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A PROPOSED JUVENILE COURT ACT FOR FLORIDA

ROGER J. WAYBRIGHT

While juvenile courts are only a little more than a half-century old, they did not spring full-grown and full-armed from the brow of Jove, as did Minerva. Their basic principles are directly derived from the common law of England, and are rooted in antiquity.

Juvenile courts are an evolutionary development in, rather than a revolutionary departure from, legal theory.

DERIVATION OF JUVENILE COURT JURISDICTION

The jurisdiction over minors common to juvenile courts today was exercised before legal history began to be recorded in any consistent way,[1] and the earliest precedents form a part of our legal folklore. As early as feudal times in England the Crown, through the *inquisitio post mortem*, supervised the estates of minors in order to realize the fruits of tenure and of livery to the overlord.

In the stirring, earthy time of Henry VIII of the many wives, when it must have seemed to him that the business of being a king was too complex for one man to handle, he delegated the prosaic function of supervising minors' estates by establishing a Court of Wards and Liveries.[2] That court lasted until 1660, when, the feudal system having run its course, this jurisdiction was transferred to the court of chancery. Through it the King, in his capacity of *parens patriae* (father of his country) as we are told by Blackstone,[3] assumed the general protection not only of those infants who were his tenants, but also of all infants in his kingdom, the chancellor of the court being regarded as the keeper of the King's conscience.[4]

In this evolutionary fashion, the doctrine developed in English law that the state is charged with the duties of care, protection, discipline, and reform of those citizens peculiarly in need of its fatherly supervision, whether dependents, lunatics, minors, or criminals. This jurisdiction of English courts of equity over minors, so firmly estab-

[1] See, *e.g.*, the opinion of Lord Redesdale in Wellesley v. Wellesley, 2 Bli. N.S. 124, 4 Eng. Rep. 1078 (H.L. 1828).

[2] 33 HEN. VIII, c. 22 (1541).

[3] 3 BL. COMM. **426, 427.

[4] *In re* Spence, 2 Ph. 247, 41 Eng. Rep. 937 (Ch. 1847); Eyre v. Shaftsbury, 2 P. Wms. 103, 24 Eng. Rep. 659 (Ch. 1722).

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lished at the time of the American War of Independence, passed to our courts of equity in this country.[5]

True, the English chancellor usually did not act unless a property right was involved; the King's conscience seldom suffered grievous twinges over purely personal rights. But the mailed fist of jurisdiction, sometimes a little rusty from disuse, was always poised, and now and then it struck, as when Lord Wellesley's children were taken away from him because of his profligate conduct,[6] or when the poet Shelley was deprived of the custody of his children because he declared himself an atheist.[7]

The right of the father to the custody and earnings of his child was enforced far more frequently than the corresponding obligation to support and protect him. With the exception of occasional interference by the chancellor where religious upbringing was involved, the education of the child was a moral rather than a legal duty. But a father who so neglected his child as to bring him to the point of starvation was liable to criminal prosecution;[8] a wife deserted by her husband could charge him with the support of their children as well as of herself;[9] and the father's duty to protect his child was recognized at least to the extent that he was not legally liable for assaulting someone to safeguard his child's person.

Mark Twain satirized this situation in *Huckleberry Finn.* Tom Sawyer and Huck, who had discovered a hidden treasure and acquired an income of a dollar a day, were confronted with the parental claim of Huck's drunken father to the money, although Huck had been left to live in an empty hogshead and feed on scraps. The county judge, when confronted with an application to appoint a guardian for Huck, shook his head and said that he would rather not separate families.[10]

At common law children under seven were held incapable of committing a crime. This concept was derived from the theology

[5]*Ex parte* Daedler, 194 Cal. 320, 228 Pac. 467 (1924).

[6]Wellesley v. Wellesley, 2 Russ. 1, 38 Eng. Rep. 236 (Ch. 1826).

[7]Shelley v. Westbrooke, 1 Jac. 266, 37 Eng. Rep. 850 (Ch. 1821); see also Whitfield v. Hales, 12 Ves. Jr. 492, 33 Eng. Rep. 186 (Ch. 1806); Creuze v. Hunter, 2 Cox 243, 30 Eng. Rep. 113 (Ch. 1790); 2 KENT COMM. *205.

[8]See Flexner and Oppenheimer, *The Legal Aspect of the Juvenile Court,* 57 AM. L. REV. 65, 66 (1923).

[9]Bazeley v. Forder, L.R. 3 Q.B. 559 (1868).

[10]Pound, *The Juvenile Court and the Law,* NAT. PROBATION AND PAROLE ASS'N YEARBOOK 1, 15 (1944).

of medieval churchmen, who, being unwilling to consign dying babies to eternal punishment for their childish misdeeds, eased the former harsh rule and established seven years as the age below which sin could not be committed[11]—at a time when "men" were considered eligible to be knighted and lead armies at the age of thirteen, and died of old age at twenty-five. There was also the rebuttable presumption of the common law that children from seven to fourteen were incapable of committing a crime.[12] Juvenile court legislation has gradually broadened the application of the old common law rules by extending upward, usually to eighteen, the age at which delinquency is regarded as crime,[13] just as the law has recognized the greater duties of parents and of the state. But the foundation of this modern structure is as old as law itself.[14]

The common law "conditional suspension of sentence," by which method Sir Walter Raleigh, after heading a fleet and an army in the meantime, was executed pursuant to a sentence pronounced fifteen years before, has evolved through the "binding to good behavior" of early American courts[15] into the juvenile court "probation." Of late this has come to be sometimes referred to as "supervision," in order to distinguish it from criminal procedure. Under this method, the child is supervised at home rather than committed to an institution.

CHARACTERISTICS OF JUVENILE COURTS

The characteristics of juvenile courts distinguishing them from others consist chiefly of adaptations of standard judicial process to immature children. They are dealt with separately from adults, at a different time and place, rather informally. If they are detained in custody or committed to an institution, the place of detention must

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[11]Winters, *Modern Court Services for Youths and Juveniles,* 33 MARQ. L. REV. 99 (1949), condensed in Case and Comment, Jul.-Aug. 1950, p. 22.

[12]*See* Clay v. State, 143 Fla. 204, 208, 196 So. 462, 463 (1940); see MILLER, CRIMINAL LAW §34 (1934); WHARTON, CRIMINAL LAW §403 (12th ed. 1932).

[13]The proposed Florida act, analyzed in some detail hereinafter, follows this trend.

[14]Even in the days of Roman law, infancy ran to age seven, and childhood ceased at 14 for boys and 12 for girls; presumptions were similar to those adopted later in the common law; see BURDICK, LAW OF CRIME §155 (1946).

[15]See, *e.g.,* Commonwealth v. Dunne, 1 Binn. 98, n. (Pa. 1804); Estes v. State, 2 Humph. 496 (Tenn. 1841).

be for children rather than for adults. The juvenile court, through its trained, specialist counselors formerly known as probation officers, keeps in constant touch with the children under its jurisdiction, supervising them as intensively as may be necessary in each individual case, not relying simply upon the child's routine answers to routine and superficial questions at specified times, or taking an active interest only if the child gets in further trouble, as is too often the case when children or adults are placed on probation by criminal courts. Taking children from parents is avoided whenever possible; instead, parental obligations are enforced. The jurisdiction and the methods used are equitable, not criminal, in nature. The purpose is to remold children and teach them a proper way of life rather than to punish or wreak vengeance upon them. The court deals with them not as criminals but as a special class of immature persons in whose welfare the state is particularly interested.[16]

GROWTH OF JUVENILE COURT SYSTEM

The idea of the juvenile court developed gradually in the course of the last century. Houses of Refuge for children were established as early as 1825; and various experiments in probation systems were tried as early as 1869. The first juvenile court in the world was created in Chicago in 1899, under legislation drawn by the local bar association. In the half-century since then, juvenile court legislation has been enacted in every state in this country and in almost every civilized country in the world.[17]

Although exact figures are not available, it is estimated that at least 275,000 children come yearly to the attention of juvenile courts

[16]For an earlier discussion upon which some of the foregoing is based, see the excellent monograph by Flexner and Oppenheimer, *The Legal Aspect of the Juvenile Court*, 57 AM. L. REV. 65 (1923), also available as U.S. CHILDREN'S BUREAU PUB. No. 99. See also *Ex parte* Januszewski, 196 Fed. 123, 127 (S.D. Ohio 1911); State v. Goldberg, 124 N.J.L. 272, 11 A.2d 299, 302 (Sup. Ct. 1940), *aff'd*, 125 N.J.L. 501, 17 A.2d 173; *Ex parte* Watson, 157 N.C. 340, 72 S.E. 1049, 1052 (1911); *In re* Lundy, 82 Wash. 148, 143 Pac. 885 (1914); State v. Scholl, 167 Wis. 504, 167 N.W. 830 (1918); 31 AM. JUR. 785; Nutt, *Juvenile and Domestic Relations Courts*, in SOCIAL WORK YEAR BOOK (1949).

[17]COSULICH, JUVENILE COURT LAWS OF THE UNITED STATES 7 (1939); Smith, Juvenile Court Laws in Foreign Countries, U.S. CHILDREN'S BUREAU PUB. No. 328 (1949); Chute, *The Juvenile Court in Retrospect*, Federal Probation, Sept. 1949, p. 3; Nutt, *supra* note 16; Pound, *supra* note 10; NAT. CONF. ON PREVENTION AND CONTROL OF JUVENILE DELINQUENCY, REPORT ON JUVENILE COURT ADMINISTRATION (Nov. 20-23, 1946); 31 AM. JUR. 784 (1940).

in the United States as delinquents, and possibly another 100,000 as dependent and neglected children.[18]

The American Bar Association officially encourages the establishment and development not only of juvenile courts but also of family courts.[19]

JUVENILE COURTS IN FLORIDA

Juvenile courts were first established in Florida in 1911, the county judges being designated as juvenile court judges.[20] Since the 1914 amendment to the Florida Constitution[21] removed the limitation on creation by the Legislature of courts other than those specifically named in the Constitution, eight separate juvenile courts have been established by special acts.[22] In the other 59 counties the county judges continue as juvenile court judges.

Florida's juvenile courts, ever since their creation forty years ago, have had statutory jurisdiction of dependent and delinquent children; and the statute defines a delinquent child as one who, among other things, violates the law.[23] Unfortunately, however, this apparent jurisdiction over all child law-violators does not exist. The Florida Constitution was written in 1885, fourteen years before the first juvenile court in the world was established, and its authors had never heard of juvenile courts. Not having such courts in mind, they vested jurisdiction over all criminal cases in other courts.[24] As a result juvenile courts have in actuality handled only part of those children who violate the law, when law enforcement officers chose to bring them into the juvenile court. For the most part their work

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[18]Lenroot, *The Juvenile Court Today*, Federal Probation, Sept. 1949, p. 10; Nutt, *supra* note 16; Perlman, *The Meaning of Juvenile Delinquency Statistics*, Federal Probation, Sept. 1949, p. 63; NAT. CONF. ON PREVENTION AND CONTROL OF JUVENILE DELINQUENCY, REPORT ON STATISTICS (Nov. 20-23, 1946).

[19]74 A.B.A. REP. 112, 280 (1949); 73 A.B.A. REP. 103-104, 302-306 (1948).

[20]Fla. Laws 1911, c. 6216, carried forward into FLA. STAT. c. 415 (1949).

[21]FLA. CONST. Art. V. §1, necessarily modifying also in this respect Art. V, §35, as amended in 1910.

[22]In the counties of Broward, Dade, Duval, Hillsborough, Monroe, Orange, Pinellas, and Polk. A few other counties, including Escambia and Lake, which are listed in FLA. STAT. at p. 2783 (1949) as having juvenile courts, have juvenile court probation officers, but the county judge serves as juvenile court judge.

[23]FLA. STAT. §415.01 (1949).

[24]FLA. CONST. Art. V, §§11, 17, 18, 22, 24, 25, 39.

has been restricted to dealing with the minor peccadilloes of youthful delinquents and with neglected children.[25]

Criminal Punishment as Crime Prevention

While no one knows the exact figure, for only a part of the cases are reported, somewhere between 40,000 and 100,000 children are jailed each year in the United States. They are confined in county jails 97.3 percent of which have been rated below 60 on a scale of 100 by federal jail inspectors. The laws of 28 jurisdictions, including Florida,[26] forbid such confinement, yet in 1948 only two states claimed never to use jails for this purpose.[27]

The American Law Institute, after years of study of the problem of crime prevention, summed up this phase of it very well eleven years ago:

> "Traditionally the criminal law has relied upon punishment and the threat of punishment as the only method of building up resistance to criminal inclinations. But with increasing knowledge of the causes of human action has come a general realization that reliance upon 'punishment' as the only means of control is logically unsound. Moreover, as a practical matter, punishment as the primary method of control is not only logically unsound but obviously ineffective. It is not a satisfactory means of social protection against crime because it does not sufficiently prevent crime."[28]

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[25]See State *ex rel.* Hamilton v. Chapman, 125 Fla. 235, 169 So. 658 (1936); State *ex rel.* Stiegel v. Chapman, 119 Fla. 347, 161 So. 424 (1935); State v. Petteway, 114 Fla. 850, 155 So. 319 (1934); *Ex parte* Kitts, 109 Fla. 202, 147 So. 573 (1933); State *ex rel.* Johnson v. Quigg, 83 Fla. 1, 90 So. 695 (1922).

[26]Fla. Stat. §415.23 (1949). A vague proviso furnishes a loophole on commitment, as distinct from sentence.

[27]MacCormick, *Keeping Children Out of Jails: It Can Be Done,* Federal Probation, Sept. 1949, p. 40.

[28]Introductory Explanation to *Youth Correction Authority Act* ix (Official Draft 1940). The passage continues: "In the first place the threat of punishment does not notably prevent the commission of first offenses. As a matter of record there is now one man in jail for every 225 men over sixteen years of age who are free. And of course a great many of those who are free have previously been in jail or eventually will be in jail. Hence criminologists estimate that one or two out of every hundred males sooner or later commit a crime serious enough to call for imprisonment, undeterred by threat of punishment.

Punishment fails because, to use medical terminology, it treats only the symptoms, not the disease. It utterly fails to take into consideration the causes of crime.[29]

And even more important than the failure of punishment to prevent crime, sending children to prison actually breeds crime.[30] For these reasons, the American Law Institute, in speaking of juvenile courts, came to the conclusion ". . . that corrective treatment of young persons, with segregation when necessary, is a more effective preventive of repeated crime than any mere punishment could be."[31]

The National Committee on Law Observance and Enforcement,

"Neither does punishment actually imposed satisfactorily prevent repetition of crime. In the metrical philosophy of Ogden Nash, 'He who has never tasted jail lives well within the legal pale, while he who's served a heavy sentence, renews the racket, not repentance.' Of the prisoners in the Eastern Penitentiary of Pennsylvania during one year 67 per cent. had previously been convicted and served time. In the Massachusetts State Prison, 70 per cent. had previously been imprisoned. In New York, 80 per cent. of the men sentenced to prison by courts had previous records; 2703 persons had been arrested 10,766 times. The jail population in Michigan consists of 63 per cent. repeaters; in Washington, D. C., 70 per cent. repeaters; in Louisiana 80 per cent. repeaters."

[29]*Id.* at x: "Reasons for this failure are not difficult to find. Science now recognizes the existence of numerous 'psychopathic personalities' whose courses of action cannot conceivably be affected by mere prospect or even experience of consequences such as the criminal law imposes. With some of them, indeed, the possible consequences, perverted in their conceptions, is an inducement rather than a deterrent. Still other people may be driven to crime by physical abnormalities whose impulsive force punishment, as such, makes no pretense of diminishing and cannot effectively counteract. More serious a defect than anything else, 'punishment' takes no account whatever of the causal conditions of crime, but eventually returns its victims to social freedom not one whit better equipped than before to cope with the same necessities, incapacities, and desires to whose pressure they previously yielded."

[30]*Id.* at x: "Even more dangerous are its positive evils. If it merely did not reform, it might be merely useless. But its worst influence is no mere innocuous failure to prevent crime; there is cogent reason to believe that it creates crime. By herding youth with maturity, the novice with the sophisticate, the impressionable with the hardened; by giving opportunity for dissemination of evil not counteracted by the prophylaxis of normal contacts; our penitentiaries actively spread the infection of crime. The penal system fosters, not checks, the plague. Small wonder therefore that punishment alone has so completely failed of its purpose.

"Administrators of the punitive machinery have long realized this failure and have recognized the reasons behind it.

". . . Hence not until the theory of the punitive system is discarded in favor of a corrective and preventive plan will repetitious crime be effectively checked."

[31]*Id.* at xv.

prison administrators, authors of popular articles in mass-circulation magazines, and judges and lawyers charged with the administration of criminal laws, who see constantly the folly of imprisoning children and releasing them later as full-fledged criminals, have all spoken vigorously to the same effect.[32]

It is not merely an academic problem in Florida; in 1949 alone a total of 72 children aged 17 or younger were received at the Florida State Prison. As the Florida Parole Commission comments, they were "branded as criminals and thrown in prison along with 1241 older men and women who, in many instances, take delight in schooling younger 'criminals' in the ways of crime."[33] Probably an equal number were placed on probation by criminal courts, and hundreds more were sentenced to less than a year in county or city jails.

THE 1950 JUVENILE COURT AMENDMENT

Since the Florida Constitution unwittingly prevented juvenile court jurisdiction of children violating the law, fourteen state-wide organizations,[34] having together over a million members, sponsored an amendment. This was unanimously proposed by the 1949 Legislature,[35] and was adopted November 7, 1950, by a vote of 116,313 to 30,540. It specifically authorizes the Legislature to confer on juvenile courts exclusive original jurisdiction of criminal cases in which the accused is a minor, and to define offenses committed by

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[32]See, *e.g.*, NATIONAL COMMITTEE ON LAW OBSERVANCE AND ENFORCEMENT, REP. No. 9, p. 170; E. R. Cass, General Secretary, writing in YEAR BOOK OF COMMITTEE ON EDUCATION OF AMERICAN PRISON ASSOCIATION (1939); Finan, *Inside the Prison — A New Spark of Hope for Remaking Men*, Readers Digest, May 1950, p. 61; *In re* Santillanes, 47 N.M. 140, 138 P.2d 503, 516 (1943); *cf.* Milwaukee Indus. School v. Supervisor of Milwaukee County, 40 Wis. 328, 22 Am. Rep. 702 (1876). See also *Hearings before Judiciary Subcommittee on S. 2609*, 81st Cong., 1st Sess. (1949).

[33]PROBATION AND PAROLE IN FLORIDA (9th Annual Report of Florida Parole Commission, 1950).

[34]American Legion, Department of Florida; Florida Bar; Florida Children's Commission; Florida Congress of Parents and Teachers; Florida Council of Churches; Florida District of Kiwanis International; Florida Federation of Women's Clubs; Florida Juvenile Court Judges Association; Florida Probation and Parole Association; Florida State Junior Chamber of Commerce; Grand Lodge of Florida, Independent Order of Odd Fellows; Grand Lodge of Florida, Knights of Pythias; League of Women Voters of Florida; Most Worshipful Grand Lodge, Free and Accepted Masons of Florida.

[35]SEN. J. RES. No. 25, Fla. Laws 1949, p. 1398.

minors as acts of delinquency. Now, after forty years of operation, our juvenile courts can be given the authority they need to straighten out 85 percent of all children who get into trouble,[36] instead of only those committing picayune offenses, who need it least.

The fourteen state-wide organizations appointed representatives who, together with consultants drawn from among the outstanding authorities in Florida and the United States in this field, formed a drafting committee. After nine months of work, the drafting committee has produced a proposed juvenile court act for the consideration of the Florida Legislature in 1951. This proposed act follows the existing Florida law to the fullest extent possible, and attempts to express it clearly and briefly in logical and coherent form in one statute. As the remainder of this article points out, changes have been made only where essential in order to have an effective, uniform system of judicial administration of juvenile delinquency and dependency in Florida. A good, basic act was proposed, without any of the frills of debatable merit which are occasionally discussed, sometimes tried, but so far not thoroughly tested and proved.

The Proposed Florida Act

No New Courts Created

The drafting committee proposes an act which applies to the present eight separate juvenile courts, to any separate county or district juvenile courts hereafter created, and to the juvenile courts presided over by the county judges in the other counties, which presently number 59. It makes no attempt to set up any new separate courts.

The modern trend is toward district juvenile courts for several adjoining counties. Four states already have these;[37] in the others juvenile courts are organized on a county basis.[38] The proposed act permits either type of organization, and leaves the choice to the people of the individual counties. In smaller counties, county judges who have the time to handle juvenile cases can continue as at present.

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[36]See note 64 *infra*.

[37]Carr, *Most Courts Have To Be Substandard!*, Federal Probation, Sept. 1949, p. 29; Chute, *The Juvenile Court in Retrospect*, Federal Probation, Sept. 1949, p. 5; Lenroot, *supra* note 18.

[38]Nat. Probation and Parole Ass'n, A Standard Juvenile Court Act 7 (Rev. ed. 1949); Lenroot, *supra* note 18.

If a separate juvenile court for one county, or for a district of several counties, is desired, the people of those counties can have their legislative delegations create one. Uniformity of jurisdiction and procedure state-wide is achieved, while home rule is preserved.

Criminal Procedure Inapplicable

It has been settled law for over thirty years, in Florida[39] and elsewhere generally,[40] that juvenile court proceedings are not crimi-

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[39]Pugh v. Bowden, 54 Fla. 302, 45 So. 499, 14 Ann. Cas. 816 (1907).

[40]United States *ex rel.* Yonick v. Briggs, 266 Fed. 434 (W.D. Pa. 1920); *Ex parte* Januszewski, 196 Fed. 123 (S.D. Ohio 1911); *Ex parte* State *ex rel.* Echols, 245 Ala. 393, 17 So.2d 449 (1944); Prince v. State, 19 Ala. App. 495, 98 So. 320 (1923); Macon v. Holloway, 19 Ala. App. 234, 96 So. 933 (1923); Martin v. State, 211 S.W.2d 116 (Ark. 1948); *Ex parte* King, 141 Ark. 213, 217 S.W. 465 (1919); *Ex parte* Daedler, 194 Cal. 320, 228 Pac. 467 (1924); *Ex parte* Ah Peen, 51 Cal. 280 (1876); *In re* Brodie, 33 Cal. App. 751, 166 Pac. 605 (1917); Cinque v. Boyd, 99 Conn. 70, 121 Atl. 678 (1923); Reynolds v. Howe, 51 Conn. 472 (1883); Garner v. Wood, 188 Ga. 463, 4 S.E.2d 137 (1939); Wingate v. Gornto, 147 Ga. 192, 93 S.E. 206 (1917); Taylor v. Means, 139 Ga. 578, 77 S.E. 373 (1913); Allen v. Williams, 31 Idaho 309, 171 Pac. 492 (1918); *Ex parte* Sharp, 15 Idaho 120, 96 Pac. 563 (1908); Lindsay v. Lindsay, 257 Ill. 328, 100 N.E. 892 (1913); County of McLean v. Humphreys, 104 Ill. 378 (1882); *Petition of* Ferrier, 103 Ill. 367, 42 Am. Rep. 10 (1882); State *ex rel.* Gannon v. Lake Circuit Court, 223 Ind. 375, 61 N.E.2d 168 (1945); Akers v. State, 114 Ind. App. 195, 51 N.E.2d 91 (1943); Dinson v. Drosta, 39 Ind. App. 432, 80 N.E. 32 (1907); Wissenberg v. Bradley, 209 Iowa 813, 229 N.W. 205 (1929); *In re* Hosford, 107 Kan. 115, 190 Pac. 765 (1920); *In re* Turner, 94 Kan. 115, 145 Pac. 871 (1915); Marlowe v. Commonwealth, 142 Ky. 106, 133 S.W. 1137 (1911); Roth v. House of Refuge, 31 Md. 329 (1869); Farnham v. Pierce, 141 Mass. 203, 6 N.E. 830 (1886); Hunt v. Wayne Circuit Judges, 142 Mich. 93, 105 N.W. 531 (1905) (but holding act invalid for other reasons); State *ex rel.* White v. Patterson, 188 Minn. 492, 247 N.W. 573, *modified on reargument*, 249 N.W. 187 (1933); *Ex parte* Peterson, 151 Minn. 467, 187 N.W. 226 (1922); State *ex rel.* Olson v. Brown, 50 Minn. 353, 52 N.W. 935 (1892); Bryant v. Brown, 151 Miss. 398, 118 So. 184 (1928); State v. Heath, 352 Mo. 1147, 181 S.W.2d 517 (1944); State *ex rel.* Shartel v. Trimble, 333 Mo. 888, 63 S.W.2d 37 (1933); *Ex parte* Naccarat, 328 Mo. 722, 41 S.W.2d 176 (1931); State v. Campbell, 325 Mo. 561, 32 S.W.2d 69 (1930); State *ex rel.* Boyd v. Rutledge, 321 Mo. 1090, 13 S.W.2d 1061 (1929); State *ex rel.* Matacia v. Buckner, 300 Mo. 359, 254 S.W. 179 (1923); State *ex rel.* Miller v. Bryant, 94 Neb. 754, 144 N.W. 804 (1913); State v. Goldberg, 125 N.J.L. 501, 17 A.2d 173, *affirming* 124 N.J.L. 272, 11 A.2d 299 (Sup. Ct. 1940); *Ex parte* Newkosky, 94 N.J.L. 314, 116 Atl. 716 (Sup. Ct. 1920); *In re* Santillanes, 47 N.M. 140, 138 P.2d 503 (1943); *In re* X, Y, and Z, 43 N.Y.S.2d 361 (Dom. Rel. Ct. 1943); *In re* Vasko, 238 App. Div. 128, 263 N.Y. Supp. 552 (2d Dep't 1933); People v. Lewis, 260 N.Y. 171, 183 N.E. 353 (1932), *cert. denied*, 289

nal trials but are civil and equitable in nature and procedure; that they are salutary measures within the state police powers, intended for the protection and welfare of the child; and that they are constitutional even though they dispense with those procedural steps and safeguards applicable to and essential in criminal prosecutions.

Upon this theory that the delinquent child is not on trial for a crime, and that the institutions to which he may be committed are not prisons but places where reformation and education are the ends sought, juvenile court acts have been upheld against every conceivable variety of attack based on state and federal constitutional provisions applicable to criminal cases. Those attacks raised the objections that indictment, notice to the person, warrant of arrest, arraignment, bail, plea, public trial by jury, or appeal were not provided; that the child was required to be a witness against himself; that he was deprived of the equal protection of the laws, or of due process of law; that cruel and unusual punishments were imposed; that there was an unlawful interference with the relation of parent and child; or that the child was subjected to involuntary servitude or to penalties unequal to those imposed upon adults. Sometimes, failing all else, the objection was merely the despairing cry that such an act must be contrary to public policy.

The Florida amendment adopted last November specifies that juvenile court laws need not provide for trial by jury, for a prosecuting attorney, or for information, style of process, and prosecuting

U.S. 709 (1933); State v. Burnett, 179 N.C. 735, 102 S.E. 711 (1920); *Ex parte* Watson, 157 N.C. 340, 72 S.E. 1049 (1911); *In re* Kol, 10 N.D. 493, 88 N.W. 273 (1901); Cincinnati House of Refuge v. Ryan, 37 Ohio St. 197 (1881); Prescott v. State, 19 Ohio St. 184, 2 Am. Rep. 388 (1869); Gerak v. State, 22 Ohio App. 357, 153 N.E. 902 (1920); Leonard v. Licker, 36 Ohio Cir. Ct. R. 427, 3 Ohio App. 377 (1914); *Ex parte* Packer, 136 Ore. 159, 298 Pac. 234 (1931); Commonwealth v. Fisher, 213 Pa. 48, 62 Atl. 198 (1905); *Ex parte* Crouse, 4 Whart. 1 (Pa. 1939); Commonwealth v. Carnes, 82 Pa. Super. 335 (1923); State v. Cagle, 111 S.C. 548, 96 S.E. 291 (1918); Childress v. State, 133 Tenn. 121, 179 S.W. 643 (1915); *Ex parte* Espinosa, 144 Tex. 121, 188 S.W.2d 576 (1945); Dendy v. Wilson, 142 Tex. 460, 179 S.W.2d 269 (1944); Steed v. State, 143 Tex. Cr. 82, 183 S.W. 458 (1944); Mill v. Brown, 31 Utah 473, 88 Pac. 609 (1907); *In re* Gomez, 113 Vt. 224, 32 A.2d 138 (1948); *In re* Hook, 95 Vt. 497, 115 Atl. 730 (1922); State *ex rel.* Gray v. Webster, 122 Wash. 526, 211 Pac. 274 (1922); Newman v. Wright, 126 W. Va. 502, 29 S.E.2d 155 (1944); State v. Zirbel, 171 Wis. 498, 177 N.W. 601 (1920); State v. Scholl, 167 Wis. 504, 167 N.W. 830 (1918); Wisconsin Indus. School for Girls v. Clark County, 103 Wis. 651, 79 N.W. 422 (1899); Milwaukee Indus. School v. Supervisor of Milwaukee County, 40 Wis. 328, 22 Am. Rep. 702 (1876).

in the name of the state, all of which features are required in criminal prosecutions. This proviso was inserted simply out of an excess of caution, for even without such specifications in the amendment, it is well settled that such requirements have no more application to proceedings in juvenile courts than they do to proceedings in equity in the circuit courts.

Nevertheless, in order to insure that a child desiring a jury trial and all the other paraphernalia of criminal procedure may have them, the proposed act goes a step further than—or backward from—the usual juvenile court act, and gives the child an absolute right to be transferred to a criminal court for trial if he so requests. When he so chooses, of course, he takes the burdens of criminal procedure along with the benefits.

Classes of Children Before the Juvenile Court

It is generally conceded that the Legislature has power to determine, by rules and definitions, the class or classes of children requiring state supervision.[41]

In other states the maximum age limit of those within juvenile court jurisdiction ranges from 16 to 21; in the majority of them the limit extends to the eighteenth birthday. During recent years several states previously having a lower age limit have raised it to include those aged 17, while in no state has it been lowered. The National Probation and Parole Association and the United States Children's Bureau recommend a maximum age limit of 17, that is, up to the eighteenth birthday.[42]

In Florida the general law now fixes the eighteenth birthday as the limit of juvenile court jurisdiction.[43] In other Florida laws requiring a dividing line between children who need a great deal of special protection and those other minors sufficiently mature to be treated more nearly like adults, this line has usually been drawn at the eighteenth birthday.[44] The Florida Industrial Schools for Boys

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[41]See 31 AM. JUR. 790.

[42]NAT. PROBATION AND PAROLE ASS'N, A STANDARD JUVENILE COURT ACT 8 (Rev. ed. 1949).

[43]FLA. STAT. §415.01(2) (1949).

[44]*E.g.*, FLA. STAT. §62.23 (removal of non-age disabilities); c. 450 (child labor); §§731.04 (capacity to make will), 741.06 (capacity to marry), 794.05 (carnal knowledge of child) (1949).

and Girls are equipped to handle children through age 17.[45]

Consequently, the proposed act gives to the juvenile courts jurisdiction of dependent children under 18, and of delinquents charged with commission before their eighteenth birthday of offenses not capital. It only slightly refurbishes the existing definitions of "dependent" and "delinquent" children by deleting some archaic and redundant language, and by adding a few phrases recommended by the National Probation and Parole Association.[46] In the proposed act a "dependent" child is one who is destitute, homeless, abandoned, or dependent upon the public for support, or who lacks proper parental care or guardianship, or who is neglected as to support, education, or medical or other care, or whose condition or environment injures or endangers his or others' welfare, or whose home is unfit by reason of neglect or of cruelty or depravity of the parents. A "delinquent" child is one who violates a law or municipal ordinance, is incorrigible, is persistently truant from school, is beyond his parents' control, associates with criminals or reputed criminals or vicious or immoral persons, is growing up in idleness or crime, is found in a saloon, or whose occupation, behavior, or associations are such as to injure or endanger his or others' welfare.

The proposed act further empowers the juvenile court to transfer to a criminal court a child above 13 who is charged with committing what would be a felony if done by an adult, and requires such transfer of a child above 15 charged with a capital offense.

When jurisdiction is acquired, the juvenile court may retain it until the child is 21, if continued supervision is considered necessary.

Taking and Detaining the Child

Putting a child in jail to start with is the best way known to make him unreceptive and unresponsive to the methods used by the juvenile court. The use of fear is as ineffective in preventing crime as is the use of its twin, punishment. Neither gets at the causes. A jail is not a mere cold-storage plant, in which the child stays "as is" in a controlled environment while the police investigate and the court gets ready to act. Most jails are stinking, filthy pestholes, filled with degraded and brutalized men and women who give a short course in

[45]FLA. STAT. cc. 955, 956 (girls between 10 and 21 may be committed to Florida Industrial School for Girls).

[46]NAT. PROBATION AND PAROLE ASS'N, *op. cit. supra* note 42, at 16.

crime and vice to child inmates, just as they do more effectively and over longer periods in prisons.[47] Subjecting a child to this sort of training while attempting to straighten him out is like hitting him on the head with a hammer while giving him an aspirin tablet.

In the larger counties special detention homes for children are available, as well as many private institutions. Even in the smallest county a child can usually be kept more cheaply[48] in a decent private home, licensed by the state welfare board,[49] than in jail, if detention as distinct from the usual release to the parents is necessary.

A child taken and kept in custody must, under the proposed act, be taken promptly either to the juvenile court or to a place designated by it; and if he is ordered jailed he must, as the existing Florida law prescribes,[50] be segregated from adult inmates. The county commission and county children's committee[51] must be informed, so that if he is jailed simply for lack of a better place they can proceed to find one. The judge may order specific offenders to be detained in jail, for occasionally an overgrown boy or girl has been so twisted mentally that the most secure custody is required.

Fingerprinting and photographing of children can be done on court order only, for it avails nothing to provide that a juvenile court adjudication is not a criminal conviction if the child's picture and fingerprints are plastered all over the local rogue's gallery and the FBI files.

Even as of 1939,[52] eighteen jurisdictions provided for the release of a child to his parents or other relatives; eighteen required either that the judge or counselor be notified immediately or that the child be taken directly to the court or to a place of detention designated by it; six directed that a child be jailed on court order only; twenty required segregation of children from adults in jail; six made jailing of children a misdemeanor; twenty-four required detention quarters for children; nineteen authorized such quarters; and fifteen specifically permitted arrangements for detention in homes of private individuals or associations. Such laws have become even more common since 1939.

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[47]MacCormick, *supra* note 27.

[48]Support of prisoners cost $1.07 per prisoner per day at the Florida State Prison in 1949, according to the state auditor's report.

[49]FLA. STAT. §409.05 (1949).

[50]See note 26 *supra.*

[51]FLA. STAT. §417.03 (1949).

[52]COSULICH, JUVENILE COURT LAWS OF THE UNITED STATES 56-60 (1939).

Juvenile Court Procedure

Juvenile court procedure is fairly well standardized throughout the United States;[53] and the proposed act does not depart substantially either from the present statutory procedure in Florida[54] or from that recommended by the National Probation and Parole Association.[55]

The counselor of the juvenile court, or any other individual, can file a verified petition alleging that a specified child is dependent or delinquent. The counselor investigates, and if the facts warrant, a summons is issued to the parents or legal custodians, or, if they are not ascertainable, then to an ascertainable relative, to bring the child before the court. The judge may if necessary endorse on the summons an order to take the child into custody. He has the power to punish for contempt those disregarding orders of the court or interfering with the administration of the proposed act, of course. An answer by the child or his parents or guardians is permitted but not required; and in any event matters constituting an answer may be pleaded orally. No fees for service of process or otherwise are required of the parties. The judge may order medical and psychiatric examination of a child before or after, and treatment after, an adjudication of dependency or delinquency, and with the consent of the parents may order treatment prior to adjudication.

The essential quality of juvenile court procedure is revealed in the nature of the hearings.[56] These are conducted privately, in the presence of only those people directly concerned unless they request or the judge directs the presence of others. The child and his parents can be examined separately. The rules of evidence employed in equity cases prevail; and, in order to obtain the child's confidence, informality is the keynote. No jury is used. Facts have to be proved as in any equity case; the court's findings must be based on competent evidence, for "Hearsay, opinion, gossip, bias, prejudice, trends of hostile neighborhood feeling, the hopes and fears of social workers, are all sources of error and have no more place in children's courts than in any other court."[57]

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[53]See 31 AM. JUR. 801-804.

[54]FLA. STAT. c. 415 (1949), particularly §§415.04-415.07.

[55]NAT. PROBATION AND PAROLE ASS'N, *op. cit. supra* note 42, at 19-21.

[56]*Cf.* 31 AM. JUR. 804-807.

[57]People v. Lewis, 260 N.Y. 171, 178, 183 N.E. 353, 355 (1932), *cert. denied*, 289 U.S. 709 (1933); *accord*, State *ex rel.* Palagi v. Freeman, 81 Mont. 132, 262

The laws of thirty-one jurisdictions expressly provide for private hearings in children's cases in juvenile courts; and in practice all juvenile courts generally follow this custom. Hearings in an informal or "summary" manner are specified in twenty jurisdictions. While a jury so obviously has no place in a juvenile court that most states do not even refer to it in this connection, the statutes of seven expressly provide that juvenile cases shall be heard without a jury.[58] Under the proposed act the child has an absolute right to be transferred to a criminal court, of course, if a jury trial is desired.

Adjudication that the child is delinquent does not constitute conviction of crime, either under present Florida law[59] or under the proposed act. This principle, which avoids automatic imposition of serious civil and other disabilities, is found in the law of thirty-two jurisdictions.[60]

If the facts proved result in an adjudication of dependency or delinquency, the judge has broad discretion in directing treatment designed to straighten out either the child's environment or the child himself; and in reaching this determination he makes full use of the counselor's investigation report.[61] No rule of thumb can possibly be devised to cover the innumerable variations in treatment necessitated by the differences in temperament and environment presented in juvenile cases. The judge, aided by the counselor, having studied each child individually, selects the most efficacious remedy from among the many made available by law.

Disposition of Dependent and Delinquent Children

Juvenile courts make every effort to keep a child in his own home, under the counselor's supervision;[62] and in most cases this is suffi-

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Pac. 168 (1927); Mill v. Brown, 31 Utah 473, 88 Pac. 609, 615 (1907); 31 AM. JUR. 806-807.

[58]COSULICH, *op. cit. supra* note 52, at 50-53.

[59]FLA. STAT. §415.22 (1949).

[60]COSULICH, *op. cit. supra* note 52, at 75, 108.

[61]The Supreme Court recently decided that such ex parte investigation reports can even be used in criminal courts in determining sentence after conviction, although of course they are not admissible in evidence at the trial, Williams v. New York, 337 U.S. 241 (1948), *rehearing denied.* 337 U.S. 961, 338 U.S. 841 (1949).

[62]See Lindsay v. Lindsay, 257 Ill. 328, 100 N.E. 892 (1913); Bryant v. Brown, 151 Miss. 398, 118 So. 184, 188 (1928); State *ex rel.* Palagi v. Freeman, 81 Mont. 132, 262 Pac. 168 (1927).

cient. If such supervision does not prove effective, the child can be placed in some public or private institution for children, or in a foster home, or, as regards those few who need all-out supervision and remolding, in the Florida Industrial Schools. These industrial schools are definitely not junior-grade prisons, but superlatively fine training schools where understanding and intensive training succeed remarkably well at turning sows' ears into silk purses. Seventy-eight percent of the boys committed to the Florida Industrial School for Boys, for instance, are so fully taught a new sense of values that they never again get into trouble, but return to their home communities well on the way to good manhood.[63] If the child is not wanted at his home, or if his home cannot be made fit for him, he can be committed to a licensed child-placing agency for adoption into a decent home and the beginning of a new and better life.

As a result of the variety of methods used by juvenile courts and their allied agencies to remold delinquent children, 85 percent of them are so thoroughly straightened out that they do not get into trouble again.[64] These results contrast strikingly with the picture on the other side of the coin: two-thirds of the prison population are habitual criminals, outlaws forever at war with society.

It is not strange that Florida obtains such favorable results by properly handling delinquent children; similar good results are achieved elsewhere, even with youths over juvenile court age. The California Youth Authority, for those aged 18 through 21, was set up eight years ago; to date it has handled over 10,000 youths convicted of law violation. Less than 25 percent of these have failed on parole or committed new offenses, as contrasted with the 69 percent who failed on parole or committed new offenses after coming out of California correctional institutions during the five-year period just before the Youth Authority was created.

In England a century ago, the theory of retributive punishment as a deterrent to crime had reached such an extreme that 269 different crimes were punishable by death, yet a person riding outside London after dark needed a guard. Social novels like Charles Dickens' *Oliver Twist* pointed up the fallacy of such a system;[65] but the

[63]See The Florida Times-Union, June 11, 1950, pp. 40, 41, 43; Jacksonville Journal, Sept. 9, 1949, p. 5.

[64]HEALY, BRONNER, BAYLOR & MURPHY, RECONSTRUCTING BEHAVIOR IN YOUTH (1929); Williams, *Foster Homes for Juvenile Delinquents,* Federal Probation, Sept. 1949, pp. 46-51.

[65]*Cf.* Winters, *supra* note 11.

clincher which caused the English to sit up and take notice was that, while the penalty for pickpocketing was death, yet the public had to be protected against having their pockets picked when they went to witness the execution of the pickpockets on the scaffold. That stimulated the beginning of the Borstal System for youths aged 16 through 23, under which 15,000 youths were handled in thirteen special institutions between 1894 and 1942. This type of treatment was so effective that on the arbitrarily selected date of February 1, 1936, only 8.1 percent of the entire English prison and jail population were Borstal graduates.

If crime were actually deterred by application of the old injunction of an eye for an eye, modernized by Gilbert and Sullivan in the jingle, "Let the punishment fit the crime,"[66] then no bleeding-heart sentiment should prevent the imposition of ever-harsher and consequently ever-more-effective punishment. On this predicate, we should welcome such notorious statutes as the one passed by Congress during the depression, when banks were failing throughout the United States, making life imprisonment mandatory for embezzlement from a bank. But the sad fact is that, while the total United States population increased only 18 percent between 1923 and 1940, the prison population, not including that in jails, jumped 126 percent. Even conceding for the sake of argument that the humane aspect of the juvenile court approach is beside the point, the results show that such treatment is far more effective in reducing crime.[67]

Apart from the fact that the functions and powers contained in the proposed act have already been vested in our juvenile courts in Florida for some forty years,[68] they are also incorporated in the laws of numerous other states.[69] Commitment to the care and custody of an individual is authorized by the laws of thirty-eight jurisdictions, placement of children in private family homes by thirty-one, and any lawful disposition deemed conducive to the welfare of the child by twenty-two.[70]

The proposed act leaves the duration of the stay of children at the Florida Industrial Schools to the discretion of the Board of Commissioners of State Institutions, to the end that they will be held until

[66]*My Object All Sublime,* THE MIKADO (1885).

[67]*Hearings before Judiciary Subcomittee on S. 2609,* 81st Cong., 1st Sess. (1949).

[68]See note 20 *supra.*

[69]See 31 AM. JUR. 793.

[70]COSULICH, *op. cit. supra* note 52, at 64-65.

reformed but no longer. In no event can they be detained after reaching age 21. Such provisions have been held valid elsewhere,[71] and properly so, for even a specialist judge cannot divine in advance how long it will take to replace bad habits with good ones, or at just what point in time a child climbs back over to the right side of the fence; only those in constant touch with the child will know when the time is ripe.

Records

Publicity in connection with children's cases inevitably tends to humiliate and demoralize the youngsters involved, making it more difficult for the juvenile court to utilize the child's feeling of self-respect in trying to effect rehabilitation.[72] Consequently, in common with the general practice, the proposed act provides that juvenile court records shall not be open to public inspection. The persons involved may of course examine all the official records, as distinct from the social records of investigation and treatment. These latter contain highly confidential information concerning the attitudes and conduct of members of the family toward one another;[73] and disclosure to others than the officials using these reports would do more harm than good.

Twenty-two jurisdictions forbid indiscriminate public inspection of official records; thirty prohibit their use in other courts; and three states specifically provide for destruction of records after a certain time,[74] as does the proposed act.

In accordance with our Florida tradition of prohibiting publication of the name of a victim of rape or attempted rape,[75] and like the laws of eight states which forbid newspaper publication of the names or identities of children involved in juvenile court cases, and eight states which prevent use of children's names in the annual public reports of the juvenile court,[76] the proposed act bars publication of the name or picture of a child in connection with juvenile court

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[71]Reynolds v. Howe, 51 Conn. 472, 478 (1883); Bryant v. Brown, 151 Miss. 398, 423, 118 So. 184, 191 (1928); State v. Cagle, 111 S.C. 548, 96 S.E. 291 (1918).

[72]NAT. PROBATION AND PAROLE ASS'N, *op. cit. supra* note 42, at 34.

[73]*Ibid.*

[74]COSULICH, *op. cit. supra* note 52, at 73-75.

[75]FLA. STAT. §794.03 (1949).

[76]COSULICH, *op. cit. supra* note 52, at 73.

proceedings. The initials and juvenile court case number of the child are to be used on appeal and in reports to other public bodies.

Appeals

The proposed act makes appeal quick, easy, and inexpensive. The child or his parents or legal custodians, if affected by an order of the juvenile court, can there file, within ten days after entry of such order, a notice of appeal to the circuit court. The original file, with any narrative statement of the evidence prepared by the judge and the stenographic report of the testimony, if any, is sent to the circuit court clerk. No new evidence may be presented, of course. Argument follows on short notice, and briefs are not required but may be filed if desired. The state attorney represents the juvenile court. Certiorari in the Supreme Court may thereafter be sought in the usual fashion.

In Florida, sending the original juvenile court file to the circuit court accords with the established practice in appeals from a civil court of record, county court, county judge's court, or justice of the peace.[77] In other jurisdictions, appellate procedure in juvenile cases varies widely, not being a matter of right.[78] In twelve, appeal lies as from any other court; in six, from final orders only; and in others, in the same manner as in equity, civil, orphans' court, or criminal cases. Seven jurisdictions have no provision for appeal; three provide for preferential consideration by the appellate court, as in the proposed Florida act; five confine appeal to a judgment removing a child from his parents or committing him to an institution; and one limits appeal to a decree adjudging him wayward or delinquent. Certiorari is the sole means of review in one state; appeal is allowed on questions of law alone in two; writ of error is used in one; appeal lies in the discretion of an appellate judge in another; and trial de novo in the appellate court obtains in three. In ten jurisdictions appeal does not suspend the challenged order, although certain of these ten authorize the juvenile or appellate court to so direct; in one, appeals go to the appellate court in chambers; and in still another, no appeal as such is allowed but rehearing before another juvenile court judge may be obtained. The corporation counsel

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[77]FLA. STAT. §§33.11, 61.05 (1949); Fla. Laws 1921, c. 8521, §11.

[78]See 31 AM. JUR. 808. As regards the tabulation in the remainder of this paragraph, see COSULICH, *op. cit. supra* note 52, at 76-77.

or attorney general represents the juvenile court on appeal in two states.

Appellate courts widely presume that juvenile court findings of facts are correct;[79] and in some jurisdictions these are conclusive,[80] even without a provision like that in the proposed act, to the effect that the appellate court shall not substitute its judgment for that of the juvenile court in discretionary matters but shall confine its decision to a determination of whether the challenged order is lawful.[81]

Qualifications of the Judge

For separate juvenile courts, the proposed act requires the judge either to have already served as judge of a separate juvenile court in Florida or to be a member of the Florida Bar, and to be at least 25 and a qualified voter in the county or district in which the court is located.

There is general agreement that the judge must be a lawyer,[82] and that he should also have such intangible qualifications as tact, personality, knowledge of social work and resources, understanding of child psychology and ability to deal with children successfully.[83]

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[79]On this aspect of Florida procedure in general, see Middleton, *Judicial Review of Findings of Fact in Florida*, 3 U. OF FLA. L. REV. 281 (1950).

[80]See 31 AM. JUR. 808; 43 C.J.S. 253-257; Note, ANN. CAS. 1916E 1018.

[81]See note 79 *supra*.

[82]COSULICH, *op. cit. supra* note 52, at 85-86; NAT. CONF. ON PREVENTION AND CONTROL OF JUVENILE DELINQUENCY, REPORT ON JUVENILE COURT LAWS 5 (1946), REPORT ON JUVENILE COURT ADMINISTRATION 6 (1946); NAT. PROBATION AND PAROLE ASS'N, A STANDARD JUVENILE COURT ACT 12-13 (Rev. ed. 1949); Alexander, *Of Juvenile Court Justice and Judges*, NAT. PROBATION AND PAROLE ASS'N YEARBOOK 187 (1947); Flexner and Oppenheimer, *The Legal Aspect of the Juvenile Court*, 57 AM. L. REV. 65 (1923), also available as U. S. CHILDREN'S BUREAU PUB. No. 99 (1922); Lenroot, *The Juvenile Court Today*, Federal Probation, Sept. 1949, pp. 10, 14; Schramm, *A Juvenile Court Judge*, Juvenile Court Judges Journal, April 1950, p. 11; Schramm, *The Judge Meets the Boy and his Family*, NAT. PROBATION AND PAROLE ASS'N YEARBOOK 4 (1945); Winnet, *Fifty Years of the Juvenile Court: An Evaluation*, 36 A.B.A.J. 363-366 (1950).

[83]Mill v. Brown, 31 Utah 473, 88 Pac. 609, 615 (1907); BELL, THE JUVENILE COURT STEPS IN 12; NAT. CONF. ON PREVENTION AND CONTROL OF JUVENILE DELINQUENCY, REPORT ON JUVENILE COURT LAWS 5 (1946); Alexander, *The Follies of Divorce: A Therapeutic Approach to the Problem*, 36 A.B.A.J. 105, 170 (1950); Flexner and Oppenheimer, *supra* note 82 at 13; Stokes, *Social Worker Plays Part in Court Process*, The Child, Dec. 1947, p. 89; Winnet, *supra* note 82, at 364.

These latter qualifications, however, cannot be measured accurately save by the voters in his community. Accordingly, the proposed act provides for his election for a four-year term.

In most other states the juvenile court judge must be an attorney; and some specify residence requirements of from five to ten years.[84] In most states he is elected by popular vote, although in some he is appointed by the governor, by the city or county government, by the mayor, by the judges of courts of general jurisdiction, by the local juvenile court committee, by a state commission, or by the governor on nomination of a legislative delegation, local juvenile court committee, or other local group, or elected by the state senate. Nowhere has a system of merit-system examinations been adopted.[85]

Qualifications of the Counselor and Assistants

Ideally, the counselor, formerly called a probation officer, should be a college graduate, with at least one year either of experience with a social agency or of graduate schooling.[86] There are so few properly trained social workers, however, that it is reliably estimated that a period of from thirty-five to forty years will be required to catch up with the demand for them.[87] And those completing courses in schools of social work are usually no better trained for socio-legal duties in juvenile courts than are law graduates.[88] Consequently, considering also the relatively low salaries provided in all but the largest counties under the proposed act, the drafting committee inserted the requirement that counselors and assistant counselors must either have served in these capacities in Florida, have a college degree,

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[84]COSULICH, *op. cit. supra* note 52, at 85-86.

[85]COSULICH, *op. cit. supra* note 52, at 79-84; NAT. CONF. ON PREVENTION AND CONTROL OF JUVENILE DELINQUENCY, REPORT ON JUVENILE COURT ADMINISTRATION 6-7 (1946); NAT. PROBATION AND PAROLE ASS'N, A STANDARD JUVENILE COURT ACT 11-12 (Rev. ed. 1949).

[86]See, *e.g.*, NAT. CONF. ON PREVENTION AND CONTROL OF JUVENILE DELINQUENCY, *supra* note 85, at 9; NAT. PROBATION AND PAROLE ASS'N, STANDARDS FOR SELECTION OF PROBATION AND PAROLE OFFICERS (1945); Nutt, *Juvenile and Domestic Relations Courts,* SOCIAL WORK YEAR BOOK 273 (1949).

[87]NAT. PROBATION AND PAROLE ASS'N, DIRECTORY OF PROBATION AND PAROLE OFFICERS IN THE UNITED STATES AND CANADA 83 (11th ed. 1947); Nutt, *supra* note 86, at 272-273; Federal Probation, Sept. 1949, p. 83; Life, June 12, 1950, p. 37.

[88]*Cf.* Lenroot, *supra* note 82, at 15; Nutt, *Social-Service Functions in Children's and Family Courts,* The Child, Nov.-Dec. 1940, p. 143.

or have done four years of work with children. From among those selected as eligible under a merit system, counselors are appointed by the juvenile court judge, and assistant counselors by the counselor with the approval of the judge. Appointees have civil service tenure, in order to take them out of politics and permit them to concentrate on their work with non-voting children.

Financing

Since the population of a county or district bears a direct relation to the number of cases coming before its juvenile court, the proposed act requires the county to appropriate each year an amount equal to twenty cents for each person in the county, as determined by the latest census. The salaries of the judge and the counselor are likewise based on population. The scale used for the juvenile court budget and for salaries is that presently used in separate juvenile courts, as nearly as state-wide uniformity based on population will permit. No attempt was made to raise or lower them deliberately.

Operation of any court costs money. Happily, money spent to operate juvenile courts eventually saves the taxpayers a great deal of money. When we consider the heavy expense of maintaining police forces large enough to cope with large-scale crime, the trial costs running as high as a quarter of a million dollars in a single criminal case, the theft or destruction by the average habitual criminal of between $50,000 and $75,000 worth of property, and the $25,000 to $40,000 required to keep him in prison during repeated terms for most of his life, we quickly come to the realization that juvenile courts, by straightening out at least 85 percent of child offenders when they take the first wrong step, save us tremendous sums.[89]

Leaving aside all humane considerations of conserving and redeeming our human resources for useful, productive lives of decent manhood and womanhood, juvenile courts are thoroughly justified from the standpoint of dollars and cents alone. The construction of more and larger penal institutions merely deals with the cancerous growth on society as a symptom, rather than arriving at the diagnosis and treating the disease at the point of its inception.[90]

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[89]See *Hearings before Judiciary Subcommittee on S. 2609,* 81st Cong., 1st Sess. (1949); see also note 64 *supra.*

[90]*Ibid.*

CONCLUSION

The purpose of laws, of courts, and of human society itself is to develop the freedom, the responsibility, the dignity and the spiritual worth of the individual human being. The objects of any judicial process dealing with violations of law are to satisfy an innate sense of justice, and to protect society. Retribution and vengeance, embodied in the concept of punishment to fit the crime, have failed to protect society precisely because they do not deter crime; they neither prevent crime nor reform the wrongdoer. But punishment—or treatment—to fit the wrongdoer does protect society, by reforming most of the wrongdoers.

This being so, it is time for the goddess of justice to cast aside her blindfold, for the sake of her billfold if no more. It is time for the people of Florida to take full advantage of the method of remodeling child offenders tried and proved effective for over a half-century. And the people of Florida voted almost four to one to do so, on last November 7.

The drafting committee has proposed a sound, workable, practical juvenile court act. It deserves the active support of every lawyer and every citizen seeking a more effective, less expensive way of reducing juvenile delinquency and adult crime.