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Fugate v. Ronin—Criminal Law Jurisdiction of Juvenile Courts in Cases of Juvenile Murder

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Notes

Fugate v. Ronin — Criminal Law

Jurisdiction of Juvenile Courts in Cases of Juvenile Murder

Petitioner, a fourteen year old girl, was charged with murder in the first degree in the county court of Lancaster County. The county court entered an order that there be a preliminary hearing and the petitioner be held without bail. The youth moved for a transfer of the proceedings against her to the juvenile court on the ground that section 43-211[1] imposed a mandatory duty upon a magistrate to transfer the case of a delinquent child under sixteen years of age to the juvenile court. This motion was overruled by the county judge of Lancaster County. The petitioner filed in the district court of Lancaster County a petition for a writ of prohibition prohibiting the county judge from holding a preliminary hearing upon the complaint. From an order of the district court denying the writ of prohibition, the petitioner appealed. *Held*: The juvenile courts do not have the sole or exclusive jurisdiction of children under eighteen years of age who have violated Nebraska law; the county attorney is not limited by the Juvenile Court Act in his duty to file proper complaints against wrongdoers and prosecute the same; a preliminary hearing on a felony charge is not a *case* within the meaning of section 43-211[2].

Section 43-211 provides in part:

> *When in any county where a juvenile court is held, as provided in section 43-204,* a child under the age of sixteen years if arrested with or without warrant, such child may, instead of being taken before a justice of peace or public magistrate be taken directly before such court, or if the child is taken before a *justice of the peace or police magistrate , it shall be the duty of such justice of the peace or police magistrate* to transfer the case to such court, and the officer having the child in charge, to take the child before that court. In any case the court may proceed to hear and dispose of the case in the same manner as if the child had been brought before the court upon complaint or affidavit as herein provided. [Emphasis added]

[1] Neb. Rev. Stat. § 43-211 (Reissue 1952).

[2] Fugate v. Ronin, 167 Neb. 70, 91 N.W.2d 240 (1958).

Section 43-204 referred to section 43-211, provides in part:

> *In counties having a population of more than fifty thousand,* the judges of the district court, on being inducted into office, shall select one of their number to preside over what shall be termed the 'juvenile court'. The judge so selected shall serve throughout his term, unless the judges choose, in the same manner as the original selection was made, another of their number to so act. The judge of the juvenile court shall hear all cases arising under the provisions of this act, and shall give precedence thereto. [Emphasis added]

The full import of the Court's ruling can best be understood by a brief review of prior case law. The principal cases are *State v. McCoy*[3] and *Lingo v. Hann.*[4]

In the *McCoy* case, a complaint was filed in the municipal court of the City of Omaha by the county attorney of Douglas County charging the defendant, a *seventeen year old boy,* with the crime of receiving a stolen automobile, a felony. He was bound over to the district court, and an information was filed charging him with the same offense. A motion to quash the information was filed by the defendant on the ground that exclusive jurisdiction over all persons under the age of eighteen years is given to the juvenile court for Douglas County. The Supreme Court held that juvenile courts do not have the sole or exclusive jurisdiction of children *seventeen years of age* charged with felony. This was so, in part, because "the county attorney is not limited by the Juvenile Court Act in any way in his duty to file proper complaints against wrongdoers and prosecute the same."[5] Notwithstanding this language, however, the opinion strongly implies that section 43-211 would have required a different result if the child involved had been *under sixteen years* of age, and, indeed, this was the position taken by the State. Thus, adopting the position taken by the State's brief, section 43-211 was construed by the Court to mean: *"When a child under the age of sixteen years is arrested, with or without warrant, and taken before a justice of the peace, or public or police magistrate, such case shall be transferred to the juvenile court."*

Certain other points should also be noted. First, the words, "justice of peace or police magistrate", contained in the mandatory transfer provision of section 43-211, are judicially expanded in the above quotation to include "public magistrate", a broad

[3] 145 Neb. 750, 18 N.W.2d 101 (1945).

[4] 161 Neb. 67, 71 N.W.2d 712 (1955).

[5] 145 Neb. 750, 761, 18 N.W.2d 101, 106 (1945).

term apparently encompassing any judicial official before whom a child under sixteen is charged with crime. Second, the Court, while dealing with a case from a county with a population in excess of fifty thousand, did not expressly limit its interpretation of section 43-211 to such counties even though such a limitation would appear to be required by a literal reading of the statute. Nor does *McCoy* suggest that felonies are excluded from the scope of section 43-211. Indeed, the contrary is implied since the defendant was charged with a felony. Notwithstanding the dicta set forth above, *McCoy* held only that section 43-211 does not apply to children of seventeen.

In the later case of *Lingo v. Hann* a complaint was filed in the county court of Buffalo County charging defendant, *a fifteen year old boy,* with kidnapping and automobile theft. Defendant entered a plea of guilty and was sentenced to the state penitentiary. While an inmate defendant applied for a writ of habeas corpus and, relying principally upon section 43-212[6], providing in substance that children under sixteen cannot be sentenced to institutions where adult prisoners are confined, argued that his penitentiary commitment was void. Defendant did not rely upon section 43-211, apparently concluding that it was inapplicable since the case originally arose in a county with less than fifty-thousand population. In refusing relief the Court quoted from *McCoy*:

> The county attorney is not limited by the Juvenile Court Act in any way in his duty to file proper complaints against wrongdoers and prosecute the same . . . juvenile courts do not have the sole or exclusive jurisdiction of children *under eighteen years of age* who have violated our laws. [Emphasis added][7]

However the Court pointedly noted that section 43-211 has no application to Buffalo County as it has a population of less than fifty thousand.[8]

The most obvious implication from this is that the extraordinary collateral relief sought by petitioner might have been granted had the case arisen in Lancaster or Douglas Counties. In any event, *Lingo* involved only a question of collateral relief for a boy who, though represented by counsel, failed to ask that his case be tried in juvenile court. Section 43-211 was not relied upon by petitioner, and the question of whether a magistrate in any size

[6] Neb. Rev. Stat. § 43-212 (Reissue 1952).

[7] 161 Neb. 67, 72-73, 71 N.W.2d 716, 720 (1955).

[8] Id. at 73 and 720.

county was, upon request, under a mandatory duty to transfer the case of a child under sixteen to the juvenile court was still open.

The *Fugate Case* holds that the mandatory transfer provision of section 43-211 does not apply to felonies, thus repudiating the dicta and implication of *McCoy* and *Lingo* which suggest that a *felony* involving a *child of less than sixteen* in *counties of fifty thousand or greater population* belongs exclusively to the juvenile court.[9]

The Court's major basis for excluding felonies from section 43-211 rests on its interpretation of the words "the case". These words, the Court held, encompass only petty offenses of which justices of the peace and police magistrates have original jurisdiction; i.e., punishment for offenses which cannot exceed three months imprisonment. This construction, it should be noted, was neither argued nor briefed by counsel for either side. However, where section 43-211 applied, as thus construed, the Court noted that there was a mandatory duty to transfer.

The Court relied upon three distinct lines of reasoning to substantiate its holding that section 43-211 is confined to petty offenses. The first sprang out of the incoherent statutory pattern with which the Court had to deal. Section 43-211 had to be read along with section 73-467[10] of the Industrial School Act which also contains provisions relevant to juvenile defendants. Section 83-467 provides in part:

> When a boy[11] of sane mind, under the age of sixteen, has been convicted before a justice of peace or other inferior court of any crime, it shall be the duty of the magistrate to send the boy . . . to a judge of a court of record. The judge shall then

[9] The strength of these dicta from McCoy and Lingo has been overstated in the next in favor of the defendant. There is language in Lingo suggesting that whatever the rule of juvenile court jurisdiction may be as to felonies in general, murder and manslaughter belong to the criminal courts. Although the Court in Fugate quotes this Lingo language with approval, the rule of the Fugate case is stated in the syllabus in terms of "felony" without differentiation.

[10] See Neb. Rev. Stat. §§ 83-463 to 83-474 (Reissue 1958), for legislation relating to the industrial school.

[11] See Neb. Rev. Stat. § 83-490 (Reissue 1956), which provides: "All proceedings, service of orders, examinations, commitments, and other provisions necessary to give sections 83-467 to 83-490 full force and effect, shall be made and carried out in accordance with the provisions of section 83-465 to 83-473, which shall govern all commitments of girls who are fit subjects for an industrial school."

> issue an order to the parent requiring him . . . to show cause why the boy should not be committed to the state industrial school.

This statute, which predates section 43-211, seems to contemplate non-"criminal" treatment of juvenile defendants of less than sixteen only on petty offenses; *i.e.*, those within the jurisdiction of the inferior courts. This inference is strengthened by section 83-465[12] (also cited by the court) of the Industrial School Act which provides in part:

> When a boy of sane mind under the age of eighteen years has been found guilty of any crime, except murder or manslaughter, in any court of record of the state, the court may order that the boy be committed to the state industrial school.

This seems to contemplate jurisdiction to treat juvenile defendants as criminals in non-petty offenses; *i.e.*, those triable solely in a court of record. The Court's construction of the word "case" in section 43-211 leaves the Industrial School Act unchanged, and the Court says that the result is to provide a uniform system throughout the state for the handling of juvenile defendants.

There are two difficulties with the Court's position. First is the assumption implicit therein that the Industrial School Act, of which section 83-467 is a part, is to govern in the event of any conflict or overlapping with the Juvenile Court Act. The legislative history of these Acts would seem to compel a contrary assumption. For shortly after the decision in *McCoy* the words *"and in all commitments to said institutions the acts* (including the Industrial Schools Act) *in reference thereto shall govern the same"*[13] were stricken from section 43-217[14] of the Juvenile Court Act which amended provides: "Nothing in this act shall be construed to repeal any portion of the act to aid industrial schools for girls and boys." The meaning of the amendment is difficult to determine; assuming that it means something, that something might be that the Juvenile Court Act should govern in cases of conflict or overlapping between the two Acts.

The more serious difficulty with the Court's position is that if, as the Court's opinion indicates, there is a statute governing the procedure to be followed in cases involving petty offenses committed by minors under sixteen years of age cognizable in the inferior courts, *i.e.* section 83-467, then what has become of section

[12] Neb. Rev. Stat. § 83-465 (Reissue 1958).

[13] Neb. Laws 1945, c. 103, p. 336.

[14] Neb. Rev. Stat. § 43-217 (Reissue 1952).

43-211. It means something, says the Court, as to petty offenses, but its office is confined to providing the full range of juvenile court remedies over petty offenses in substitution for the simple commitment provisions of the Industrial School Act. If the latter is the case, then the Court has in fact held that section 43-211 does supersede section 83-467 in part, and its attempt at harmonizing the two Acts has been incomplete. Of course section 43-211 is the later statute by some sixteen years.[15]

The second major basis for the Court's holding that section 43-211 applies only to petty offenses is that a contrary holding would have been fruitless; the county judge could have been circumvented in the instant case by the filing of the complaint in the District Court. Then a preliminary hearing could have been held before the district judge and the mandatory provision of section 43-211 would not apply. This, of course, is the Court's repudiation of the dicta in *McCoy* interpreting the words "justice of peace or police magistrate" to include "public magistrate",[16] a term which would obviously apply section 43-211 to a district judge sitting as an examining magistrate.[17]

The final basis for the holding is a reference to alleged constitutional problems[18]—uniform jurisdiction among the courts[19]

[15] The first act in reference to the state industrial school was enacted in 1879. In 1905 the legislature created the Juvenile Court Act.

[16] See Neb. Rev. Stat. § 29-103 (Reissue 1956), which defines the term magistrate to mean a justice of the peace, county judge, mayor of a city or incorporated village, or police judge. The case of Binfield v. State, 15 Neb. 484, 19 N.W. 607 (1884), held that a district judge is not included within the statute.

[17] In the instant case, the Court notes that § 43-211 does not include county judges as subject to its provisions. This would have been a sufficient basis for its decision without the further holding as to meaning of the word "case"; but after noting the non-inclusion of county judges the Court drops the point, nor is it mentioned in the Court's syllabus.

[18] The constitutionality of the Juvenile Court Act as a whole was determined in State v. Bryant, 94 Neb. 754, 144 N.W. 804 (1913).

[19] Neb. Const. Art. V § 19 provides: "The organization, jurisdiction, powers, proceedings, and practices of all courts of the same class or grade, so far as regulated by law and the force and effect of the proceedings, judgments, and decrees of such courts, severally, shall be uniform." State v. Magney, 52 Neb. 508 ,72 N.W. 1006 (1897), the Court held that the legislature may enact laws defining the jurisdiction and powers of all courts in the state, but such a law, to be valid, must be uniform as to all courts of the same grade wherever situated.

and equal protection of the laws[20] are the ones obviously meant —which would arise only if section 43-211 applied solely to counties with a population in excess of fifty thousand and the well settled duty of the Court to adopt a construction avoiding constitutional issues. The literal confinement of section 43-211 to Lancaster and Douglas Counties and the constitutional issues raised constituted the major obstacle to an acceptance of petitioner's construction of section 43-211. Petitioner accordingly argued that section 43-211 applied to all counties. Reliance was placed on an ambiguous passage from *State v. Birdsall*[21] said to apply section 43-211 to all counties, on the importance of section 43-211 to the entire Act, and on the Juvenile Court Act provision enjoining a liberal construction on the Court.[22] Since petitioner's argument required ignoring express statutory language, she obviously had an uphill battle.[23] But the Court does state that under its construction sections 43-211 and 83-467 "provide a *uniform system throughout the state* for the handling of children under sixteen years of age." If section 43-211 is statewide in application, as the Court suggests, the constitutional problems urged against petitioner's construction seem to disappear.

A similarly important constitutional question, which the Court's opinion did not touch, is the effect of the *Fugate* decision in vesting with the county attorney sole discretion in determining whether a child under sixteen years of age should be tried in juvenile court or under the general criminal laws.

The Juvenile Court Act, under the Court's interpretation, defines specific juvenile acts and provides punishment for them,

[20] Neb. Const. Art. III, § 18 prohibits local or special laws regulating the practice of courts of justice and the regulating of the jurisdiction and duties of justices of the peace and police magistrates.

[21] 88 Neb. 587, 130 N.W. 108 (1911). In Birdsall a complaint was filed before the county judge of Dawes County, population less than 50,000, charging the defendant, a seventeen year old girl, with a violation of the law. The Court said, "Finally, it appears that after the complaint was filed and the defendant was taken into custody the case could not be transferred to the juvenile court because the defendant was over sixteen years of age." Id. at 589 and 109.

[22] Neb. Rev. Stat. § 43-218 (Reissue 1952), provides in part: "This act shall be liberally construed to the end that its purpose may be carried out."

[23] In State v. Gregori, 318 Mo. 998, 2 S.W.2d 747 (1928), the court held that a juvenile court statute relative only to counties with a population of more than 50,000 was unconstitutional as legislation not applying equally to inhabitants of every section of the state.

but there is no semblance of a classification which would enable one to ascertain under what circumstances he may be tried under the general criminal laws or under what circumstances he may be tried in juvenile court. So far as the Juvenile Court Act under the Court's interpertation is concerned, the same identical act, under the same circumstances, may violate the Juvenile Court Act when committed by one child and violate the general criminal law when committed by another child. The determination rests solely with the prosecuting attorney.[24]

The constitutionality of the interpretation, as such, is not clear. In *Olsen v. Delmore*,[25] for example, a statute authorizing the prosecuting attorney to charge a violation of the uniform firearms act either as a gross misdemeanor or as a felony was held to violate the due process and equal protection clause of the Fourteenth Amendment. *State v. Pirkey*,[26] a recent Oregon case, is similar in that a statute vesting uncontrolled discretion in a grand jury or prosecuting attorney to charge either for a felony or a misdemeanor was held to run afoul to the Federal Constitutional guarantees. A number of jurisdiction's are in accord with these holdings.[27] However, there is an abundance of contrary authority.[28] Recent United States Supreme Court decis-

[24] Neb. Rev. Stat. § 23-1201 (Reissue 1954).

[25] 48 Wash.2d 545, 295 P.2d 324 (1956).

[26] 203 Or. 697, 281 P.2d 698 (1955).

[27] Daloia v. Rhay, 252 F.2d 768 (9th Cir. 1958), holding only where, by reason of form and structure of a penal statute, prosecution officials are given unlimited discretion to charge either a felony or a misdemeanor, equal protection is denied; State v. Cory, 204 Or. 235, 282 P.2d 1054 (1955), holding that portion of the Habitual Criminal Act giving the district attorney unlimited discretion denied equal protection; but see Jones v. Rhay, 254 F.2d 393 (9th Cir. 1958) holding a statute is not unconstitutional on grounds that it left to full discretion of sentencing court whether offense is a felony or a misdemeanor.

[28] Ex parte Digiuro, 100 Cal.App.2d 260, 223 P.2d 263 (1950), holding where an act is punishable under two or more sections of the code, it may be prosecuted under either; McDowell v. State, 160 Fla. 588, 36 So.2d 180 (1948), holding where information could have been drafted and cause prosecuted under either grand larceny statute or under statute relating to obtaining property by false pretense, state's attorney could elect to prosecute under grand larceny statute; Lewis v. State, 82 Ga.App. 280, 60 S.E.2d 663 (1950), holding where there are two or more statutes under which defendant may be indicted, and punishment provided by the different statutes was dissimilar in severity, defendant does not have right to say under which statute

he prefers to be tried, it is the option of the state; Petty v. State, 73 ions make it very doubtful whether the *Olsen* and *Pirkey* decisions would be followed.[29] Particularly is this true in view of the vast number of state statutes which would fall if such a view is adopted. However this may be as a constitutional matter, the unfairness of and the violence done to the spirit of equal protection by decisions vesting uncontrolled discretion in the prosecuting attorney to charge either for a felony or a misdemeanor, or a felony or no crime at all would seem to dictate a contrary result where at all possible.

A final speculation is in order. Had the case gone the other way, and the petitioner been transferred to the juvenile court and there subjected to the juvenile court's power to order detention until age twenty-one, could a criminal action have been commenced against the petitioner when she attained the age of sixteen, when the criminal court attains jurisdicion, or at the age of twenty one, when the juvenile court loses jurisdiction? No case directly in point has been discovered, but the following well established propositions of law are relevant.

1. There is no Nebraska statute of limitations on murder.
2. The Constitution guarantees a defendant the right to a

Idaho 136, 248 P.2d 218 (1952), holding the matter of determining which of two or more applicable criminal statutes will be invoked is for the state to decide; Alder v. Com., 307 Ky. 471, 211 S.W.2d 678 (1948), holding defendant did not have the selection of the law under which he should be prosecuted; People v. Flynn, 330 Mich. 130, 47 N.W.2d 47 (1951) holding that defendant charged and convicted under statute making it a felony to destroy or injure personal property and the fact that defendant could have been convicted under a statute making it a misdemeanor, did not render defendant's conviction erroneous; Lee v. State, 201 Miss. 423, 29 So.2d 211 (1947), holding that accused was not improperly sentenced because accused could have been prosecuted and sentenced under another statute providing for a lesser penalty; People v. Rudolph, 277 App.Div. 195, 98 N.Y.S.2d 446 (1950) holding if one act is a crime under two or more sections of the penal law, it may be prosecuted under either provision or all of them and in such a case a grand jury and district attorney may determine under which of the applicable sections an indictment is to be found or an information to be filed; Curtis v. State, 86 Okl. Cr. 332, 193 P.2d 309 (1948), holding the state may elect under which sections of the Code prosecution may be maintained; Dixon v. State, 152 Tex.Cr.Rep. 504, 215 S.W.2d 181 (1948), holding the state may prosecute for either swindling or theft by false pretext under facts showing both.

[29] Berra v. U. S., 351 U.S. 131 (1956); Gore v. U. S., 357 U.S. 386 (1958).

speedy trial. Convictions have been invalidated because of too great a separation between offense and prosecution.[30]

3. No one may be twice put in jeopardy for the same offense. *United States v. Dickerson*[31] held that when the respondent acknowledged his guilt and the juvenile court found him within its jurisdiction as a delinquent child and continued the case for social study and recommendations as to disposition, jeopardy attached, and respondent could not thereafter be prosecuted on the same charge.

4. Whether a criminal court has jurisdiction of a child in the face of juvenile court legislation is to be tested by the age of the child at the time of prosecution rather than the time of the offense.[32]

5. A prosecutor may not unreasonably delay prosecution until the child attains prosecutable age within the meaning of proposition 4 supra. Putting together these propositions, it leaves the legal position of the petitioner dubious even had she won the instant case.[33]

It only remains to determine how the *Fugate* case aligns with the law in other jurisdictions.[34] As the Court points out in *Fugate,* statutory variations prevent citing any case from another jurisdiction as being directly in point. But under the varying statutes of the several states, there have been many decisions as to whether juvenile courts have exclusive jurisdiction of capital offenses[35]

[30] Neb. Const. Art. I, § 11; Neb. Rev. Stat. §§ 29-1201 to 29-1203 (Reissue 1956); Abbott v. State, 117 Neb. 350, 220 N.W. 578 (1940); Critser v. State, 87 Neb. 727, 127 N.W. 1073 (1910).

[31] United States v. Dickerson, 168 F.Supp. 699 (D.C.D.C. 1958).

[32] The controlling age under juvenile court legislation is that at the time of the prosecution under the majority of statutes, Peterson v. State, 156 Tex.Cr.Rep. 105, 235 S.W.2d 138 (1950), and at the time of misconduct under others, United States v. Fotto, 103 F.Supp. 430 (S.D.N.Y. 1952); State v. Musser, 110 Utah 534, 175 P.2d 724 (1946).

[33] Such a statute would seem to violate the "ex post facto" clause because the mere election of the prosecuting attorney to wait for the child to grow older would purport to make that a crime which was not a crime when committed.

[34] Generally under common law there is a presumption of criminal incapacity on the part of an infant below the age of fourteen, which is conclusive prior to the age of seven, and is rebuttable thereafter. State v. George, 20 Del. 57, 54 Atl. 745 (1902); Miles v. State, 99 Miss. 165, 54 So. 946 (1911).

[35] Two general types of delinquency definitions are typically used in the Juvenile Court Act of the various jurisdictions to show exactly

alleged to have been committed by children under sixteen. Although there has been a split as to results,[36] the large majority of cases have held that such offenses were criminally triable.[37] In most of the cases in which this result has been reached the statutory pattern with which the Court had to work was just

what conduct they include and in which court they are cognizable. The first type employs what may be called the technique of specific enumeration, i.e., Ill. Ann. Stat., § 23-2001 (1958). The second type has provisions of a generalized nature or what may be termed catch-all provisions, i.e., Wis. Ann. Stat., § 48.08 (1957). The Nebraska Juvenile Court Act employs both techniques, i.e., Neb. Rev. Stat. § 43-201 (Reissue 1957).

[36] States contra to the instant case: State v. Anderson, 215 La. 856, 41 So.2d 809 (1949), holding that it was mandatory to transfer the case of a fifteen year old charged with murder to the juvenile court; In re Farrell, 191 Misc. 582, 78 N.Y.S.2d 679 (1948), holding the domestic relations court has exclusive jurisdiction in all cases involving children under the age of fifteen regardless of the offense committed; State v. Monahan, 15 N.J. 34, 104 A.2d 21 (1954), holding the juvenile court had exclusive jurisdiction over a fifteen-year-old boy who was indicted for murder and reversing the earlier case of In re Daniecki, 117 N.J. 527, 177 Atl. 91 (1935), which held the Legislature had no power to vest exclusive jurisdiction in the juvenile courts to try the crime of murder; ex parte State ex rel. Echols, 245 Ala. 353, 17 So. 2d 449 (1944) an order of the magistrate transferring the case of a boy under sixteen years of age, charged with murder, to the juvenile court for final disposition was held proper.

[37] States in accord with the instant case: People v. Lattimore, 326 Ill. 206, 199 N.E. 275 (1935), holding the criminal court had jurisdiction of a fifteen year old charged with murder; State v. Doyal, 59 N.M. 454, 286 P.2d 306 (1955) holding the district court could sentence a fifteen year old to the penitentiary for committing a felony; Imel v. Municipal Court, 225 Ind. 23, 72 N.E.2d 357 (1947), holding the juvenile court did not have jurisdiction of a minor in his fifteenth year of age who was charged with murder; Collins v. Robbins, 147 Me. 163, 84 A.2d 536 (1951), holding the same; Snyder v. State, 189 Md. 167, 55 A.2d 485 (1947), holding the juvenile court has jurisdiction over all children except those charged with a crime which if committed by an adult would be subject to punishment by death or imprisonment; Templeton v. State, 146 Tenn. 272, 240 S.W. 789 (1922), holding the juvenile court was entirely without jurisdiction or power to try or make any disposition of a case where the offense was rape or murder; Hinkle v. Skeen, 138 W.Va. 116, 75 S.E.2d 223 (1953), holding circuit court had jurisdiction of all capital offenses; People v. Wolff, 182 Cal. 728, 190 Pac. 22 (1920), holding child under eighteen years of age could be prosecuted for murder under the general law; Parker v. State, 194 Miss. 895, 13 So.2d 620 (1943), holding whether juvenile should be tried in juvenile court rested in the sound discretion of the trial judge; Wade v. Warden of State Prison, 145 Me. 120, 73 A.2d 123 (1950) holding the juvenile courts do not have sole or exclusive jurisdiction of minors who have violated our laws.

as incoherent as Nebraska's.[38] To the extent the cases might have gone either way, the majority position seems to be grounded in a preference for criminal law notions of deterence and vengence over the juvenile court notions of correction and rehabilitation. The writer feels that our statutes are so chaotic that the Nebraska Court might have decided *Fugate* the other way with an adequate authoritative basis; he would be less than honest if he did not express his regret that Nebraska, in aligning itself with the majority, has set its face against the hopeful modern developments in the handling of juvenile offenders.

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[38] These exceptions to the exclusive jurisdiction of the juvenile court have been accomplished by the courts through various techniques. Some courts say the juvenile must plead the question of age or object to the jurisdiction of the criminal court or waive both. A majority of the courts hold even if defendant was of juvenile age at the time he committed the act, he may be tried in criminal court upon the passing of the juvenile court age. Courts have held the grant of exclusive jurisdiction to juvenile courts to be unconstitutional under state constitutions. By statutory construction, courts have found the legislature did not really mean exclusive jurisdiction. Cases are cited in 123 A.L.R. 446 (1939); 48 A.L.R.2d 665 (1956).