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# Juvenile Court Administration in Kentucky

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## NOTES

### JUVENILE COURT ADMINISTRATION IN KENTUCKY

The Juvenile Courts of this State deal with two classes of children, those who are designated by the Statutes as dependent or neglected children and those who are designated as delinquent children. They also deal with parents, guardians, custodians and other persons who, in any way, contribute to the dependency, neglect or delinquency of a child as defined by the Kentucky Statutes and with those who have the custody of such a child who neglect to do that which will directly tend to prevent such child from becoming neglected, dependent or delinquent.<sup>1</sup>

"Any male child seventeen years of age, or under, or any female child eighteen years of age or under, who is found begging, or receiving, or gathering alms (whether actually begging or under the pretext of selling or offering for sale anything), or being in any street, road or public place for the purpose of so begging, gathering or receiving alms; or who is found singing or playing any musical instrument for gain upon the streets or in any public place; or who is found wandering and not having any home or any settled place of abode or proper guardianship or visible means of subsistence; or who is found destitute, homeless or abandoned or depends upon the public for support, or who has not proper parental care, or whose home by reason of neglect, cruelty or depravity on the part of its parents, guardian or other person in whose care it may be is an unfit place for such child; or who is found living in any house of ill-fame, or with any vicious or disreputable person."

The same section defines a delinquent child as:

"Any male child seventeen years of age or under and any female child eighteen years of age and under who violated any law of this state; or who is incorrigible; or who knowingly associates with thieves, vicious or immoral persons; or who, without just cause and without the consent of its parents, guardian, or person having its custody, control or supervision, absents itself from its home or place of abode; or who is growing up in idleness or crime; or who knowingly visits or enters a house of ill repute or who knowingly patronizes or visits any policy shop or place where any gambling device is or shall be operated; or who patronizes or visits any saloon or dram shop where intoxicating liquors are sold; or who patronizes any public pool room or bucket shop, or who wanders about the streets in the night time without being on lawful business or occupation; or who habitually wanders about any railroad yards or tracks, or jumps or attempts to jump on any moving train, or enters any car or engine without lawful authority; or who uses vile, obscene, vulgar, profane or indecent language or is guilty of immoral, indecent or lascivious or disorderly conduct in any

<sup>1</sup>Section 331e-1 of the Kentucky Statutes, defines a dependent or neglected child as:

public place or upon any highway or about any school house; or who is persistently truant from school."

A dependent child is one that is in that state because it has been neglected, abandoned or mistreated by its parents, guardians, custodian or other person whose duty it is, under the law, to provide for it, or because there is no person who is legally obligated to care for it who is able to do so. Such a child is not in any way to blame for its neglected or dependent condition. Its condition is the result of the unwillingness or inability of those who are responsible for its nurture and education to perform their duty.

A delinquent child is one whose condition is the result of some moral turpitude on the part of the child. It is true other persons may have committed acts which have helped to contribute to this state of delinquency, but this state is one that involves a certain amount of responsibility resulting from free agency on the part of the child in his or her refusal to do certain required things or persistence in doing things forbidden.

In many particulars the procedure in dealing with dependent or delinquent children is practically the same and the purpose of the law in handling both dependent and delinquent children is to save them from their neglected or delinquent state and make of them useful citizens.

The Kentucky Statutes provide:

"Any reputable person being a resident of the county having knowledge of a child in the county who appears to be either neglected, dependent or delinquent, who is not an inmate of a state institution or any institution incorporated under the laws of the State of Kentucky for the care and correction of children, or any reform school, or industrial school for juvenile offenders, may file with the clerk of the county court a petition in writing, setting forth the facts, verified by affidavit. It shall be sufficient that the affidavit is upon information and belief. The petition shall set forth the name and residence of the parent or parents, if known, or if the name and residence is unknown to the petitioner; (a) the name and residence of the person having the custody, control or supervision of such child; or (b) if the child be illegitimate, the name of the mother of such illegitimate child; or if it allege that both parents, or that such mother is dead, then the name of the guardian, if any, of such child; (d) if no guardian of such child is known to the petitioner, then of some near relative, or that such is unknown to the petitioner. All persons named in the said petition shall be notified of such proceedings as hereinafter provided."<sup>2</sup>

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<sup>2</sup>Section 331e-4.

The Statute protects the child by requiring that the petition be filed by a reputable person who is a resident of the county where the child lives. The child is further protected in that the name and residence of the parent or parents, if known, must be given in the petition and if the child has no parents the name of the guardian shall be given and if there is no guardian then the name of some near relative shall be given, so that those who are or should be most interested in the child may be notified of the proceedings.

The law provides that upon the filing of the petition a summons shall issue requiring the parent or parents, guardian or person having custody, control or supervision of the child, or with whom the child may be to produce said child in court at a stated time which shall be not less than twenty-four hours after service. It also provides that the parents, if living, and their residence if it be known to the petitioner or its legal guardian, if there be one, and his residence known to the petitioner, or if there be neither parent or guardian, or their residence be not known, then some near relative, if his residence be known, shall be notified of the proceeding and in the event there are none of these the Judge shall appoint some suitable person to act in behalf of the child. The law also provides that it shall be the duty of the Probation Officers to be present when the case is tried to represent the interests of the child and to furnish such information as may be required to advise the Court in the proper disposition of the case and to take charge of the child before and after the hearing as may be ordered by the Court.

It is also provided that the child or person interested in the child may demand a trial by jury.

If it appeared from the affidavit that a summons will be ineffective to produce said child in Court a warrant may be issued for his arrest.

Until the first hearing of the case the Chief Probation Officer or any assistant probation officer may release the child upon its own recognizance or upon the recognizance of the parent or person having its custody, or the child may be placed in the detention home or in any place of detention for children maintained by the city or county, provided that no child under fourteen years of age shall be incarcerated in any county jail or police station.

The child has the right to give bond or other security for its appearance for trial.

The Court has large discretion upon the trial of the case as to the disposition that shall be made of the child. If the child is found to be delinquent the court may release it on probation to its parents, guardian, or some other suitable person. It sometimes appears that it is necessary to take a child out of its home where members of the family have contributed to its delinquency and place it in a home where the environment will be different. However, where the child has persisted in its delinquency and has repeatedly violated the terms of its parole or probation or has committed some great offense it sometimes becomes necessary to send the child to the reform school or to some other institution that receives and cares for delinquent children.

If a child is found to be dependent or neglected the Court may leave the child in its own home or if it is necessary for the best interests of the child may take it out of its own home and place it in some private family or institution where it will be properly cared for. The Court, through the Probation Officers, keep in touch with such children and from time to time may enter the necessary orders for their welfare.

Immediately upon the filing of a petition involving a child it becomes the duty of the Probation Officers to make a thorough investigation of the case including the home environment and all other conditions surrounding the case and make a written report to the County Judge. The Probation Officers shall be in Court when the case is heard to represent the interests of the child and shall keep themselves informed as to the conduct of all children placed on probation and shall render them all proper and friendly aid possible. They should make a report to the Court whenever ordered. The law provides that all proceedings of Juvenile Court be conducted in chambers so that the child will not be embarrassed in its later life by reason of having been brought into court, and no probation officer shall divulge or communicate to any person other than the Court or the proper officers of the court any information obtained pursuant to the discharge of his duties without the consent of the Court and no record of any of these proceedings shall be made public without the consent of the Court.

The law also provides<sup>3</sup> that when any child who comes within the provisions of the Juvenile Court Act is arrested with or without a warrant his case shall immediately be transferred to the County Judge and the Court may then upon being given notice proceed to hear and dispose of the case in the same manner as if the child had been brought before the Court upon petition.

In a recent case, the Court of Appeals of Kentucky, held that Section 331e-4 of the Kentucky Statutes which provides for the filing of a petition, etc., prescribed the procedure only in cases of dependent, neglected or delinquent infants who are not charged with any crime, but are dependent, neglected or delinquent as these conditions are defined by the Kentucky Statute, and are, therefore, required to be brought before the Court that proper steps may be taken to relieve, alleviate or correct this dependent, neglected or delinquent condition.<sup>4</sup> In such cases the filing of the petition is necessary to give the Court jurisdiction. But the Court held that where the child is charged with a crime of which the Court has no final jurisdiction it is proper to proceed under Sec. 331e-5 and no petition is necessary. It is necessary, however, for notice to be given to the parents, custodian, guardian or other person as provided in Sec. 331e-4.

It is also provided that in any case brought before it in accordance with the Statute, the Court may, in its discretion, permit such child to be proceeded against in accordance with the laws that may be in force in this State governing the commission of crimes, and in such cases the petition, if any, has been filed as provided in Sec. 331e-4, shall be dismissed.<sup>5</sup> The proper procedure is for the child to be brought before the Court, notice be given, a hearing had and the child adjudged a delinquent child and the case transferred to the Court having jurisdiction and the petition, if any, dismissed.

It will be noted that the Court of Appeals says that the procedure provided in Section 331e-4 applies only to cases of delinquent, dependent and neglected children, where the child has not been accused of a crime of which the Juvenile Court has no jurisdiction. However, Section 331e-1 which specifies and

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<sup>3</sup> Kentucky Statutes, Section 331e-5.

<sup>4</sup> *Tipton v. Commonwealth* 221 Ky. 363, 298 S. W. 980.

<sup>5</sup> Kentucky Statutes, Section 331e-5.

sets out a number of acts, any one of which constitutes delinquency, names as the first of said list:

“Any male child 17 years of age or under and any female child 18 years of age or under who violates any law of this State.”

Therefore, the commission of a crime by a child is an act of delinquency and the child may be proceeded against by petition as set out in Sec. 331e-4 and does not necessarily have to be proceeded against by warrant as provided in Sec. 331e-5. I do not think, therefore, that the Court of Appeals meant to say a child who commits some crime like larceny must be proceeded against by warrant and not by petition but that where the crime is of such serious nature that the Juvenile Court after hearing the case will probably decide to send it to the Circuit Court for trial, it is proper to proceed by warrant and not by petition.<sup>6</sup>

I think the better practice in cases where children are arrested on warrants charging them with a serious offense is to have a petition filed under Sec. 331e-4 of the Statute; then upon the hearing of the case the Court is not limited to testimony merely regarding the act complained of in the warrant but can go into the entire question of the child's conduct. He or she may not be guilty in a criminal way of the offense charged in the warrant but the testimony may show that the child is incorrigible, or is growing up in idleness or crime, or is truant from school or is a delinquent child or has committed some other act which the Statute declares constitutes delinquency and the Court may then enter the proper orders for the care, control and correction of the child.

The law provides that children coming under this Act shall be cared for as would be done by a Court of Chancery; that the care, supervision and discipline of the child shall approximate as nearly as possible that which would be given it by parents and that the proceedings involving the child shall not be deemed criminal proceedings. On the other hand the law also recognizes the fact that there are some cases of such serious nature that it becomes necessary for the child to be proceeded against under the law of the State governing the commission of crimes. It is, therefore, provided that the Court may, in its discretion, in any

<sup>6</sup> Cf. recent case of *Hall v. Commonwealth*, 21 S. W. (2d) 799. (Ed.)

case where a delinquent child is brought before it permit such child to be proceeded against in accordance with the law that may be in force in this State governing the commission of crimes. In such cases the petition is dismissed and the child is transferred to the court having jurisdiction. However, the County Court has the first jurisdiction, and before the Circuit Court can assume jurisdiction it becomes necessary for the proper proceeding to be had either upon petition or warrant with due notice to the parents or other person before the case can be transferred to the Circuit Court so as to give it jurisdiction.

The wording of the Statute seems to indicate that the Juvenile Court would have jurisdiction of a boy throughout his seventeenth year and of a girl throughout her eighteenth year because the Statute reads, "Any male child seventeen years of age or under or any female child eighteen years of age or under." However, the Kentucky Court of Appeals has held that as soon as a boy reaches his seventeenth birthday or a girl her eighteenth birthday the jurisdiction of the County Court ceases.<sup>7</sup>

In 1928 the General Assembly passed an Act creating a commission to be known as "The Kentucky Children's Bureau" and also providing for the establishment of a County Children's Bureau. It is the duty of the County Children's Bureau, with the co-operation of the State organization, to discover dependent, neglected, delinquent and defective children and obtain for them the benefit of the law; to administer funds appropriated by the Fiscal Court for Mothers' Aid; to serve as attendance officers if appointed by the Board of Education or County Superintendent of Schools; to serve as Probation or Parole Officers, if appointed by the Judge of the Juvenile Court; and to perform various other duties connected with the welfare of dependent, neglected, delinquent or defective children.

This law has not been in effect long enough to determine to what extent the County Bureau and the State organization will be able to assist in the work of caring for the reclaiming of delinquent children. However, if there is a proper co-operation between this organization and the Juvenile Court and the other organizations interested in the welfare of this class of children I think the Bureau can accomplish a good work.

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<sup>7</sup> *Wilson v. Com.*, 208 Ky. 707, 271 S. W. 1055.



Section 331g-1 of the Kentucky Statutes, while not part of the Juvenile Court Act, was evidently passed in aid of it, deals with parties who promote or contribute to the dependency or neglect of children. This Statute is very broad in scope and provides that any parent, guardian or other person who has the custody of any dependent or delinquent child or any other person who shall knowingly or wilfully encourage, aid, cause, abet or connive at such state of dependency, neglect or delinquency, or shall knowingly or wilfully do any act or acts that directly produce, promote or contribute to the conditions which render such child a dependent, neglected or delinquent child or who having custody of such child shall, when able to do so, wilfully neglect to do that which will directly tend to prevent such state of dependency, neglect or delinquency or to remove the conditions which render such child a dependent, neglected or delinquent child shall be deemed guilty of a misdemeanor and on conviction fined not more than \$100.00 or imprisoned in the county jail or workhouse not more than fifty days or both.

The law provided, however, that the Court has the right to suspend the sentence and release the defendant on probation for the space of one year on his or her entering into a recognizance with or without surety in such sums as the Court may direct. The conditions of the probation and recognizance shall be that the defendant shall provide and care for such dependent, delinquent or neglected child in such a manner as to prevent a repetition or continuance of this state, and that the defendant will comply with orders of the court in every way affecting the welfare of the child.

This section of the Statute is invoked in a great many cases where parents fail to provide for the support of their children. They are given a workhouse sentence and released on probation upon condition that they make proper provision for the maintenance of their children.

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