

JUVENILE JUSTICE STUDY COMMITTEE

Report to the Legislative Council
and the Members of the
Second Session of the Sixty-sixth General Assembly
State of Iowa
1976

F I N A L R E P O R T

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House Concurrent Resolution 25, introduced during the 1975 Session of the Sixty-sixth General Assembly, requested that the Iowa Legislative Council create a study committee for the 1975 legislative interim to continue the study of the Iowa Juvenile Justice System which had been conducted during the 1974 legislative interim. The membership of the Study Committee is as follows:

Senator Minnette F. Doderer, Chairperson
Representative Thomas J. Higgins, Vice Chairperson
Senator Philip B. Hill
Senator E. Kevin Kelly
Senator Karl Nolan
Senator Bass Van Gilst
Representative Glen E. Bortell
Representative Julia Gentleman
Representative Emil J. Husak
Representative James W. Spradling

At its initial meeting the Study Committee agreed to concentrate its efforts on a thorough study of Chapter 232 of the Code and to consider legislation designed to enhance the quality of justice provided juveniles under the Iowa juvenile justice system. Also at its initial meeting the Study Committee decided to hold meetings at the State Training School for Boys, the State Training School for Girls and the State Juvenile Home for the purpose of eliciting the opinions of the students, staff, and administration relating to the effectiveness of the Iowa juvenile justice system and recommendations for change. The remainder of the Study Committee's meetings was devoted to an examination of the current provisions of Chapter 232 and discussions of proposals intended to improve the operation of the Iowa juvenile justice system. Professor Josephine Gittler of the University of Iowa College of Law, a noted authority in the juvenile justice field, assisted the Study Committee by identifying the issues to be resolved and by preparing memoranda for the Study Committee which set forth alternative methods of resolving the issues. During its deliberations the Study Committee identified and discussed the following general topics: jurisdiction of the juvenile court; police roles and powers within the juvenile justice system; detention and shelter care alternatives, juvenile court intake procedures (for the purposes of this Report the term intake shall mean the initial contact a juvenile has with juvenile authorities and the process by which the decision is made to file a petition with the court alleging that the child is delinquent or to provide services to the juvenile on an informal basis without an adjudication by the court), adjudication and disposition. As a result of this study the Study Committee makes the following legislative recommendations to the General Assembly:

1. The current definition of a child in need of assistance is so broadly written as to permit a juvenile court judge almost total discretion to set the criteria by which to adjudicate a juvenile as a child in need of assistance. The Study Committee recommends that the term "child in need of assistance" be more specifically defined in order to more precisely set forth the criteria by which a child may come under the jurisdiction of the juvenile court as a child in need of assistance.

2. When a juvenile comes in contact with a police officer, the officer makes an initial decision as to whether to refer a juvenile to the juvenile court, and when a juvenile is referred to the juvenile court an intake officer (probation officer) makes an initial decision as to whether to file a petition. These decisions substantially effect the juvenile's rights and subsequent treatment. Since the right to counsel is fundamental to preserving the rights of juveniles at these initial stages, the Committee recommends that the juvenile be afforded the right to counsel in connection with custodial questioning by a peace officer and questioning by an intake officer (probation officer) as well as in connection with all subsequent judicial proceedings (detention hearing, adjudicatory hearing and dispositional hearing).

3. The Study Committee recommends that a juvenile shall be informed of his/her rights prior to custodial questioning by a peace officer or questioning by an intake officer (probation officer) and if interrogated without the presence of legal counsel, any statement made by the juvenile shall be inadmissible as evidence in subsequent proceedings.

4. Currently the practice of informal probation (the practice of placing a juvenile under supervision without an adjudication) is widely used throughout the state of Iowa without clear statutory authority. The Study Committee recommends that the practice of informal probation be statutorily provided with the following procedural safeguards; the juvenile's participation in an informal probation agreement must be voluntary with the advice of his or her parent, guardian, or other responsible adult and legal counsel and if an informal probation agreement is entered into a petition alleging delinquency may not be filed against the juvenile arising out of the same transaction or occurrences which initially brought the juvenile to the attention of the authorities. The Committee further recommends that informal probation agreements not be effective for longer than a six-month period.

5. The Study Committee recommends that when a decision to file a petition alleging delinquency is made during the intake process, the decision to file the petition be reviewable by the county attorney. The Study Committee also recommends that, if during the intake process the decision is made not to file a petition alleging delinquency, such a decision is not reviewable by the county attorney. In addition the Study Committee recommends that the decision to file the petition be based on the legal sufficiency of the complaint filed against the juvenile, the

competency of the evidence used to support the complaint, and the best interests of the child and of the community.

6. When a juvenile is taken into custody and cannot be released to parents, guardian, or other suitable person, a decision must be made as to the type of facility in which the juvenile may be placed. The Committee recommends differentiating between placement in detention (secure or locked) facilities, and shelter (nonsecure or unlocked) facilities, and proposes specific criteria to be applied in determining the appropriate placement in each case. One such criterion is that only juveniles alleged to be delinquent may be held in a detention facility. The Committee recommends stringent criteria establishing when and under what conditions a child may be detained in jail. These criteria include: a) that no juvenile under 14 years of age may be detained in jail, and b) that juveniles must be detained in an area separate from adult prisoners.

7. Presently a juvenile accused of being delinquent and who cannot be returned to his or her home to await an adjudicatory hearing may be held in a detention facility by an ex parte order of the court. The Study Committee recommends that within forty-eight hours of the apprehension of the juvenile an adversary hearing be held to determine whether the child should remain in custody and, if the juvenile is to remain in custody, to determine whether that custody will be in a secure or nonsecure facility.

8. Currently the practice of plea bargaining exists within the juvenile justice system, but without specific statutory authority. The Study Committee recommends that the practice of plea bargaining be acknowledged with the following procedural safeguards for the juvenile: a) that the court determine that the juvenile entered into the plea bargaining agreement voluntarily and intelligently; b) that the court finds that the juvenile was effectively represented by legal counsel; c) that sufficient evidence exists to find the juvenile a delinquent at an adjudicatory hearing; d) and that the juvenile retains the right to withdraw from the plea bargaining agreement if he or she has not been afforded procedural safeguards, or if acceptance of the plea will work an injustice on the juvenile, or if the court rejects the terms of the agreement.

9. Presently a juvenile is adjudicated and a disposition of his or her case is made at the same hearing. The Study Committee recommends that the adjudication function and the disposition function be performed in separate hearings.

10. The Study Committee recommends that at the adjudicatory hearing the rules of evidence shall be the same as those which apply in the adult criminal court.

11. The Study Committee recommends that, if because of previous contact with the juvenile or the juvenile's case the juvenile court judge cannot render an unbiased decision and another unbiased

judge is unavailable, the juvenile may request and be granted a jury trial.

12. The Study Committee recommends that the preparation of a pre-disposition report may not be commenced prior to the adjudicatory hearing, without the consent of the juvenile and his or her counsel. In addition the Study Committee recommends that the social history file may not be presented to the juvenile court judge until the adjudication hearing is completed.

13. The Study Committee recommends that all juvenile court proceedings be closed to the general public, except that the judge in his or her discretion may admit persons who have a legitimate interest in the juvenile's case or the juvenile justice system. In addition the juvenile may request and be granted permission to permit specified members of the general public to be admitted to the proceedings.

14. The Study Committee recommends that the juvenile court may make one of the following dispositions of a child adjudicated as delinquent: placement in a secure facility, placement in a nonsecure facility, placement in foster care, released on conditional freedom (probation). In addition the Study Committee recommends the establishment of criteria designed to assist the judge in selecting the dispositional alternative most appropriate for the juvenile and which is least restrictive of the juvenile's rights.

15. Because the existence of records indicating a juvenile's contact with the juvenile justice system may stigmatize the juvenile in the future, the Committee recommends that official records involving juveniles be confidential and that nontestimonial identification of a juvenile (by such means as fingerprints) may not be taken except by ex parte court order. The Committee further recommends that arrest records of juveniles not be included in any information transmission system, that arrest records in cases where no adjudication takes place be expunged, and that all other arrest records be expunged after a reasonable length of time. The Committee recommends that juvenile court records be sealed following the adjudication and that they be released only in narrowly specified circumstances. The Committee further recommends that court records be expunged two years after the adjudication if no subsequent court contact has occurred.

A bill draft incorporating these recommendations will be presented to the next session of the General Assembly.