



Resolution

The Ohio Judicial Conference, an independent statutory entity in the judicial branch of government, is the voice of Ohio judges on matters pertaining to the administration of justice.

Resolution to Support Optional Juvenile Court Participation as a Title IV-E placing Agency

Prepared by
Ohio Judicial Conference Juvenile Law and Procedure Committee

Approved by
Ohio Judicial Conference Executive Committee

November 17, 2006

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- the chairs of all Judicial Conference committees;
- the presiding officers and presiding officers elect of Ohio's judicial associations;
- the Administrative Director of the Ohio Supreme Court.

The Ohio Judicial Conference Executive Committee resolves that optional Juvenile Court participation as a Title IV-E placing agency is consistent with the traditional role of the juvenile court, is supported by the law of the state, and is consistent with the ethical standards embodied in the Judicial Canons. The Judicial Conference also recognizes the emerging role of specialized courts in the proper administration of justice in Ohio and is working diligently with other interested parties to determine the parameters of the changing role of judges in Ohio. This Resolution is supported by the attached analysis.

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Court Participation in Title IV-E

OJC Juvenile Law & Procedure Committee, November 2006

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Summary Statement:

It is the position of the subcommittee of the Ohio Judicial Conference, Juvenile Law and Procedure Committee that court participation in Title IV-E supports the law and the administration of justice. First, the participation does not raise separation of powers concerns. Additionally, the special nature of the juvenile court allows for and requires the judge to be more than simply an arbiter of facts. Also, the participation is specifically provided for by statute. Finally, the participation is consistent with the standards of ethics and professionalism contained in the Code of Judicial Conduct.

Background of Title IV-E:

Under the federal Title IV-E program, states can be reimbursed for eligible foster-care placements and for administrative expenses.¹ Primarily, Title IV-E money is used to reimburse Public Children's Services Agencies for placement of abused and neglected children. However, juvenile courts may also be reimbursed with Title IV-E funds for placements they make of otherwise eligible unruly and delinquent juveniles. The placement facility must be eligible. Facilities which are "operated primarily for the detention of children who are determined to be delinquent" are not eligible.² The children must also be eligible by meeting federal AFDC financial need standards.³

To be reimbursed, the court must enter into a contract with the Ohio Department of Job and Family Services (ODJFS), the single state agency in charge of administering Title IV-E funds, so that they assume responsibility for the placement and care of adjudicated unruly and delinquent children. Certain judicial determinations must be made by the Court as a federal requirement, regardless if it is children's services or the juvenile court that is making the placement. Under IV-E the court must make findings indicating that remaining in the home is "contrary to the welfare of the child" i.e. not in the child's best interest, that "reasonable efforts" to prevent removal were undertaken, and that reasonable efforts were undertaken to finalize a permanency plan.⁴

A concern was raised over whether this structure violates the separation of powers doctrine inherent in the Ohio Constitution or whether it causes violation of the Ohio Canons of Judicial Conduct; we assert for the following reasons that it does not.

- I. The protection of separation of powers was intended to apply to ensure that one branch does not have overruling influence over another, not to prohibit inter-branch collaboration in the administration of justice.**

¹ See Title IV-E of the 1980 "Social Security Act," 42 U.S.C. § 670 (2002).

² 42 U.S.C. 672(b) (2002).

³ 42 U.S.C. 672(b) (2002).

⁴ 42 U.S.C. 672(b) (2002); 45 CFR 1356.21. (2005).

The separation of powers doctrine inherent in Constitution of the United States and of the State of Ohio does not require complete separation of the functions of each branch. In 1974 in *U.S. v. Nixon* the United States Supreme Court put it this way:

In designing the structure of our Government and dividing and allocating the sovereign power among three co-equal branches, the Framers of the Constitution sought to provide a comprehensive system, but the separate powers were not intended to operate with absolute independence.⁵

The United States Supreme Court further clarified the doctrine three years later stating that in determining whether the proper balance exists between coordinate branches, the inquiry should focus on the extent to which the coordination prevents a branch “from accomplishing its constitutionally assigned functions.”⁶ The Ohio Supreme Court also has summed up the separation of powers doctrine stating that:

The essential principle underlying the policy of the division of powers of government into three departments is that powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments, and further that none of them ought to possess directly or indirectly an overruling influence over the others.⁷

Thus, in determining whether a statute or practice violates separation of powers, appropriate questions to ask are whether the practice (1) prevents another branch from performing its constitutional functions or (2) whether it causes an overruling influence over the other branches. It is not enough that a court may perform an activity which another branch properly may perform.

Applying the law to the facts of this case, the constitutional function of courts as adjudicators is not impeded by incidental administrative activities such as providing for the placement of children. Nor is the fact that the court has entered into a contract with an executive agency for reimbursement to be considered an overruling influence. The Department of Job and Family Services handles the administration of reimbursement with federal funds but not the administration of the court. The actions of Job and Family Services are analogous to an audit.

The question remains who decides whether these actions violate separation of powers. Many courts are caught in a state of limbo because whether or not the juvenile court may act as placing agency has not gotten a stamp of approval. We assert that this affirmative decision of constitutionality is not practical or necessary. Every statute is presumed to be constitutional unless ruled otherwise in an action brought by a party with proper standing. The court system does not have to formally confirm the constitutionality of the Title IV-E program before participating. If such an action were brought, we conclude that applying the facts to the standards established by the Supreme Court would result in a determination of constitutionality.

The court in its position of reverence and respect for the law and the Constitution undertakes only those activities and functions which promote the administration of justice. Juvenile Courts

⁵ *United States v. Nixon*, 418 U.S. 683, 707 (1974).

⁶ *Nixon v. Adm'r of General Servs.*, 433 U.S. 425, 449 (1977).

⁷ *State ex rel. Bryant v. Akron Metro. Park Dist.*, 166 N.E. 407, 410, (1929) as cited in *Bray v. Russell*, 729 N.E.2d 132, 134 (2000).

participating in Title IV-E are doing so as part of the administration of justice. In an opinion rendered by the Butler County Prosecuting Attorney on the subject of court's participation in Title IV-E, it was concluded that the juvenile court must determine whether the practice affects "the performance of the court's judicial functions, authority, and/or independence."⁸ The Butler County Prosecutor cited specifically to the Ohio Attorney General's opinion 2004-003, which stated that the judicial branch is the determiner of separation of powers violations.⁹

II. Because the Juvenile Court serves the special needs of children, its structure is flexible, historically and out of necessity.

Historically, the juvenile court emerged as the first specialized court to care for the particular needs of children. The adult court system which was focused on punishment did not fit children, ignoring the duty that government owes them. Under the historical doctrine of *parens patriae* the government acts as parent of those unable to care for themselves. The juvenile court has its roots in this doctrine which made the English courts of chancery responsible for the protection of infants.¹⁰ In modern law and in Ohio the power of *parens patriae* exists in the legislature which has statutorily delegated this power to protect children to the juvenile court.

The Supreme Court of Ohio has affirmed the Juvenile Court's role as *parens patriae*, giving the juvenile court a broad scope of authority. This doctrine calls for the juvenile court to be more than just an adjudicatory body but also a "wise and kindly parent."¹¹ In a 1938 case, *In Re Heist* the court stated "the juvenile court is wholly beneficent in its purpose. Its objective is to redeem and save erring children and youth."¹² In 2000, Justice Lundberg Stratton writing for the Supreme Court of Ohio summed up the doctrine:

The juvenile justice system is grounded in the legal doctrine of *parens patriae*, meaning that the state has the power to act as a provider of protection to those unable to care for themselves. *In re T.R.* (1990), 52 Ohio St. 3d 6, 15, 556 N.E.2d 439, 448; Black's Law Dictionary (7 Ed.1999) 1137. Since its origin, the juvenile justice system has emphasized individual assessment, the best interest of the child, treatment, and rehabilitation, with a goal of reintegrating juveniles back into society.¹³

The determinations made by the courts—what services are appropriate to meet the needs of children and the environments they reside in, whether it serves the best interest of children to place them outside their homes—which now may yield IV-E funding are the same determinations the courts have been making for over a century.

The structure of the juvenile court also is flexible because of its purpose. The Ohio Revised Code § 2152.01 states that the overriding purposes for juvenile delinquency dispositions "are to provide for the care, protection, and mental and physical development of children..." Thus, it is the court's role not just to make the judicial determination but to care for and do what is best for the child.

⁸ July 25, 2006, letter from Butler County Assistant Prosecuting Attorney, Roger L. Sorey to Robert G. Clevenger, Director of the Butler County Juvenile Justice Center.

⁹ OAG 2004-003.

¹⁰ *In re T.R.*, 52 Ohio St. 3d 6 (1990).

¹¹ Young, A Synopsis of Ohio Juvenile Court Law, 31 Cin. L. Rev. 131, 136 (1962).

¹² *In Re Heist*, 11 Ohio Op. 537 (1938).

¹³ *State v. Hanning*, 89 Ohio St. 3d 86, 88 (2000).

The structure of the juvenile court allows for other functions which are not strictly judicial. For instance, under Juvenile Rule 9, the juvenile court is responsible for intake, under R.C. § 2151.12, the juvenile judge acts a clerk, under R.C. § 2151.14 the probation department is supervised by the juvenile judge, under R.C. § 2152.41 and 2152.42 the juvenile court may operate a detention facility, and under R.C. § 2151.65 the juvenile court may operate a residential facility.

The structure of the Title IV-E program has parallels in the juvenile court system and in programs in other courts. For instance, under RECLAIM Ohio, the court receives money from the Department of Youth Services (DYS) to address the needs of juvenile offenders who are most at-risk of being permanently committed to DHS. Additionally, the reimbursement structure of Title IV-E is similar to Title IV-D, which provides funding to courts involved in the establishment and enforcement of child support orders and for parentage. In the case of Ohio drug courts, treatment services are integrated with justice system case processing; the judge is the leader of a team of people including probation officers and treatment professionals. Many specialty courts persist throughout the adult justice system. It is clear by the pervasiveness of this type of integration throughout the justice system that a widespread assumption of its constitutionality exists.

Because the purpose of the juvenile court is to serve the needs of children in administering justice, the structure currently allows for and must continue to allow for flexibility. In fact, activities which support the broad role of the juvenile court are urged. The National Center for Juvenile Justice (NCJJ) states that the first key principal of a juvenile delinquency court of excellence is engaging in judicial leadership and encouraging “system collaboration” in the Juvenile Delinquency Guidelines, approved by the Officers and Trustees of the National Council of Juvenile and Family Court Judges in March of 2005. The second principle is for the court to have a role in finding as many services for children as possible. “The juvenile court is one of the few places in society where the needs of children are paramount...the juvenile judge’s role should include “leading the community in responding to the needs of its children.”¹⁴

III. Juvenile Court participation in the federal Title IV-E program is authorized by federal and state law.

Ohio statutory authority, while not determinative on whether Juvenile Court participation in the federal Title IV-E program violates separation of powers or the Code of Judicial Conduct, offers substantial persuasive authority of its permissibility. Legislative enactments enjoy a presumption of constitutionality.¹⁵ The Supreme Court reiterated in its 1996 *Van Der Veer* decision that it “must, to the extent reasonably possible, construe a statute so as to uphold a challenged statute if at all possible.”¹⁶ Further, the Ohio Constitution § 4.18 states that the courts shall “have and exercise such power and jurisdiction, at chambers, or otherwise, as may be directed by law.”

The Ohio Revised Code specifically allows the Juvenile Court to enter into agreements with the Department of Job and Family Services (ODJFS):

¹⁴ Cindy S. Lederman, *Juvenile Justice*, Volume VI, No. 2, (December 1999).

¹⁵ *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142, 128 N.E.2d 59, paragraph one of the syllabus (1955); *Doyle v. Ohio Bur. of Motor Vehicles*, 51 Ohio St. 3d 46, 554 N.E.2d 97 (1990).

¹⁶ *Van Der Veer v. Ohio Dept. of Transp.* (1996), 113 Ohio App. 3d 60, 64, 680 N.E.2d 230.

For the purpose of reimbursing the court for foster care maintenance costs and associated administrative and training costs incurred on behalf of a child eligible for payments under Title IV-E... and who is in the temporary or permanent custody of the court or subject to a disposition... The agreement shall govern the responsibilities and duties the court shall perform in providing services to the child.¹⁷

The Administrative Code further specifies this relationship. The Juvenile Court and the Board of County Commissioners:

May enter into a subgrant agreement with ODJFS to administer Title IV-E of the Social Security Act, which allows the juvenile court to assume full responsibility for the placement and care of adjudicated unruly and delinquent children. The subgrant agreement enables these courts to receive Title IV-E reimbursement for allowable foster care maintenance (FCM), administration, and training costs as outlined in this rule.¹⁸

This Intergovernmental Agreement (IGA), which all courts must enter into with ODJFS, delineates the roles, but neither the agency nor the court is contracting away their traditional functions. This intergovernmental agreement must be executed because to obtain federal financial participation (FFP), the funds must be collected through a single-state agency, which in Ohio is ODJFS. Additionally, the Office of the Butler County Prosecutor finds no “pro se constitutional prohibition against such a contract”¹⁹ and cites to the specific statutory authorization in Revised Code § 2151.152.

Furthermore, the practice of Ohio Juvenile Courts contracting with other agencies or entities for services of children on probation is established by the Ohio Revised Code. The Juvenile judge “may contract with any agency, association, or organization, which may be of a public or private, or profit or nonprofit nature, or with any individual for the provision of supervisory or other services to children placed on probation who are under the custody and supervision of the juvenile court.”²⁰

Under the principles of statutory interpretation grounded in separation of powers, statutes are presumed to be constitutional. In this case the state legislature has specifically authorized the juvenile court to do exactly what they are doing.

IV. Juvenile Court participation in the federal Title IV-E program is consistent with the Code of Judicial Conduct and supports its role in the administration of justice

A concern was also raised that the Title IV-E structure may cause violation of the judicial canons, presumably Canon 3 and related impartiality provisions in Canon 2A and 4A. Canon 3 states that “A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.” Under Canon 3(A) a judge’s judicial duties include “all the duties of office prescribed by law.” Canon 3(E)(1) states that a judge shall disqualify himself or herself in a proceeding in which “the judge’s impartiality might reasonably be questioned.”

¹⁷ R.C. § 2151.152.

¹⁸ O.A.C. § 5101:9-7-08(A).

¹⁹ July 25, 2006, letter from Butler County Assistant Prosecuting Attorney, Roger L. Sorey to Robert G. Clevenger, Director of the Butler County Juvenile Justice Center.

²⁰ R.C. § 2151.151(A).

Canon 2A permits judges to engage in activities that improve the law “provided those activities do not cast doubt on the judge’s capacity to act impartially as a judge, demean the judicial office, or interfere with the proper performance of judicial duties.” Canon 4A concerns positions of influence and states that:

A judge shall not allow family, social, political, or other relationships to influence the judge’s judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others and shall not convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

Given the extra-judicial functions of the Juvenile Courts, participation in the Title IV-E program does not taint the impartiality of the Judge. According to their preamble, the Judicial Canons are to be applied consistent with Constitutional requirements, statutes, other Court rules and decisional law, and in the context of all relevant circumstances. It is not a conflict of interest simply because the Court considers outcomes for a child that are based upon staff input and/or result in engaging the child in programs operated by the Court. Grounded in the doctrine of *parens patriae*, this is the unique nature of the juvenile court. The recent arrival of the IV-E program has not changed the courts’ long-standing obligation to keep families intact and remove children from home only when necessary. Further, it is important to note that, if the court makes an out-of-home placement, IV-E only provides partial reimbursement; there is little financial incentive to order such a placement.

Since their inception one-hundred years ago, the juvenile courts in Ohio have been given broad authority to protect the best interests of children. The options available to reach that outcome have always included services and programs operated by the court. For decades before Title IV-E came into existence, the court has been making judicial determinations based upon statements made by its staff and/or the treatment characteristics of its own programs to fulfill the proposes of Chapters 2151 and 2152 of the Ohio Revised Code. In many counties, the only services available to meet the needs of children are those provided by the court. In view of the construction given to the Judicial Canons, the broad authority granted to the juvenile court dispels the implication of any conflict of interest arising from Canon 3.

Conclusion:

It is the position of the juvenile judges of Ohio, in light of the preceding arguments that optional juvenile court participation as a Title IV-E placing agency is supported by law and consistent with the ethical standards embodied in the Judicial Canons.