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OPINION	:	No. 79-705
	:	
of	:	October 30, 1979
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SUBJECT: COUNTY WELFARE DEPARTMENT REPORTS—The file and report prepared by the county welfare department to the juvenile court regarding dependency proceedings may be inspected by counsel representing parent or guardian.

The Honorable Herb Jackson, District Attorney of Sacramento County, has requested an opinion on the following question:

1. Is the report to the juvenile court prepared by the county welfare department in dependency proceedings under Welfare and Institutions Code section 300 confidential, or may it be copied and distributed to the prosecuting and defense attorneys connected with the companion case wherein charges are pending against a parent or guardian in adult court?

2. Is the file prepared by the county welfare department in its investigation of dependency matters under Welfare and Institutions Code section 300 confidential, or may the prosecuting and defense attorneys obtain access to any interviews, reports, and observations which may be relevant to the prosecution of a parent or guardian in a factually connected prosecution in adult court?

CONCLUSIONS

1. Reports prepared by the county welfare department in dependency proceedings under Welfare and Institutions Code section 300 may, pursuant to Welfare and Institutions Code section 827, be inspected by counsel representing the parent or guardian in the dependency proceedings. They may be inspected by the district attorney where he is representing the minor in the dependency proceedings or where he obtains an order of the juvenile court permitting inspection. Copies of the social study prepared for the disposition hearing in dependency proceedings are furnished to the parties before the disposition hearing. Copies of the social study are not otherwise available for distribution.

2. Any document made available to a welfare department social worker in making his report, which is thereafter retained by the department, may be inspected pursuant to Welfare and Institutions Code section 827, by counsel representing the parent or guardian in the dependency proceedings. The district attorney may inspect such documents if he is representing the minor or if he obtains an order of the juvenile court permitting such inspection.

ANALYSIS

Welfare and Institutions Code section 300¹ provides:

“Any person under the age of 18 years who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge such person to be a dependent child of the court:

“(a) Who is in need of proper and effective parental care or control and has no parent or guardian, or has no parent or guardian willing to exercise or capable of exercising such care or control, or has no parent or guardian actually exercising such care or control. . . .

“(b) Who is destitute, or who is not provided with the necessities of life, or who is not provided with a home or suitable place of abode.

“(c) Who is physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality.

“(d) Whose home is an unfit place for him by reason of neglect, cruelty, depravity or physical abuse of either of his parents, or of his guardian

¹ Unless otherwise indicated, all section references are to the Welfare and Institutions Code.

or other person in whose custody or care he is.”

The county probation officer investigates to determine if dependency proceedings should be commenced. (§ 328.) When a minor is declared by the juvenile court to be a dependent child, the probation officer prepares a report, called a social study, on the question of the child’s placement. (§§ 280, 281, 356, 358.) The duties of the probation officer concerning dependent children may be delegated to the county welfare department. (§ 272; Cal. Rules of Court, rule 1302, subd. 7*)²

The present inquiry asks whether the prosecuting and defense attorneys involved in a criminal case against a parent or guardian for abuse or neglect, which arose from the same facts as the dependency case in juvenile court, may obtain copies of the social study and have access to the welfare department’s investigatory file containing reports, interviews, and observations.

With regard to juvenile court records, section 827 provides:

“Except as provided in Section 828, a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in any such case or made available to the probation officer in making his report, or to the judge, referee or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer, may be inspected only by court personnel, the minor who is the subject of the proceeding, his parents or guardian, the attorneys for such parties, and such other persons as may be designated by court order of the judge of the juvenile court upon filing a petition therefor.”³

² Section 272 states in part:

“The board of supervisors may delegate to the county welfare department all or part of the duties of the probation officer”

“Rule 1302, subdivision 7, provides:

“(7) ‘Probation officer,’ in section 300 proceedings, shall include any social worker in the county agency designated by the board of supervisors as responsible for the administration of public social services, when that agency is delegated duties concerning dependent children by the board of supervisors;”

³ Section 828 provides:

“Except as provided in sections 389 and 781 of the code or 1203.45 of the Penal Code, [record sealing provisions] any information gathered by a law enforcement agency relating to the taking of a minor into custody may be disclosed to another law enforcement agency, or to any person or agency which has a legitimate need for the information for purposes of official disposition of a case. When the disposition of a

Section 827 establishes the confidentiality of juvenile court records held by the court and the probation officer. It permits the inspection of some records by the parties to the juvenile court case and vests in the juvenile court the discretion to determine the extent to which records of a particular juvenile case may be inspected by third parties. (See *T.N.G. v. Superior Court* (1971) 4 Cal. 3d 767, 778, 780–78 1.) The court’s decision whether to permit inspection by third parties is governed by the best interests of the minor. (*T.N.G. v. Superior Court, supra*, 4 Cal. 3d at p. 781.)

Although section 827 does not expressly address itself to welfare department reports and documents, reading the section in conjunction with section 272 leads us to conclude that welfare department records and reports in dependency matters would be subject to the confidentiality provisions of section 827 where the welfare department performs the probation officer’s duties.

Section 827 permits limited inspection of reports and “all other documents made available to the probation officer in making his report” which he thereafter retains. The social study, as a report on appropriate disposition, would be covered by the provisions of section 827 and would thus be available for inspection as permitted by section 827. Documents retained in the welfare department’s file in a particular case, which were available to the welfare officer in making his report, would similarly be open to inspection as provided in section 827.

Pursuant to section 827, counsel for the parent or guardian may inspect the records specified in that section. Thus, an attorney representing the parent or guardian in the dependency proceeding could inspect welfare department reports such as the social study and parts of the department file falling within the ambit of section 827. On the other hand, another attorney representing the parent in a criminal proceeding would not have a right to inspect such records under section 827 unless the attorney obtained an order of the juvenile court permitting inspection.

The district attorney is not expressly permitted to inspect records under section 827. Pursuant to section 351, however, the district attorney may be permitted to represent the minor in a dependency matter in the interests of the state when a criminal case against the parent or guardian based on the same facts is pending. Section 351 provides:

“In a juvenile court hearing, where the minor who is the subject of the hearing is represented by counsel, the district attorney shall, with the consent or at the request of the juvenile court judge, appear and participate in the hearing to assist in the ascertaining and presenting of the evidence. *Where*

taking into custody is available, it must be included with any information disclosed.”

the petition in a juvenile court proceeding alleges that a minor is a person described in subdivision (a), (b), or (d) of Section 300, and either of the parents, or the guardian, or other person having care or custody of the minor, or who resides in the home of the minor, is charged in a pending criminal prosecution based upon unlawful acts committed against the minor, the district attorney shall, with the consent or at the request of the juvenile court judge, represent the minor in the interest of the state at the juvenile court proceeding. The terms and conditions of such representation shall be with the consent or approval of the judge of the juvenile court.” (Emphasis added.) (See also Cal. Rules of Court, rule 1311, subd. (d).)

As counsel for the minor under section 351, the district attorney would, pursuant to section 827, be permitted to inspect reports and documents as provided by section 827. Section 351 does not, however, provide that the district attorney will represent the minor in all cases. He does so in the interest of the state, at the request of, or with the consent of, the juvenile court judge. If the district attorney does not represent the minor in the dependency action, he may not inspect reports and documents without an order of the juvenile court permitting such inspection.

Section 828 (see fn. 3, *supra*), authorizes the disclosure of “any information gathered by a law enforcement agency relating to the taking of a minor into custody” to another law enforcement agency which has a legitimate need for the information for purposes of official disposition of a case. The district attorney under the facts recited in the questions presented would be entitled to such information under section 828. But the information described in section 828 does not include the documents referred to in section 827. Thus, section 828 does not authorize the district attorney to inspect the records referred to in section 827.

With regard to the distribution of copies of the social study, rule 1376, subdivision (b), of the California Rules of Court provides that copies of the social study must be furnished to the parties before the disposition hearing in the dependency matter.

Rule 1376, subdivision (b), provides:

“Prior to every disposition hearing, the probation officer or social worker shall prepare a social study of the minor, which shall contain those matters relevant to a proper disposition of the case and a recommendation for the disposition of the case. If a recommendation is made to remove the minor from the home, the probation officer or social worker shall also include in the social study a recommended plan for reuniting the minor with the family. The social study shall be furnished to all parties at least 48 hours prior to the

commencement of the disposition hearing by depositing copies with the clerk. A continuance of 48 hours shall be granted upon request of any minor, parent or guardian who has not been furnished the social study in accordance with this rule.”

We find no statute or rule otherwise permitting the distribution of copies of the social study. Section 827 specifically provides only for inspection of reports. We conclude the right to inspect reports as provided for in section 827 does not include the right to receive copies of the social study. As the Supreme Court recognized in *T.N.G. v. Superior Court*, *supra*, 4 Cal. 3d at pages 779–781, the Legislature has, in the Juvenile Court Law, clearly demonstrated the intent to keep juvenile proceedings and records connected with such proceedings confidential (See §§ 345, 346, 389.) Exceptions to the confidentiality of dependency proceedings and juvenile records have been provided for by statute and rule. (§§ 346, 827; rule 1367.) Absent a statute or rule permitting the distribution of copies of the social study other than to the parties at the time of the disposition hearing in juvenile court, we conclude distribution of copies to the attorneys involved in an adult proceeding against the parent or guardian is not authorized.
