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U.S. Department of Justice
Office of Juvenile Justice and Delinquency Prevention
National Institute for Juvenile Justice and Delinquency Prevention



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**MAJOR ISSUES
IN JUVENILE
JUSTICE INFOR-
MATION AND
TRAINING:**

**A Legislator's Guide
to the Assessment of
Juvenile Justice Legislation**

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MAJOR ISSUES IN JUVENILE JUSTICE INFORMATION AND TRAINING

A Legislator's Guide to the Assessment of Juvenile Justice Legislation

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The Legislator's Guide represents the final addition to a "family" of juvenile justice publications produced by the Academy over the past three years. Many state and local officials, youth advocates, and academicians have contributed to our understanding of the issues presented here. We acknowledge and appreciate their insightful contributions to this pamphlet.

The Academy would also like to thank past and present staff members for their suggestions regarding topics with which they have developed extraordinary expertise through their work in the MIJJIT Project. We would like to especially thank the Principal Investigators of the following studies: John C. Hall, Out-of State Placement of Children; Constance L. Simmons, Grants in Aid of Local Delinquency Prevention and Control Services; Donna M. Hamparian, Youth in Adult Courts; and John M. Pettibone, Services to Children in Juvenile Courts.

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Throughout the MIJJIT Project, staff work was guided by the recommendations of an Advisory Committee whose names appear on the following pages. We would like to take this opportunity to thank them once more for the many hours of work they gave to us. While many of them have moved on to other endeavors during the course of this project, their spirited dialogues are clearly seen in the Legislator's Guide.

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INTRODUCTION

This monograph is intended for the use of persons interested in legislation related to:

- The Interstate Placement of Children
- Subsidies for Local Delinquency Prevention and Control Services
- Youth in Adult Courts
- Services to Children in Juvenile Courts

These topics were selected because of research conducted by the Academy over the past three years. The publications resulting from this research are listed on the inside back cover and may be obtained through the National Criminal Justice Reference Service. Readers who are interested in preparing legislation on any of these topics are urged to obtain the pertinent reports for use as source documents.

Legislation is usually the vehicle used to create or institutionalize changes in public policy. Because state and local juvenile justice agencies normally derive their authority from statutory laws, state legislatures play a central role in shaping policies related to children's services.

Very often, however, bills are offered which, when passed, fail to meet their objectives. They are either plagued by law suits, unexpected changes in circumstances, or they are simply difficult to administer. While some of these situations can clearly not be anticipated when the legislation is passed, many of them result from either poor

draftmanship or from the failure to think through ramifications which should have been foreseeable at the time of the legislative debates.

Effective legislation share common characteristics: the purpose is clearly stated; the financial and programmatic outcomes are predictable; and delegated authority is sufficient for the cognizant agency to meet its responsibilities. In other words, legislative intent is unmistakably reflected in either judicial or administrative activities.

The purpose of the Legislator's Guide is to provide guidance in the formulation of juvenile justice legislation. This assistance is provided in the form of hypothetical questions and satisfactory responses which, irrespective of philosophy or intent, should apply to any piece of legislation offered on the above topics. It can be used to assist drafters of such legislation, as well as legislators who must determine whether sufficient information has been made available to them.

This format is based upon the assumption that legislators must have certain key information about proposed legislation before they can be reasonably expected to vote. They should be informed about the intent of the Bill and its relationship to current law. They should understand the procedural steps needed for implementation. They must know, in advance, the fiscal impact inherent in passage. We hope this pamphlet will contribute to the process of producing responsible juvenile justice legislation.

INTERSTATE PLACEMENT OF CHILDREN

Public agencies in several social service fields are involved in placing or arranging the placement of children in out-of-state facilities. In the field of child welfare, they are usually local offices or departments of welfare or social services. In education, these activities are carried out by administrators of special education programs. In juvenile justice, most of the placements are either made or ordered by juvenile courts, although the mechanics of placement might be through other agencies, depending upon state laws. Mental health and retardation agencies rarely have direct authority to place children. As a normal practice, they may advise parents, attorneys, and private or other public placing agencies about the quality of services available in out-of-state facilities.

Not since before World War I has so much public attention been focused on this practice. Concerns appear to center on two phenomena: evidence of child abuse in residential facilities and the growing application of constitutional principles to juvenile justice practices. Their expression can be found in class-action litigation, special investigations, and legislation. The movement of children across state lines raises necessarily complex questions. How can we measure the benefit of a particular out-of-state placement against the separation of a child from family and community? Where does the authority of a sending state end and that of a receiving

state begin? What safeguards should be provided to ensure that one state's children receive comparable services when placed in another state's facilities?

The most common statutory approach has been the adoption of one or more interstate compacts which have evolved over the past 50 years. Other approaches include state constitutional limitations, as well as the passage of so-called export-import and long-arm statutes. Theories of comity and the full faith and credit clause of the U.S. Constitution have also been applied by courts to cases involving the interstate placement of children. Recently, states appear to be exercising controls through fiscal restraints and licensing procedures. In some states, the intent is clearly to prohibit the practice; in other states, regulation appears to be the motive.

WHAT IS THE INTENT OF THE BILL?

An appropriate answer to this question will:

- Identify whether the Bill is intended to eliminate, reduce, or better regulate the interstate placement of children.
- Identify whether the Bill is intended to affect placements made by other states in this state, or vice versa.
- Identify the categories of children which will be affected, as well as the agencies responsible for such categories. For example, these might be stated as *juvenile delinquents under the jurisdiction of the state juvenile corrections agency, or adoptive children under local child-placing welfare agencies.*

- Note ways in which the Bill will expand or restrict state and local agency authority to make or arrange out-of-state placements.

WHAT PROCEDURAL CHANGES ARE CONTEMPLATED?

An appropriate answer to this question will:

- Describe, if appropriate, functions of cognizant agencies, in terms of placing, regulating, or paying for children in out-of-state residential facilities. In the alternative, describe, if appropriate, functions of cognizant agencies, in terms of monitoring or regulating agencies that receive children placed in this state by out-of-state agencies.
- Identify interstate compacts to which the state is signatory. Identify provisions which are applicable to out-of-state placements and describe their pertinence to the Bill.
- Note any conflicts with existing laws or inconsistent authority pertaining to state agencies that will result through passage of the Bill. Where appropriate, particular attention should be given to existing procedures promulgated by state agencies responsible for child welfare, education, juvenile justice, mental health, and developmental disabilities services.
- Describe how state agencies will monitor and regulate out-of-state placements made by locally controlled agencies.
- Identify procedures for enforcing

provisions of the Bill and note sanctions which may be imposed for non-compliance.

- Note the extent to which the Bill's provisions will apply to interstate placements made by or to individuals or private agencies.
- Note the extent to which the Bill's provisions will apply to interstate placements not covered by existing interstate compact provisions.
- Note the extent to which the Bill's provisions will apply to interstate placements when no public funds are used to finance them.
- Describe the experiences of other states with similar provisions.

HOW WILL BUDGETS BE AFFECTED?

An appropriate answer to this question will:

- State the level of fiscal support required to implement the Bill.
- Forecast levels of funding needed for the next three to five years.
- Identify sources of funding.
- Assess the impact of prospective changes on budgets of local government.
- Assess the impact of prospective changes on budgets of privately operated residential facilities, both in and out of the state.
- Note any state or federal mandates that affect fiscal responsibilities of specific agencies or units of government.

SUBSIDIES FOR LOCAL DELINQUENCY PREVENTION AND CONTROL SERVICES

For many years, the provision of juvenile corrections, particularly institutional care, was a responsibility of state government. Whatever local alternatives existed were provided through municipal or county funding. In recent years, there has developed an increasing advocacy for the use of community-based services and against the use of large, congregate facilities. Coupled with this trend has been a greater incidence of intervention into the lives of young people in an effort to prevent problems that could lead them into the juvenile justice system. One result of these shifts in social service philosophy has been the development of state subsidies for local governments. Known by a variety of terms, such as subventions or grants-in-aid, subsidies share a common purpose: to stimulate local governments to create delinquency prevention and control services.

The study recently completed by the Academy identified over 100 such programs in 39 states. While most of these programs were classified as delinquency **control** subsidies within the juvenile justice field, a large number of delinquency **prevention** subsidies were found in the areas of child welfare, education, employment, and mental health. Delinquency prevention subsidies share a common purpose, whether expressed or implied, of financing services which are aimed at keeping young people out of trouble and,

hence, away from the juvenile justice system. Some subsidies appeared to require very little of local recipients while other ones contained matching-fund requirements, performance measures for continued eligibility, and fiscal disincentives to discourage excessive commitments to state residential facilities.

With the abrupt changes presently occurring in federal funding of juvenile programs, state subsidies will unquestionably take on a growing importance. Local program operators and public officials will turn to state legislatures for funds to replace lost federal dollars. State governments, in turn, may have increased responsibilities for reallocating block-grant funds.

WHAT IS THE INTENT OF THE SUBSIDY?

An appropriate answer to this question will:

- Indicate whether the Bill is intended to (a) correct intergovernmental revenue imbalances through transfers of state income, (b) expand local community-based services, (c) reduce local reliance on the use of state delinquency facilities, (d) create incentives for the establishment of minimum state standards, (e) reduce recidivism among delinquents, or (f) encourage the development of exemplary, innovative projects by local agencies. It is important to note that, while subsidies may reflect more than one objective, measuring success becomes increasingly difficult as more objectives serve as performance measures.

- Describe how the Bill complements or alters the existing relationship between state and local governments, either in terms of programmatic authority or financial responsibility.
- Describe the types of children, agencies, and services which will be affected by the subsidy.
- Define local services eligible for subsidy support.

HOW WILL THE SUBSIDY BE ADMINISTERED?

An appropriate answer to the question will:

- Identify state agency responsible for administering the subsidy.
- Identify local public and/or private agencies eligible for direct state grants.
- Identify local public and/or private agencies eligible for subgrants, subcontracts, or other forms of indirect payments.
- Note eligibility criteria or performance measures to be used in determining distribution of subsidy funds.
- Describe procedures for application, review, and approval of subsidy funds. This answer should distinguish between local and state review and approval procedures.
- Describe extent to which planning efforts required for local subsidy applications are consistent with planning requirements for other state subsidies and federal grants-in-aid.
- Describe cash flow procedures for

transferring subsidy funds to local treasuries or depositories.

- Describe both programmatic monitoring and fiscal auditing procedures.
- Note procedures, if appropriate, for citizen involvement in the planning, review, and monitoring processes required by the subsidy.
- Note significant changes required in state or local government, either in terms of structure or existing services, that would be necessary to carry out the provisions of the Bill.

WHAT ARE THE EXPECTED EFFECTS OF THE SUBSIDY?

An appropriate answer to this question will:

- Describe what objectives services are expected to achieve.
- Describe the specific services which will be expanded, in terms of staff, beds, children served, or other appropriate units of measurement.
- Describe projected changes in other state agency services and expenditures, as a result of the subsidy. For example, a state residential facility may be closed because of expected reductions in demand for bed space.
- Identify other state agencies which might be administering complementary programs with whom it would be desirable to have inter-agency cooperation.
- Note any shifts in service delivery between state and local agencies or

among agencies within the same levels of government.

- Describe how the effects of the subsidy are to be evaluated.

HOW WILL BUDGETS BE AFFECTED?

An appropriate answer to this question will:

- Indicate cost of the subsidy to the state during the first budgetary cycle.
- Forecast cost of the subsidy during the following three to five years.
- Note any cost savings to the state contemplated after the subsidy is operational.
- Indicate cost of the subsidy to local agencies, in terms of both matching funds and non-reimbursable expenses. Note if the Bill provides that matching funds must be in cash or in in-kind contributions of personnel, space, or other indirect expenses to local recipients.
- Note any cost savings to local agencies contemplated after the subsidy is operational.
- Indicate whether state payments to local agencies will be made in advance or after local expenditures have been made.
- Describe the method for allocating the subsidy to eligible local agencies. The answer should define the payments in terms of *formula factors, per capita ratios, or reimbursement for actual expenditures.*

enforcement agencies, prosecutors, courts, and corrections agencies.

- Describe effect of the Bill on the use of (a) photographs, (b) fingerprints, (c) bail or release on recognizance, or (d) jury trials in cases involving youth charged with crimes.
- Describe the effect of the Bill on the use of juvenile court records for purposes of (a) criminal court sentencing, or (b) referring juveniles to criminal courts.
- Describe procedural safeguards established for the protection of due process rights.

WHAT CHANGES CAN BE REASONABLY EXPECTED?

An appropriate answer to this question will:

- Document expected increases or decreases in the workloads of juvenile courts, criminal courts, juvenile probation and corrections agencies, adult probation and corrections agencies, and defense counsel. These might be stated in terms of more or less hearings or delays, detention or confinement days, or caseloads.
- Describe expected numbers of juveniles to be affected by the Bill and demonstrate that the numbers or types of such juveniles are sufficient to warrant changes in existing law.
- Compare expected changes with the stated objectives.

HOW WILL BUDGETS BE AFFECTED?

An appropriate answer to this question will:

- Indicate financial impacts upon the affected agencies.
- Project demand for detention and corrections bed space.
- Describe how new procedures will affect planning and budgeting for new facilities.
- Specify needs for new programs, specialized corrections facilities, or retraining of corrections officials.

SERVICES TO CHILDREN IN JUVENILE COURTS

From their beginnings, juvenile courts and delinquency-related social services have been understandably intertwined. Juvenile courts, as an American institution, were established to protect young people from the harsh sentencing available to criminal court judges. Over the years, juvenile courts have become heavily involved in counseling, social casework, emergency shelter, medical treatment, intake, detention, probation, and other related services.

Because the delivery of social services were not a part of either the justice or chancery courts in which juvenile courts had its roots, it should also be understandable that these same services, in a number of states, emerged as activities within the executive branch of government. The result is that the governmental structures established for the delivery of services to children in juvenile courts are remarkably dissimilar among the states.

As state legislatures wrestle with the problems of providing such services, it can be expected that discussions related to coordination of service delivery, jurisdiction and accountability, cost and attendant benefits, and the best ways to ensure the protection of children's rights will frequently be resolved through structural reorganizations. One can find, somewhere in the United States, for example, probation offices operated as parts of local courts, the state judiciary,

local social services agencies, and comprehensive state human resources agencies. So long as reorganization is viewed as at least a partial solution to the problems of providing services to children before juvenile courts, legislatures can expect to receive Bills which propose alternative structures.

WHY IS A REORGANIZATION NEEDED?

An appropriate answer to this question will:

- Describe problems experienced with existing organization of services. Note any court orders, executive orders, attorney general opinions, or other pieces of legislation which require that existing laws be changed. Note any fiscal, political, or programmatic problems with existing organization of services.
- Describe the advantages of the particular reorganization of services described in the Bill. These benefits may be phrased in terms of *efficiency, effectiveness, shifts in public policy, or constitutionality.*

WHAT TRANSFERS OF AUTHORITY ARE CONTEMPLATED?

An appropriate answer to this question will:

- Identify the specific service-delivery responsibilities of courts and executive agencies under existing law, and describe how those duties will change under the Bill.
- Describe the shifts contemplated between and among state and local (municipal,

county) agencies.

- Describe the shifts contemplated between and among judicial and executive agencies.
- Describe the shifts contemplated between and among public agencies and privately operated programs.
- Indicate, if appropriate, the extent to which the proposed changes are parts of a larger reorganization strategy affecting agencies not mentioned in the Bill.
- Note any remarkable advantages or disadvantages that will be predictably felt by children and their families as a result of the reorganization.
- Indicate the extent to which affected agencies endorse or oppose passage of the Bill.

WHAT CHANGES CAN BE REASONABLY EXPECTED?

An appropriate answer to this question will:

- Document expected increases or decreases in the workloads of juvenile courts, state or local executive agencies, or privately operated programs.
- Indicate areas where the agencies or services do not now exist, but would be generated through passage of the Bill.
- Describe and document the effect of the Bill on people currently employed by public agencies or in the private sector. Note the effects of existing civil service laws if the contemplated changes to existing laws are put into effect.

- Describe and document any projected effects on a capital expenditure planning, or anticipated needs for offices or other types of work space.
- Note any effects which the passage of the Bill might have on existing usage of buildings, or on existing leases and other types of contracts.
- Note any changes which the passage of the Bill might have on existing citizen participation. These changes might be phrased in terms of the use of advisory committees, bond issues, tax levies, or other forms of public oversight.

HOW WILL BUDGETS BE AFFECTED?

An appropriate answer to this question will:

- Indicate financial impacts upon the affected agencies. Where appropriate, particular attention must be paid to contemplated shifts in the funding base between state and local governments or between general and special fund accounts.
- Describe how new service-delivery mechanisms will affect planning and budgeting for new facilities. Note, if appropriate, plans for abandoned facilities resulting from shifts in service-delivery responsibilities.
- Compare the relative costs of the existing system with the contemplated system. Note, separately, the costs to each level of government and fund account.
- If privately operated programs are to be utilized, note levels and methods of payment.

MAJOR ISSUES IN JUVENILE JUSTICE INFORMATION AND TRAINING PROJECT

This pamphlet is part of a series of books and monographs of Project MIJJIT, published by the Academy for Contemporary Problems in 1981 and 1982.

- The Out-Of-State Placement of Children: A National Survey
- The Out-of-State Placement of Children: A Search for Rights, Boundaries, Services
- Grants in Aid of Local Delinquency Prevention and Control Services
- Youth in Adult Courts: Between Two Worlds
- Services to Children in Juvenile Courts: The Judicial-Executive Controversy
- Readings in Public Policy

Persons interested in obtaining copies of these volumes should contact:

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