



# The Florida Senate

Issue Brief 2011-206

October 2010

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Committee on Children, Families, and Elder Affairs

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## CREATION OF A CHILDREN'S CODE

### Statement of the Issue

Florida laws relating to children are not only scattered throughout the statutes, but also contain provisions that are duplicative, inconsistent, conflicting, and unclear as they are applied to:

- Children who are abused, abandoned or neglected;
- Children who commit crimes, and children and families in need of services (CINS/FINS);
- Children in family court cases involving parental responsibility, time-sharing, and child support; and
- Children in civil and probate proceedings.

As a result, service provision and proceedings involving children and their families by both the social service system and the courts are often being delivered and conducted in a fragmented, inefficient, and ineffective manner. A number of states have created a children's code in an attempt to resolve ambiguities, reconcile conflicting laws, ensure that statutes accurately reflect settled case law, and provide a single code containing procedural and substantive laws affecting children.

### Discussion

#### History of Children's Codes

The notion of creating a "children's code" is not a recent one, with mentions of the term as early as 1913 in the literature.<sup>1</sup> Early efforts promoting a children's code were an attempt to create standardized laws relating to dependent children across the states:

... The governor of some State should be induced to call a conference of all the active workers for children within his commonwealth; it should represent all agencies, public and private, and all creeds, and should include citizens generally who are giving their lives to social service. Successful workers from other states should be invited to contribute from their experience, and when the sentiment of the conference has crystallized upon the best methods, a commission should be appointed of men who know, not only the law, but understand social needs as well, to draft a Children's Code...<sup>2</sup>

... Not a state in the union has a complete code of legislation covering the care, education and protection of children. While several model laws in specified fields of child-care have been framed and applied to many states successfully, they represent but a small fraction of the legislation necessary to work out a complete system. No national society has come forward with a program; no group of national societies has co-operated as yet to construct a definite system.

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<sup>1</sup> Clopper, E.N. (1921). The Development of the Children's Code, Annals of the American Academy of Political and Social Sciences. In 1915, the National Conference of Charities and Correction saw the creation of an organization to promote the concept of a children's code throughout the country – the National Committee for Standardizing Child Welfare Laws.

<sup>2</sup> Remarks by H.H. Shirer, Secretary, Board of the State Charities, Columbus, Ohio. Address before State Conference of Charities and Correction, Minneapolis, Minnesota, October 26, 1913. The Children's Code of Ohio. The Ohio Bulletin of Charities and Correction. Volume 20, number 1 Ohio Board of State Charities, Columbus, Ohio. Ohio State Reformatory Press.

Progress is haphazard and unsystematic. Within the same state, laws such as the child labor and compulsory education laws conflict directly with each other. One group of people puts through the legislature a bill for the salvation of certain children and another group puts through another, without reference to the conflicting machinery they create...<sup>3</sup>

A number of states, typically led by commissions or councils appointed by the governor, were successful in enacting a children's code.<sup>4</sup> In 1921, Edward Clopper, Field Secretary of the National Child Labor Committee, reported on the progress of states in developing children's codes, but also observed that they were most often limited to laws relating to child welfare and should be broader in scope:

...But the term "child welfare" has become more or less technical and among social workers nowadays it is applied to the care of the child handicapped by poverty, neglect, delinquency, or defect. In defining the powers and duties of children's code commissions, governors and legislatures have apparently had this common limitation in mind and the commissions have generally restricted their work accordingly. However, a children's code should be as comprehensive as its name...<sup>5</sup>

## Florida

The issue of creating a children's code in Florida was raised at least as early as 1991 by the Study Commission on Child Welfare (commission). The commission was established by the Florida legislature in November 1989, after several children died while in state care.<sup>6</sup> It reviewed state laws and programs relating to children, identified problems with the child welfare system, and made recommendations to help alleviate those problems.<sup>7</sup>

The commission found it problematic that laws affecting children are found in many separate chapters in Florida Statutes. The Report noted that this created confusion because some laws were repetitive or conflicting, a consequence of which was the fragmented treatment of the problems of children and their families.<sup>8</sup> As a result, the commission recommended that all Florida laws pertaining to children should be compiled into a comprehensive children's code or in chapters which focus on the needs of the family, rather than on the administrative needs of the agencies and institutions providing services.<sup>9</sup>

In 1994, following up on the recommendation of the commission, the House Aging and Human Services Committee prepared a proposal outlining an interim project to examine the feasibility of developing an integrated children's code:

A comprehensive, consistent, orderly, cohesive, single Children's Code pulled together out of the bits and pieces of laws affecting children scattered throughout numerous chapters in some 50 separate titles of the Florida Statutes would be a huge step toward solving these types of problems and toward shaping a clear agenda and statutory plan for Florida's children, with all parts of the machinery working together to accomplish the public policy goals in an internally consistent, harmonious, and accessible manner.<sup>10</sup>

<sup>3</sup> Remarks by Roger N. Baldwin, Secretary, Civic League, St. Louis, Mo. Official proceedings of the annual meeting, National Conference on Social Welfare. 1914. University of Michigan Library.

<sup>4</sup> Clopper, E.N. (1921). *The Development of the Children's Code*, *Annals of the American Academy of Political and Social Sciences*. Ohio enacted a children's code in 1913, followed by Minnesota in 1917 and Missouri in 1919.

<sup>5</sup> *Id.*

<sup>6</sup> The commission was created during a special session in November, 1989, and was directed to specifically review chapters 39, 63, 402, 409, and 425, F.S., relating to dependency, delinquency, adoption, the guardian ad litem program, child abuse and neglect, child care facilities, human services, and social and economic services. Chapter 89-546, L.O.F., The Bradley McGee Act.

<sup>7</sup> Report of the Study Commission on Child Welfare, Part One, Recommendations, March 1991. [Report]

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Florida House of Representatives. House Aging and Human Services Committee. Outline for Study Plan: *Children's Code*. August 16, 1994. On file with the Senate Committee on Children, Families, and Elder Affairs. It does not appear that the

The Florida Bar Commission on the Legal Needs of Children, appointed for a two-year term beginning July 1, 1999,<sup>11</sup> was established to identify the legal needs of children who appear in all divisions of the state court system in Florida, either as parties, victims, witnesses or defendants.<sup>12</sup> While the commission's final report did not list the creation of a children's code as a recommendation,<sup>13</sup> the interim report stated that the commission had enlisted researchers to document inconsistencies in statutes and rules of court covering all of the laws relating to children, with the ultimate goal of creating a consistent children's code, a children's law bench book, and proposing changes to inconsistent laws.<sup>14</sup>

## Louisiana

Louisiana appears to have the oldest and most consistently maintained state children's code. The Louisiana State University Law School assumed sponsorship of the Children's Code Project for the purpose of "constructing a comprehensive Children's Code out of the bits and pieces of laws affecting children which are scattered through eighty-nine separate titles and codes..."<sup>15</sup> Representatives were solicited from the courts and from every organization which was actively involved in legal proceedings affecting children or concerned about juvenile justice issues. It is believed that what made the Louisiana project so successful was the contribution not only of judges and lawyers, but also of state agency policymakers, social workers, sheriffs, teachers, administrators of private charitable organizations and institutions, and court clerks.<sup>16</sup>

The project committee began its work in 1986, and the first Louisiana Children's Code was enacted by the Louisiana legislature in 1991.<sup>17</sup> Four goals guided the work of the project committee:

- To gather together all of the laws affecting the exercise of juvenile court jurisdiction;
- To resolve ambiguity and to reconcile often conflicting laws in order to insure that all parts of the juvenile justice system work efficiently together;
- To ensure that the statutory law accurately reflected settled jurisprudence, especially constitutional mandates; and
- To write a true code – an internally consistent, harmonious set of substantive principles and procedures that would enable any reader to discover the requirements for any proceeding within the juvenile court's jurisdiction.<sup>18</sup>

Since many professionals who are not lawyers must be able to work with laws relating to children, the project committee attempted to make the language of the code as clear and comprehensible and self-contained as possible.

For example, "permanency planning" hearings, as they are known to child welfare professionals, are labeled as such in the children's code. The project committee determined "that term needs to become part of the common vocabulary of both the social work and the legal professions."

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interim project was completed.

<sup>11</sup> The commission was subsequently extended for an additional one year term through July, 2002.

<sup>12</sup> The Florida Bar. Commission on the Legal Needs of Children. Available at: <http://www.floridabar.org/tfb/TFBComm.nsf/840090c16eedaf0085256b61000928dc/3ed599427239920385256ee70064e689!OpenDocument>. (Last visited: July 23, 2010).

<sup>13</sup> The Florida Bar. The Commission on the Legal Needs of Children. Final Report. June 2002.

<sup>14</sup> The Florida Bar. The Commission on the Legal Needs of Children. Interim Report. March 2001. Researchers were from Gator TeamChild at the University of Florida Levin College of Law.

<sup>15</sup> McGough, L.S., Coordinator, Louisiana Children's Code Project. *The Drafting of the Children's Code*. Louisiana Children's Code Handbook. West Louisiana Deskbook Series.

<sup>16</sup> *Id.*

<sup>17</sup> See Acts 1991, No. 235.

<sup>18</sup> McGough, L.S., Coordinator, Louisiana Children's Code Project. *The Drafting of the Children's Code*. Louisiana Children's Code Handbook. West Louisiana Deskbook Series.

The project committee deliberately decided against including reform as a goal. It concluded that its most important contribution was to collect and synchronize existing laws so that the underlying policies could be discerned. “Until we can see the shape of current policies, we cannot begin to dream new shapes which might better advance those policies.”<sup>19,20</sup> The legislation enacting the children’s code also provided that the Louisiana State Law Institute<sup>21</sup> would direct and supervise the continuous revision, clarification, and coordination of the Children’s Code. The Law Institute was also directed to prepare comments and explanatory notes to the provisions of the code.<sup>22</sup>

### **Implications for Policy and Practice**

A comprehensive children’s code such as the Louisiana Children’s Code appears to have the potential of resolving many of the issues that exist in Florida relating to inconsistencies and conflicts in sections of the law that pertain to children. The legislature may wish to explore ways that Florida might begin to develop a children’s code similar to the one in Louisiana, but specific to the circumstances that currently exist in Florida.

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<sup>19</sup> McGough, L.S., Coordinator, Louisiana Children’s Code Project. *The Drafting of the Children’s Code*. Louisiana Children’s Code Handbook. West Louisiana Deskbook Series.

<sup>20</sup> In contrast, Georgia, took an opposite approach with its “juvenile code.” At the direction of the 2005 General Assembly, Georgia drafted a Proposed Model Code (PMC), which is a research and evidence-based best practices model of juvenile law. The March 2008 PMC, which represents a comprehensive revision of the then current juvenile code, was guided by three overarching themes: develop a new organizational structure, maintain stylistic consistency throughout, and incorporate substantive revisions that reflect best practices. It has not yet been enacted.

<sup>21</sup> The Louisiana State Law Institute was established in 1938 and designated as the official law revision commission, law reform agency, and legal research agency of Louisiana. Its general purposes were to promote and encourage the clarification and simplification of the law of Louisiana, and better adapt the law to present social needs; to secure better administration of justice; and to carry out scholarly research and scientific work.

<sup>22</sup> Conversation with Lucy McGough, Project Coordinator, Louisiana Children’s Code Project (1986 – present.) September 28, 2010.