specific program design, and the development of a data-based information system.

Dr. Bob Dyer, from Family and Social Services, testified that a child could currently enter the state system through an education, a welfare, a mental health, or a corrections program and that there is a continuing problem in determining which agency should be responsible for a child after the child enters the system. He stated that it was important to focus on developing less costly residential care options to deal with the long-term needs of children, rather than more costly institutional and out-of-state options.

Dr. Dyer also stated that a better coordinated provision of services was necessary. He stated some options Indiana might examine include the "single bureaucracy" and pooled funding for children's services being developed in Oregon, or the regional funding mechanisms in place in Rochester, New York, and Cincinnati, Ohio. He added that the creation and implementation of such programs in Indiana would require legislative action.

Steve McCaffery, Executive Director of the Indiana Mental Health Association, testified that services for children with special needs in Indiana were inappropriate, underfunded, and fragmented. He stated that children who have the same basic needs are placed in different systems. He added that there was a need for a continuum of community-based services for children, and that the services should be provided when they are needed and not when they happen to become available.

Jeffrey Bercovitz, Executive Director of Probation and Juvenile Services for the Indiana Judicial Center, testified that the Indiana Judicial Center is the staff agency for the Judicial Conference of Indiana and provides publications, research assistance, and educational conferences for judges, probation officers, and other court personnel. Mr. Bercovitz continued by presenting an overview of the probation system in Indiana. He stated that \$20,000,000 per year was spent on probation in Indiana. He said that almost all the funds were provided by counties and almost all of it went to pay salaries. He stated the \$20,000,000 was spent for probation supervision of 24,000 felons, 44,000 misdemeanants, and 15,000 juveniles.

Mr. Bercovitz added that probation in Indiana was a function of the judicial branch of government. He added that this compares with 32 states in which probation is a function of state or local executive branches of government. Mr. Bercovitz concluded by stating that there were several inconsistencies in the Indiana Juvenile Code that need to be addressed, including hearing procedures, jurisdiction problems, and waiver of juveniles into the adult justice system.

At the fourth meeting, the Committee considered and endorsed findings and recommendations to be reported to the General Assembly.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

The Juvenile Law Committee reports the following 1992 interim findings and recommendations to the General Assembly:

1. Under current Indiana law, it is possible for a juvenile to move through at least three or four different agency systems without any of the agencies knowing that the juvenile is involved with other agencies or what the other agencies are doing for the juvenile. This situation may result in the duplication of services to the juvenile or in creating conflicting strategies to deal with the juvenile.
2. Several legislative committees met during the 1992 interim to address areas of the law that affect juveniles. There should be one "legislative clearing house" to review the work of these legislative committees, as well as the work of comparable executive branch entities, and establish policies concerning juveniles in Indiana.
3. Areas of the law that affect juveniles in Indiana include mental health, juvenile justice, welfare, and education.
4. Several provisions of the Indiana Code that concern juveniles, including provisions found in IC 12, IC 16, IC 31, and IC 35, are inconsistent and need to be reviewed together so that inconsistencies may be corrected and made clear for the various agencies and individuals who must rely on them to provide services and enforce the law.
5. The State needs to develop the capability to provide services to juveniles in Indiana instead of sending juveniles out of Indiana. The practice of sending juveniles out of Indiana for services is not cost-effective and does not address difficulties encountered when the juvenile returns home.

6. The provision of comprehensive services to juveniles and the families of juveniles involved in the various areas described in item 3 above will provide improved benefits to those involved and better utilization of state and local treatment and intervention resources. The Department of Education "S-5" program is a good example of how this comprehensive approach can work. The service integration pilot projects authorized by SEA 176 from 1992 and "Step Ahead" programs can also be used to provide information regarding the provision of a comprehensive services approach (including monetary concerns and data collection).

7. The State needs to provide long-term mental health care facilities within Indiana for juveniles with severe mental health difficulties.

8. Based upon information gathered by the Juvenile Law Committee during the 1992 interim, the Committee recommends that a legislative commission be established to revise the Indiana Code to correct substantive inconsistencies in laws that concern juveniles.

9. The legislative commission described in item 8 above should be fully staffed and funded in order to begin revising the Indiana Code as soon as possible after the General Assembly completes its 1993 Session.

The Committee did not propose any legislation for the 1993 session of the General Assembly.

W I T N E S S L I S T

Wayne Addison, Probation Officer, Hancock County
Ruth Alewine, Family and Social Services
Jeffrey Bercovitz, Indiana Judicial Center
Chris Debruyne, Department of Correction
Dr. Bob Dyer, Family and Social Services
Carol Eby, Department of Education
Dick Good, Indiana Prosecuting Attorneys Council
Cathy Graham, Family and Social Services
Katherine Gregory, Family and Social Services
Judy Kendrick, Family Works Incorporated
Jim Killen, Indiana Youth Services Association
Larry Landis, Indiana Public Defenders Council
Laura Langel, parent, Merrillville, Indiana
Judge Don Leicht, Cass County
Dick Malcolm, Indiana Foster Care and Adoption Association
Bob Marra, Department of Education
Steve McCaffery, Indiana Mental Health Association
Rachel McGeever, Family and Social Services
Bob Molnar, Indiana Soldiers' and Sailors' Children's Home
Sally Nye, Indiana Association of Residential Child Care Agencies
Catherine O'Connor, Indiana Criminal Justice Institute
Judge Frank Orlando, Center for the Study of Youth Policy, Nova University
Judge James Payne, Marion County
Becky Pryor, Indiana Advocates for Children
Jim Sullivan, National Medical Enterprises
Judge Edward Theobald, Knox County
Richard Turner, Chief Public Defender, Marion County Juvenile Court
Sheila Zwickey, Rush County Prosecutor