

THE
FAMILY COURT
ITS GOALS AND ROLE

SUMMARY REPORT
OF THE PROJECT:
COMMUNITY AND FAMILY COURT-IP PROGRAM GOAL PLANNING
an LRAA Funded Project

FAMILY COURT RESEARCH GROUP

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**THE
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COMMUNITY AND FAMILY COURTS IN PROGRAM GOAL PLANNING
An LEAA Funded Project**



SUPREME COURT OF HAWAII
JUDICIARY BUILDING
HONOLULU

CHAMBERS OF
WILLIAM S. RICHARDSON
CHIEF JUSTICE

This summary report is the embodiment of the ideas and efforts of a wide array of organizations and individuals concerned with juvenile delinquency, child protection, family stability and other related problems and issues. In its emphasis on goals, it serves as a significant contribution toward directed planning for the courts and the community.

Such cooperative community-wide endeavors are necessary if the courts are to be updated and strengthened. This precept has been clearly illustrated by the Judiciary's 1967 Citizens' Conference, which led to the subsequent modernization of Hawaii's entire judicial structure, and the 1972 Citizens' Conference, which was remarkably successful in suggesting alternatives for the future administration of justice in the state.

The Family Court conferences which served as the prelude to this report were in just such a mold, and I commend the participants, the staff of Family Court of the First Circuit, the District Family Court Judges, Judge Betty M. Vitousek, and Senior Judge Herman T. F. Lum for a job well done. The recommendations contained herein evince the thoughtful examination of problems facing the Family Courts today, and of demands and challenges to face those courts tomorrow.

William S. Richardson

William S. Richardson

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I. INTRODUCTION

In 1965, the Juvenile Court, a concept of more than 66 years' standing, was expanded when Hawaii enacted laws creating a special court for children *and* families. The Family Court Act of 1965 integrated the jurisdiction and programs of the predecessor Juvenile Court and the Domestic Relations Court into one Family Court in each circuit. Many hailed this as a progressive step that would enable the State to better meet the needs of its people.

Since then, there have occurred numerous developments in the relevant areas of juvenile justice, children's rights, and programs dealing with children; there have been a number of landmark Supreme Court decisions in juvenile law, viz., *Kent* and *Gault*; and there has been substantial accretion to the body of knowledge dealing with children and the family. As a result, various segments of the community, including members of the courts, social agencies and other institutions, have come to view the function of the court with differing perspective. Because the role of the court has appeared ambiguous, numerous questions have arisen, such as: Should the jurisdiction of the Family Court be narrowed or expanded? Shouldn't non-court agencies assume responsibility for certain Family Court programs or activities? Should the Family Court provide treatment to children?

In view of these developments, the Family Courts last year decided to secure the views of a wide spectrum of the community in an attempt to produce a definitive statement as to our goal and role. Therefore, the courts applied for and received a grant from the State Law Enforcement and Juvenile Delinquency Planning Agency to implement the project, *Community and Family Courts in Program Goal Planning*, which was carried out during the period June 1972 through September 1973. The results are embodied herein.

We have been fortunate in securing maximum input and a real exchange of ideas. The results of the total project have been distilled into a statement of the goal and role of the Family Courts. This statement, then, can be taken as a starting point for the Family Courts of Hawaii in developing program directions.

The judges of all the Family Courts join in acknowledging the support and encouragement of Chief Justice Richardson. The courts are also grateful for the support of the Law Enforcement and Juvenile Delinquency Planning Agency, without which this project would have been extremely difficult to implement, and for the assistance and cooperation of many persons from the Legislative, Executive and Judicial branches of the State Government, and from various groups in the community. A list of the participants is provided in the Appendix.

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II. PROJECT: COMMUNITY AND FAMILY COURTS IN PROGRAM GOAL PLANNING

The development of a goals statement was implemented through the project *Community and Family Courts In Program Goal Planning*, which commenced June 1, 1972, and was funded by a grant from the Law Enforcement and Delinquency Planning Agency, State of Hawaii.

As the project's first phase, a planning conference was convened on October 11, 1972, and involved persons closely connected and knowledgeable with the juvenile justice system and related areas of the court's concern. This planning committee delineated topics for discussion and the program format for a major conference.

The second phase involved the major conference, in which 107 persons from a wide cross-section of the community, including courts, social agencies, State Government agencies, school officials, community organizations and others, participated. Sponsored in cooperation with the Health and Community Services Council of Hawaii and the University of Hawaii, the conference was held on November 30 and December 1, 1972, and involved intensive discussions on those basic issues which are part and parcel to an understanding of the role, function, and program direction of a special court for children and families.

Subsequently, on July 5 and 6, 1973, a mini-conference involving 38 persons was convened. A planning group took the recorded output of the major conference and developed a discussion format around which the mini-conference participants then proceeded to develop specific recommendations. The statement of *The Family Court: Its Goals and Role* was developed, to a large degree, from the group reports and recommendations of the mini-conference, which are included herein.

III. PROBLEMS AND ISSUES

A. Major Conference.

The major conference held at the Ilikai Hotel on November 30 and December 1, 1972, discussed the following:

- (1) Family Courts, Where We Stand: An Assessment of Current Practice.
- (2) Current Issues and New Directions.
- (3) The Family Court: Part of Total Government Effort and Responsibility in Youth Development.
- (4) State and Community Agencies and the Issues.

In order to facilitate discussions, the "problems and issues" given hereunder were developed and distributed as discussion material. It is reproduced herein in order to give an indication of the nature and scope of the deliberations. Although discussions were extensive, it was not possible to discuss every question; and there was no expectation that "answers" would necessarily be found for the questions. Rather, the aim was to evoke discussion and facilitate the exchange of ideas. There were numerous concerns, recommendations, questions and conclusions that emanated from the conference but these were not in any unified arrangement. Accordingly, these are not included herein.

1. COURT JURISDICTION.

Should the jurisdiction of the Family Court be narrowed; Expanded? Or remain the same? Are the courts assuming responsibilities beyond the control of the courts, particularly around problems related to child welfare, education, employment, and family counseling? Would probation and other social services be more effective if removed from the courts? Would institutional and after-care services now provided by the Department of Social Services and Housing be more effective if administered by the Judiciary? Should there be a distinct State agency for children and family services?

2. NON-CONFORMING CHILDREN.

Should the number of cases of minor misdeeds appearing before the court be reduced through referrals to non-court agencies which can perhaps handle them more effectively?

Should future Family Courts concentrate primarily on cases of children alleged to

have committed serious offenses, those who have continually repeated minor misbehavior, or those for whom past attempts at informal dispositions have failed?

3. DECRIMINALIZATION.

Should non-conformity and deviancy be re-evaluated in terms of societal expectations? Has society changed to such an extent that what was once considered unacceptable deviance may be tolerated today and in the future? Should there be a re-examination of "children's rights"?

4. DIVERTING YOUTH FROM JUSTICE SYSTEM.

Are current practices in diverting youth from the justice system (counsel and release by police and court workers) adequate? Is there a need for further diversion and establishment of a "Youth Services Bureau" advocated throughout the country? Is this the alternative to achieve necessary control and redirection without unnecessary stigma and damage to the child? Will the same label and stigma be merely transferred to such an agency? Will such an agency be more effective in reducing delinquency and misconduct?

Should there be special programming, over and above current efforts, to meet the needs of children who cannot cope with the traditional school? Should there be more efforts to meet the needs of "alienated youth," "drop-outs" and "non-conformists"?

Are there enough avenues for success of all children?

Should there be more avenues for success, or at least retention in the school system (whatever the nature of the student's handicap), so that he receives some education and socialization during pre-adult years? Should the different efforts at Kailua High School, Farrington High School, Stevenson Intermediate School, and others be developed on a specific statewide basis?Or, should "drop-outs," "non-conformists," and "alienated youth" be channeled to the courts for education and socialization?Or, should the Department of Social Services and Housing be designated as the agency to provide education and socialization for these children?

5. TREATMENT.

The "right to treatment" for both juveniles and adults is regarded as a constitutional right. Although currently confined to psychiatric treatment, will it develop as a legally enforceable right (for one in the Family Court process) to the services of a competent probation counselor with a reasonable caseload?

Should the court maintain an advocacy role? Should the court mandate agencies to provide specific types of services? Is this legally possible? Is it desirable?

Will there be increasing need for specialized foster homes for youths adjudicated as neglected, dependent, or delinquent? Will training of foster parents become a program necessity? Should the Department of Social Services and Housing be made responsible for providing this service while the courts retain the responsibility to determine and review the legal status? Should the major task of probation counselors of the future be more as liaisons (brokers) between the court and treatment facilities in the community and involve less responsibility for personally inducing change in offenders?

6. MARRIAGE COUNSELING, RECONCILIATION AND CHILD CUSTODY.

a. Attorneys handle only the legal issues relative to matrimonial actions and generally they do not address themselves to the social aspects of the situation. They do not refer their clients to social agencies and other helping agents and as a result the clients become further entangled in their problems which makes the problems more difficult to resolve.

Should attorneys who handle matrimonial cases be more involved in the social aspects of a case and be more knowledgeable regarding the availability of social services within the community?

What should be the role of the lawyer in a divorce case with children?

Should counsel be appointed for children? Should Family Court have an attorney of its own?

b. People are entering into marriage at an earlier age. A substantial number of these marriages end in divorce, because the young couples are ill-prepared to cope with the demands, responsibilities, and stresses of marriage.

Should the services be expanded to include pre-marital education and counseling programs?

Whose responsibility is it to prepare these people for marriage? Should family life courses be part of the school curriculum?

Should there be mandatory intervention by Family Court where children are involved in a divorce case? If there is mandatory counseling, should Family Court be handling the service or should it be referred out to existing agen-

cies? Should domestic relations cases be handled by a quasi-non-legal body?

- c. Family Court personnel are deeply involved in providing marital counseling and other services resulting from matrimonial actions. The Family Court counselors help married couples to resolve some of their problems, but often if and when they seek counseling, it is too late because the differences are irreconcilable. Should some other agency provide this service? What agency? Do we have competent marriage counseling services? Should they be licensed?

Should there be a clearinghouse or coordination of social services?

B. Mini-Conference.

The voluminous material that came out of the major conference was studied by a planning committee and a set of statements and questions was developed in order to sharply focus the task for the participants of the mini-conference.

The participants of the mini-conference were divided into three groups to discuss the following issues as they related to Family Court goals and directions:

1. PREVENTION.

In the final analysis, the most promising and, therefore, the most important method of dealing with delinquency and crime is by preventing it. Should the Family Courts be engaged in delinquency prevention efforts?

2. DIVERSION.

It has often been expounded that not all children referred to the court for alleged violations of law need to be handled by the court and that court intervention should be reserved for those situations where protection of the community dictates or where there is an indication that intervention by a court can be more productive in curbing unlawful behavior. Should the goal of the Family courts be in the direction of further diversion?

3. DETENTION.

Detention of children is based on the need for such due to (1) the requirement of protection of the child, (2) requirement of protection of the community, and (3) temporary hold is necessary pending court disposition. Should the goal of the Family Courts be in the direction of eventual elimination of Detention Homes as such with the provision of other alternatives such as specialized foster homes?

4. MINORS IN NEED OF SUPERVISION.

Should the goal of the Family Courts be in the direction of diverting all such cases to community agencies?

5. TREATMENT.

The problems related to delinquency require a variety of techniques and resources. No one institution, be it the school, police or courts, has complete responsibility, but each must work cooperatively in their efforts to educate, protect and rehabilitate the offender as they are mutually dependent on each other. Should the goal of the Family Courts be in the direction of concentrating on its adjudicatory role and shifting the provision of treatment of children to Executive department agencies and community agencies?

6. ADVOCACY AND LEADERSHIP ROLE.

- a. Should the courts assume an advocacy role for children within its jurisdiction by:
- (1) Using the power of the courts to mandate treatment, whenever necessary?
 - (2) Demanding that the best available treatment resource be sought for each case?
 - (3) Requiring planned monitoring re: the implementation and maintenance of the treatment plan?
 - (4) Seeking the creation of non-existent resources where suitable alternatives are unavailable?
- b. Should the courts assume an advocacy role for all children in the community in promoting broader understanding and change where health and general welfare of all youths are thwarted or infringed upon?
- c. Should the Family Courts take leadership in all problems relating to children and youth which require legislation?

7. MARRIAGE COUNSELING, RECONCILIATION AND CHILD CUSTODY.

- a. Should the Family Courts continue to provide social services (counseling, social investigation) in this area or should it confine its functions to only the adjudicatory processes?
- b. Should the Family Courts attempt to preserve marriages?

8. COMMITMENT TO INSTITUTIONS.

Should the goal of the Family Courts be in the direction of eliminating youth correctional institutions?

9. COUNCIL.

Should the courts exercise leadership and form coordinating council with respect to children's needs?

The groups were asked to address themselves primarily to the assigned questions and formulate recommendations in those areas. Following are summaries of each group's observations and recommendations:

GROUP I

Discussion Leader: The Honorable Alfred Laureta
Recorder: Kai Bong Chung
Reporter: Dr. Christopher E. Barthel, III
Assignment: Issues 6, 7, 9

The group felt very much in favor of developing a statement of goals. Directed planning, they felt, is necessary not only in order to avoid helter-skelter activity, but to enable the courts to devise sound means of implementing programs and concerns embodied in those goals.

Specifically, the group recommended the following:

Issue 6 - ADVOCACY AND LEADERSHIP ROLE.

Advocacy and leadership are very necessary goals of the Family Courts. Advocacy is a responsibility that can operate in two main areas--advocacy in a specific case, for a specific child; and advocacy in a general vein, relating to community-wide social needs, social planning and social issues. Advocacy may be court-originated, where the court may decide to move aggressively in regard to a particular case; or it may devolve upon the court as a consequence of the court's being looked upon as a resource, a potential advocate, by the community.

It is a wide-ranging goal that extends beyond the traditional role of the court and into, perhaps, the role of the parent. Nevertheless, it is necessary.

Issue 7 - MARRIAGE COUNSELING.

The goal of the Family Courts should be to bring about some kind of healthy resolution to marital conflicts. This may not necessarily mean the preservation of the marriage, although the courts may seek such conciliation as a preferred measure among many. Mandated conciliation, however, has proved rather ineffective, since once papers are filed in court it is usually too late to preserve the marriage. The courts should nevertheless provide counseling relating to pre-divorce and post-divorce situations, involving custody and visitation problems, support and other financial arrangements, etc.

Issue 9 - COUNCIL.

If the court is going to be actively involved in an advocacy and leadership role, as

recommended, obviously it would have to be involved in some way in the coordination of community agencies and resources to meet children's needs. A coordinating council seems to be part and parcel of what the Correctional Master Plan also recommends. However, the courts should not necessarily be the agency under which the council would operate. Therefore, Issue 9 should be amended to read that the Family Courts should exercise leadership to form the coordinating council, not necessarily **and** form.

Discussion On Other Issues.

The Family Courts should be engaged in the prevention of delinquency and particularly in the area of advocacy and in the area of coordinating with various agencies.

Further, diversion is a worthwhile goal to aim for. It would require monitoring, however, so that the court would, while sending juveniles to other agencies, continue to exercise responsibility in seeing that treatment services and handling procedures are followed. Not all such cases should be diverted, however, since some children would not benefit from such diversion. Therefore, diversion should be practiced in all **appropriate** cases.

There are youngsters who need protective, closed settings. For this reason, the courts will continue to need **detention homes**. Although such facilities may exist, alternative should also be established within the community. Different kinds of settings are needed to meet the needs of different kinds of kids who are currently being maintained under one big roof.

The courts should not shift the **treatment of children** to other agencies, if they are to concentrate on an adjudication function as defined in a narrow way. The concept of diverting youth to these agencies can be desirable only if the adjudication function is as broadly defined as by the November conference to include:

- (1) Fact-finding to determine whether the child comes within the court's jurisdiction.
- (2) Study and diagnosis in preparation of a plan of treatment to determine what will be done for the child and/or his family and by whom.
- (3) Monitoring to determine the continued appropriateness and effectiveness of the treatment plan.

It should not be the goal of the Family Courts to work for the elimination of **youth correctional facilities**, since there remains a need for some type of correctional setting for

youngsters. The Family Courts should, however, play a very active role in monitoring the cases it sends to those facilities. How are these youngsters getting along? What is happening to them? Are they receiving the proper treatment? Are they being helped by this treatment process? The youth facility should not necessarily be under the umbrella of the court, but the court should be aggressive in determining whether a child is being helped there, or whether other alternatives should be attempted. The court should move around a circle of alternatives and not employ linear solutions where the correctional facility is the end of the line.

GROUP II

Discussion Leader: The Honorable Barry J. Rubin
Recorder: August Markham
Assignment: Issues 1, 2, 4

The group decided that the nine issues under discussion required, in effect, a fundamental review and re-evaluation of the Family Court system in toto, primarily as expressed in the Family Court Act itself.

That Act (571) as outlined by the Legislature in 1966 states in its first section:

This chapter shall be liberally construed to the end that families whose unity or well-being is threatened shall be assisted and protected, and restored if possible, as secure units of law-abiding members; and that each child and minor coming within the jurisdiction of the court shall receive, preferably in his own home, the care, guidance, and control that will conduce to his welfare and the best interests of the State, and that when he is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which they should have given him.

Group II proposed to change the wording to:

“571-1. **Construction and Purpose of Chapter.** This chapter shall be liberally construed to the end that children and families whose rights and well-being are jeopardized shall be protected and secured in those rights through action by the court; that the court shall ensure the formulation of a plan adapted to the requirements of the child and his family and the necessary protection of the community, and (may) (shall), (whenever appropriate), utilize all State and community resources in its (formulation and) implementation. The court shall thereafter be responsible to determine the continued appropriateness of said plan and its implementation.”

This is essentially a re-statement of the adjudicatory junctions as defined originally by the November conference and referred to in Group I's report.

As to the specific questions regarding Family Court goals, the group was affirmative in many instances. The treatment of children was central to the discussion, although the group looked at the Family Court system in toto because of the concerns in marital situations the

court is responsible for as well. The group also felt that all of the community and State agencies concerned should operate in constant cooperation among themselves and with the courts in order to effectively carry out the responsibilities of the community to children and families.

Issue 1 - DELINQUENCY PREVENTION.

If the courts want to have as few offenders brought before them as possible, if the courts seek to work things out so that such offenders never come back again, then essentially the courts seek and are involved in delinquency prevention efforts. Oftentimes community agencies may come knocking at the court's door asking the court to be active in the case of a child who was not known to the police and, hopefully, will never become known to the police.

Issues 2 and 4 - DIVERSION.

There is a great deal of diversion going on right now. Whenever possible, the courts should seek to prevent children and families from becoming lodged within the court system. There are, however, many minors in need of supervision who should continue to come within the court's jurisdiction. Certain classes of children who might be denominated as incorrigible, runaway, etc., are deserving of protection.

GROUP III

Discussion Leader: The Honorable Nelson Doi

Recorder: The Honorable Patrick Yim

Assignment: Issues 3, 5, 8

The group formulated a set of statements comprising its recommendations in regard to the questions dealing with prevention, diversion, treatment, commitment to institutions, advocacy and leadership, and the coordinating council. In regard to marriage counseling, reconciliation and child study, the group's position was that the Family Courts should ensure the best interest of the child and his proper development in a marriage situation by using strategies such as mandatory conciliation services and counseling children of divorced parents.

The general statements formulated read:

- (1) The Family court shall adjudicate the child and shall be responsible for the treatment of the child.
- (2) The Family Court shall be given the authority to mandate treatment when necessary.
- (3) The Family Court shall be concerned and involved in the area of prevention.
- (4) The Family Court shall support the concept of responsible diversion, assuming the formulation of standards for diversion and adherence to constitutional requirements.
- (5) The Family Court recognizes that some children's needs necessitate the continuation of the detention home and the Hawaii Youth Correctional Facility.
- (6) The Family Court must develop a full spectrum of treatment alternatives.
- (7) The Family Court shall promote broader understanding and change where health and general welfare of all youths are thwarted or infringed upon by leadership or supportive efforts in this direction.
- (8) To assume the proper and effective implementation of these functions, a council, involving public and consenting private agencies, shall be created, first, to identify available services; second, to serve as a brokerage firm for

services; third, to develop alternative programs to fill gaps; fourth, to seek resources collectively; fifth, to coordinate efforts; and sixth, to conduct research.

IV. THE FAMILY COURT: ITS GOALS AND ROLE

The goal of the Family Court is the accommodation of the rights and needs of the child, parents, and the family unit. These goals can best be accomplished when

- (1) the court is responsible to insure treatment of the child;
- (2) the court has authority to mandate and monitor treatment when necessary;
- (3) the court insures the best interest of the child and the family unit in a marital conflict situation; and
- (4) the court under its jurisdiction can institute responsible diversion which satisfies appropriate standards that adhere to constitutional requirements.

But the court functions as a member of a concerned community and as such

- (1) shall be concerned and involved in the positive growth of children; and
- (2) shall promote greater understanding and improvements where the health and general welfare of children are handicapped, through leadership and supportive efforts that remove those handicaps and promote the development of children.

The court, to assure the proper and effective implementation of these goals, shall establish a council, involving public and consenting private agencies

- (1) to identify available services;
- (2) to serve as a broker for services;
- (3) to develop alternative programs;
- (4) to evaluate resources collectively;
- (5) to coordinate efforts; and
- (6) to conduct research.

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