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# THE JUVENILE COURT CONCEPT IN MISSOURI: ITS HISTORICAL DEVELOPMENT—THE NEED FOR NEW LEGISLATION

NOAH WEINSTEIN†

The present method of treatment of neglected and delinquent children by the juvenile court in Missouri is a dual heritage from their treatment under the criminal law and in the courts of equity as it has evolved during the last century and a third. This mixed ancestry may underlie some of the problems that have arisen to impede the proper development of the juvenile court.

Each year in Missouri thousands of neglected and delinquent children are brought to the attention of the juvenile court and its personnel. At the present rate there will be at least 60,000 such children during the next decade, and, for many reasons, there is cause to believe that their number will far exceed that figure. They are a sizable part of our society. How they will be examined, treated, and disciplined, and in what form these children will become adult members of the community, is a vital concern to all of us in the state.

A proposed act "to facilitate the care, protection and discipline of children who come within the jurisdiction of the juvenile court"<sup>1</sup> has been prepared by a joint committee of the Missouri General Assembly for consideration by the 1957 legislative session. This measure, which would replace the present forty-six year old juvenile court act, proposes to write into our statute law the changes in juvenile court procedures brought about by judicial interpretations of the act over the years and to recognize the other substantial progress accomplished in the specialized field of handling neglected and delinquent children in modern times.

The proposed act provides a really effective means for the *prevention* of serious delinquency and criminality. It furnishes the minimum tools needed by the court for helping re-form the personality and character of juveniles brought before it and, thus, prevents the development of children into hardened criminals and enables them to play a useful part in society.

For an understanding of how the juvenile court has developed as it has, this article first considers the background of this particular field of law as it existed in Missouri during the nineteenth century. In doing this we shall endeavor to review the various laws and some of the decisions having particular application to children. Following this, we

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1. SENATE BILL No. 15, 69th Missouri General Assembly § 211.010 (1957).

shall turn our attention to the important special laws enacted by the Missouri legislature in the early part of the present century having for their specific purpose the special treatment of children, and shall recount some of the leading court decisions interpreting these laws. Finally we shall examine the details of the proposed juvenile court legislation prepared by the joint legislative committee for the present session of the Missouri General Assembly.

### EQUITY COURTS AND MINORS

The first Constitution of the State of Missouri, adopted "at the town of St. Louis" on July 19, 1820, vested the judicial power, as to matters of law and equity, in a supreme court, in a chancellor, in circuit courts, and in such inferior tribunals as the general assembly might from time to time establish.<sup>2</sup> This constitution vested in the court of chancery original and appellate jurisdiction in all matters of equity, *and a general control over executors, administrators, guardians, and minors.*<sup>3</sup> The General Assembly of Missouri, meeting at St. Charles on the first Monday in November 1822, ratified an amendment to the constitution which abolished the office of chancellor and vested chancery jurisdiction in the supreme court and circuit courts.<sup>4</sup>

On January 7, 1825, the general assembly, in defining the jurisdiction of circuit courts, provided that they were to have general control over minors and were authorized to "proceed therein according to the rules, usages and practice of courts of equity unless otherwise provided for by law."<sup>5</sup> The general control over minors by courts of equity described in the 1825 law gave recognition to the power that had been exercised by such courts for more than two centuries in England. The origin of this jurisdiction is variously ascribed to the fiction of the right of the king as *parens patriae*, which, after the abolition of the Court of Wards, vested in the king the protection of all the infants in the realm; or to the general jurisdiction of equity over trusts and the treatment of guardianship as a trust; or to an old common-law writ dealing with wards; or to a usurpation justified because it was the beneficent exercise of power peculiarly equitable in its nature.<sup>6</sup>

The validity of the exercise of the power of a court of equity in the protection of personal rights of a minor, even absent the infant's ownership of property, was asserted by the Missouri Supreme Court in a decision which recognized the right of a court exercising equitable

2. Mo. CONST. art. V, § 1 (1820), 1 Mo. ANN. STAT. at 88 (Vernon 1951).

3. Mo. CONST. art. V, § 10 (1820), 1 Mo. ANN. STAT. at 89 (Vernon 1951).

4. Mo. CONST. amend. art. 1 (1822), 1 Mo. ANN. STAT. at 100 (Vernon 1951).

5. Mo. Laws 1825, at 268-69.

6. See *Ex parte* Badger, 236 Mo. 139, 226 S.W. 936 (1920).

jurisdiction to remove a child from its own parents if necessary to protect the child and promote its welfare.<sup>7</sup>

By an act approved January 17, 1825, the circuit court sitting as a court of chancery was vested with jurisdiction in all causes of divorce, alimony, and maintenance, including the power to enter orders affecting the care, custody, and maintenance of the children involved.<sup>8</sup>

#### JUSTICE OF THE PEACE, PROBATE, AND COUNTY COURT JURISDICTION OVER MINORS—ADOPTION BY DEED

Although the jurisdiction of equity may have been sufficiently broad to deal with all problems of minors, the legislature, perhaps prompted by the failure of equity to assert itself, deemed it necessary to delegate portions of this jurisdiction to various other courts. Thus, in 1824, a justice of the peace was authorized to bind a minor, who was found to be a vagrant, as an apprentice until his twenty-first birthday.<sup>9</sup>

Certain jurisdiction over classes of minors was also conferred on the probate court, which by an act approved January 17, 1825, had the power to "bind out," as an apprentice or servant, any poor child who was or may be a charge of the county, or a child who begs, or whose parents beg or are charges of the county, or the children of any poor family if "the father is a habitual drunkard, or if there is no father, where the mother is of bad character or suffers her children to grow up in habits of idleness without any visible means of obtaining an honest livelihood . . ." <sup>10</sup> until such child became twenty-one years of age, if a male, or eighteen years of age, if a female.<sup>11</sup>

In 1857, the general assembly provided for the adoption of any child by deed executed, acknowledged, and recorded as in the case of conveyances of real estate. Upon the recordation of such a deed, the child had the same rights and privileges as a child had "against lawful parents."<sup>12</sup> The natural parents were not required to join in the deed of adoption. Thus the supreme court held that the adopted child became in a legal sense the child of the adopting parents and at the same time remained the child of its natural parents and was not deprived of its rights of inheritance.<sup>13</sup> This act also provided that the county court<sup>14</sup> had the power to change the name of the child so adopted. Subsequently this latter provision was amended and the power to

7. *Ibid.*

8. Mo. Laws 1825, at 330-31.

9. Mo. Laws 1825, at 784.

10. Mo. Laws 1825, at 132.

11. *Ibid.*

12. Mo. Laws 1857, at 59.

13. *Clarkson v. Hatton*, 143 Mo. 47, 44 S.W. 761 (1898).

14. County courts were defined as "tribunals for the transaction of county business." Mo. Laws 1825, at 268.

change the name of an adopted child was vested in the probate court.<sup>15</sup>

The Thirty-fifth General Assembly authorized any "society" incorporated under the provisions of chapter 21, article 10, of the Revised Statutes of 1879, having as one of its objects the care or protection of abandoned, ill-treated, and friendless children, to act as guardian of the person of any child when so appointed under the provisions of that act.<sup>16</sup> The act authorized the probate court to act upon the application of any such "society" alleging the circumstances of the "abandonment, ill-treatment or neglected condition" of any child under the age of fourteen years found in the jurisdiction of the court.

Under such proceedings "unfitness or incompetency of the parents shall be determined by a jury, if one is demanded."<sup>17</sup> Upon such a finding, the probate court was authorized to appoint the "society" as guardian of such child with all the powers and duties of a guardian until the child reached the age of fourteen years. The child was permitted, when he became fourteen, to select a guardian of his own choice subject to the court's approval. The "society" had the power during the period of guardianship to receive from the child's parents a release of parental rights in the form of an acknowledged deed duly recorded as in the case of conveyances of real estate. Such a release deprived the parents of the right to custody and control of the child.

An additional provision of this legislation is worthy of note. The probate court was authorized to take a child and deliver it to the custody of a "society" without notice or hearing upon the verified application of a society that the child was suffering from "neglect or ill-treatment." The child could remain in the custody of the society for not more than thirty days, during which time formal proceedings could be instituted under the other provisions of the act.<sup>18</sup>

These laws establishing a statutory form of dual adoption remained in force until 1917 when they were repealed, and a code for the adoption of children was enacted vesting jurisdiction over adoption in the juvenile division of the circuit court.<sup>19</sup>

The laws of 1897<sup>20</sup> gave the county court the power to award the custody of a minor child of "habitually intemperate or inhuman" or "grossly immoral" parents to some person or to a non-sectarian institution for care and education. The county court was authorized to award a reasonable amount out of the county's pauper funds for the support of such a child.

15. Mo. Rev. Stat. § 602 (1879).

16. Eleemosynary: Abandoned, Ill-Treated and Friendless Children. Mo. Laws 1889, at 116.

17. *Id.* at 117.

18. *Ibid.*

19. Mo. Laws 1917, at 193.

20. Mo. Laws 1897, at 75; Mo. Rev. Stat. § 5251 (1899).

## CRIMINAL COURTS AND MINORS

Nineteenth century attitudes in Missouri toward punishment of children convicted of crime are graphically illustrated in the decisions of our courts. In *State v. Barton*,<sup>21</sup> a boy not yet sixteen years old at the time of his alleged crime was convicted of murder in the first degree and sentenced to death. One of the grounds for appeal was the refusal of the trial court to sentence the defendant to imprisonment in the county jail because he was under sixteen at the time of committing the murder. The defendant relied on an 1865 statute which read: "Whenever any person under the age of sixteen years shall be convicted of any felony, he shall be sentenced to imprisonment in a county jail, not exceeding one year, instead of imprisonment in the penitentiary . . . ."<sup>22</sup> The supreme court held:

This section seems capable of but one construction, and that is to require imprisonment in a county jail as a substitute for imprisonment in the penitentiary, where such offenses as were punishable by imprisonment in the penitentiary have been committed by a youth under sixteen. A felony punishable by death is not within the letter or meaning of the statute. The judgment must be affirmed.<sup>23</sup>

The statute referred to by the court in the *Barton* case is also found in the Revised Statutes of 1879 with the exception that by express provision it is applicable to persons convicted of a felony committed when under eighteen years of age.<sup>24</sup> In 1887 this law was amended and again made applicable to persons under sixteen years of age.<sup>25</sup> However, the court was given the power, if the defendant was over sixteen and under eighteen, to commute the imprisonment from the penitentiary to the county jail for a term of not more than one year, if, in the court's opinion, the facts warranted it. The governor was also empowered to commute a death sentence imposed on a minor under eighteen years to imprisonment in the penitentiary for not less than two years. This bit of legislation had an emergency clause phrased in the following ominous language: "There being cases of convictions now pending, in which the action of the governor is sought, creates an emergency within the meaning of the constitution; therefore, this act shall take effect and be in force from and after passage."<sup>26</sup>

In the Revised Statutes of 1899 there was a provision for the sentencing of a minor, convicted of a felony committed while under sixteen, to a "reformatory school" for one year or over or until he

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21. 71 Mo. 288 (1879).

22. Mo. GEN. STAT. § 21 (1865).

23. *State v. Barton*, 71 Mo. 288, 290 (1879).

24. Mo. REV. STAT. § 1666 (1879).

25. Mo. Laws 1887, at 166.

26. *Ibid.*

becomes twenty-one, or to imprisonment in the county jail for not more than one year, in place of confinement in the penitentiary. As to minors over sixteen and under eighteen, the court could commute a penitentiary sentence to the reformatory or county jail in the same manner. The governor retained the power to commute the death penalty imposed on a minor under eighteen to imprisonment in the penitentiary for not less than two years.<sup>27</sup>

The supreme court in 1882 recognized the common-law principle<sup>28</sup> of criminal intent applicable to infants. In *State v. Adams*,<sup>29</sup> the court considered the appeal of a boy, twelve years old at the time of the trial, who was convicted of murder in the first degree. The judgment was reversed because the state's instructions "virtually told the jury that defendant's age should not affect the conclusion at which they should arrive, any more than if he had been of mature years."<sup>30</sup> This was held error. The court decreed that the law presumes the infant *doli incapax* (incapable of criminal intention) between the ages of seven and fourteen, and this presumption must be overcome by the state with "evidence strong and clear beyond all doubt and contradiction."<sup>31</sup> After the *Adams* decision the supreme court recognized the common-law principle that an infant under seven years of age cannot be guilty of a felony.<sup>32</sup>

In 1897 the legislature enacted a law authorizing judges of the circuit and criminal courts to release on parole (a) any offender sentenced to a fine or jail term, or (b) any person under the age of twenty-five convicted of a felony other than murder, rape, arson, or robbery, or (c) any person confined in jail.<sup>33</sup>

There is no doubt that the differential treatment of children in the criminal courts of Missouri with respect to (1) age distinctions and criminal responsibility, (2) commutation of penitentiary sentences to the county jail for a limited term, or to a "reformatory school," and (3) the establishment by statute of the power of the criminal court to parole offenders under the age of twenty-five convicted of certain felonies, had a part in the eventual development of the present system of juvenile court laws.

The use in Missouri of specialized institutions for minors, a vitally important factor in the proper functioning of the modern juvenile court, had its starting point when the legislature in 1889 formally

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27. MO. REV. STAT. § 2381 (1899).

28. 2 BLACKSTONE, COMMENTARIES \*464-65.

29. 76 Mo. 355 (1882).

30. *Id.* at 357.

31. *Ibid.*

32. *State v. Tice*, 90 Mo. 112, 2 S.W. 269 (1886).

33. Mo. Laws 1897, at 71.

declared that the Reform School for Boys at Boonville<sup>34</sup> and the Industrial Home for Girls at Chillicothe were to be eleemosynary institutions of the state.<sup>35</sup> The management of each institution was vested in separate five-member boards.<sup>36</sup> These two institutions were the forerunners of the present Training School for Boys at Boonville and the Chillicothe Training School for Girls.

#### THE BEGINNING OF THE MODERN JUVENILE COURT

It is apparent that the law in the nineteenth century had not yet conceived of even a formal "horizontal" method of action in the handling of minors who came into the courts whether by their own immediate acts or as a result of the fault of their parents. Children were subject to "vertical" handling by equity courts, probate courts, justices of the peace, county courts, and even by formal deeds. Yet, near the end of the century, we find what is generally conceded to be the first definite step in the direction away from this hodge-podge treatment of children. The pioneering work of the Chicago Bar Association, under the leadership of Judge Harvey B. Hurd, with the aid of Dr. Hastings H. Hart, Director of the Illinois Children's Home and Aid Society, and the Chicago Women's Club, among many others, resulted in the adoption by the Illinois legislature on April 21, 1899, of an act entitled "Juvenile Courts, for Dependent, Neglected and Delinquent Children."<sup>37</sup> This act established a "special court room to be designated as the Juvenile Court Room" and vested the judicial administration of the law in the circuit court (or its Illinois equivalent). The law applied to children under the age of sixteen who were dependent, neglected, or delinquent. Dependent and neglected children were defined as those who were destitute, homeless, abandoned, and dependent upon the public for support, or those children not receiving proper parental care, or whose home was an unfit place for children. A delinquent child was defined as one who had violated a state law or a municipal ordinance. Nearly all criminal procedure was eliminated. Proceedings for neglect and delinquency were instituted by the filing of a petition by a resident; thus, the arrest of the child was eliminated. The court was authorized to "hear and dispose of the case in a summary manner." Any interested person or the judge on his own motion could demand a jury of six "to try the case." The law also established the office of probation officer with duties similar to those contained in later Missouri acts, but in this original Illinois statute the probation officer was "to receive no compensation from the public

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34. In 1903 the name was changed to "The Missouri Training School for Boys." Mo. Laws 1903, at 202.

35. Mo. Laws 1889, at 112.

36. *Ibid.*

37. Ill. Laws 1899, at 131.



treasury.”<sup>38</sup> Children under twelve years of age were not to be committed to any jail. Any child found guilty of a criminal offense could be committed to any institution in the county incorporated for the care of delinquent children, to the state reformatory, to the care and guardianship of the probation officer, or to a foster home; or the child could be returned to his own home and remain under the supervision of the probation officer. The purpose of the act was set out in the following words: “That the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents, and in all cases where it can properly be done the child be placed in an improved family home and become a member of the family by legal adoption or otherwise,”<sup>39</sup> and to this end the act was to be liberally construed.

At about the same time, Ben Lindsey and his group of supporters persuaded the Colorado legislature to amend the existing “School Law” (April 12, 1899), relating to children between the ages of eight and eighteen who were habitual truants, vicious, immoral, etc. As a result Lindsey independently organized a limited juvenile court. But it was not until 1903 that Colorado, by law, established juvenile courts.<sup>40</sup>

#### 1901 PROBATION ACT

What appears to be the first positive legislation in Missouri in the general direction of our modern conception of juvenile court legislation was enacted by the legislature in 1901. This particular statute was captioned “CRIMES AND PUNISHMENTS: PROBATION FOR JUVENILE DELINQUENTS” and was applicable only to cities of 350,000 inhabitants or more.<sup>41</sup>

The 1901 act provided for the appointment of an officer to be known as a probation officer with power to appoint deputy probation officers, all subject to court approval. It was the duty of the probation officer to investigate the “social environments, past conduct and general character of any child under sixteen years of age as soon as practicable after the child’s arrest, or violation of any state law or municipal ordinance,”<sup>42</sup> and to submit such information in writing to the court having jurisdiction of the offense and child. The probation officer was required to attend the trial of the child, represent him, and supervise his conduct as the court might direct “with power to visit said child from time to time as its interests and the interests of society

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38. A concession for obvious political expediency which was corrected in 1905 by legislation authorizing compensation in the proper manner. See Ill. Laws 1905, at 151-52.

39. Ill. Laws 1899, at 137.

40. Colo. Laws 1903, at 187.

41. Mo. Laws 1901, at 135.

42. *Ibid.*

may demand, in the opinion of the court or of said probation officer."<sup>43</sup> Police officers arresting children under sixteen years of age were required to inform the probation officer immediately and give him all available information pertaining to the child. After the arrest, the court was authorized to release the child on bond or upon his own recognizance or to commit him to the custody of his parents or other suitable person until the trial. After trial or "a hearing of the cause," the court could defer entering judgment and commit the child to his parents, guardian, or other suitable custodian subject to the supervision of the probation officer. The court could enter judgment and stay execution,<sup>44</sup> then order the child placed in the manner above described. If the conduct of the child was satisfactory, the court could set aside the judgment or stay execution "altogether." The court had discretion to commit a child found guilty of the violation of any law or ordinance to any state institution, training school for boys, industrial school for girls, or any institution incorporated under Missouri laws for the care of children consistent with the laws, rules, and regulations of such institutions. Jailers were required, "as far as practicable," to provide places of confinement for children under sixteen separate from other prisoners. The probation officer was required to keep full records of all cases handled by his office. The salary of the probation officer was established at \$800 per annum with his assistant's salary fixed at a maximum of \$600 per year and an expense allowance not exceeding \$100 a year. The prosecuting attorney was directed to give the probation officers aid in the performance of their duties "consistent with their official relation to said cases."

It is noted that, although the probation statute contained certain features of the juvenile court statutes as we know them today, it did not embrace the fundamental concept that children who violate criminal laws are wards of the state in special need of the state's care, protection, and treatment, and are not to be treated as criminals. Children in Missouri were still indicted and tried for specific crimes in the criminal courts under the rules applicable to the criminal trial of adults. However, the 1901 act represents an attempt at co-ordination of institutional facilities, foster homes, social agency resources, and the suspension-of-sentence power of the criminal courts in its application to children under sixteen years of age.

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43. *Ibid.*

44. Suspension of sentence and probation was apparently initiated by John Augustus in the courts of Boston in 1841. In 1878 Massachusetts adopted this procedure by statute applicable to both minors and children. It was the 1901 Probation Act that adopted this procedure for Missouri, limited to children under the age of sixteen in cities with 350,000 inhabitants or more.

## 1903 JUVENILE COURTS ACT

In 1903 the probation act was repealed and the legislature enacted the first set of laws under the title "JUVENILE COURTS ESTABLISHED. AN ACT to regulate the treatment and control of neglected and delinquent children in counties having a population of 150,000 inhabitants and over."<sup>45</sup> The 1903 act was applicable only to children under the age of sixteen years and related specifically to the legislative definition of "neglected child" and "delinquent child." The statute adopted in substance the definition of minors subject to be "bound out" by the probate court under the terms of the Laws of 1825,<sup>46</sup> plus the definition of "neglected children" subject, under the terms of the Laws of 1889,<sup>47</sup> to removal from their parents by the probate court and their being placed under the guardianship of a "society." "Delinquent child" was defined as one who violates any law of the state, or city ordinance, which is the same group affected by the 1901 Probation Act.

The 1903 Juvenile Courts Act provided, for the first time in Missouri, a "Juvenile Court Room" and a "Juvenile Court." The circuit court was vested with original jurisdiction of all cases coming within the terms of the act. That court was directed to designate one of its judges to hear all cases under the act; he thereby became judge of the new juvenile court.

Practice and procedure in criminal cases were to apply in the juvenile court to the extent applicable unless otherwise provided, and, in all trials under the act, "any person interested therein may demand a trial by jury." Neglect proceedings were to be heard by the court in a "summary manner."

The office of probation officer was established with powers and duties similar to those under the 1901 act. The probation officer was appointed by the circuit court, and he, in turn, could appoint deputy probation officers.

The act specifically prohibited a justice of the peace, police magistrate, or judge of any court having jurisdiction of the "offense" from trying a child under the age of sixteen years. Exclusive jurisdiction was vested in the juvenile court, which was directed to "*proceed to hear the case in accordance with the law, in trials of such offenses.*"<sup>48</sup> Summons requiring the appearance of the child in court could be issued in lieu of an arrest warrant.

Imposition of punishment and penalties imposed by law for the commission of offenses under this act rested in the discretion of the

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45. Mo. Laws 1903, at 213.

46. Mo. Laws 1825, at 132.

47. Mo. Laws 1889, at 116.

48. Mo. Laws 1903, at 215.

judge of the juvenile court, who could suspend or remit the execution of any sentence. A substantially similar provision was contained in the 1901 act.

The court was authorized to cause investigations to be made of the cases in the court, and for this purpose could adjourn the hearing from time to time. Under the terms of the 1903 act (unlike the 1901 act) the child could not be committed to a jail (whether or not practicable), but was to be kept in a suitable place provided by the county or with an association which cared for neglected children. When a delinquent child was sentenced to confinement in an institution in which adult convicts were kept, it was declared unlawful to keep the child in the same building or yard as adults, and any contact between them was prohibited. A similar provision in the 1901 act required this segregation only so far as "practicable."

Prosecuting officials were directed to aid the probation officers in the performance of their duties, and police officers were required to inform the probation officer of the arrest of any child under sixteen. This provision was generally covered in the 1901 act.

Salaries of the probation officer and his deputies were increased \$200 per annum to \$1,000 and \$800 respectively, with allowable expenses remaining the same.

The court's power to deal with and place the child was quite similar to the 1901 provisions. For the first time, however, there appeared a requirement that, in committing delinquent children to the care and custody of an individual or association, consideration must be given to the religious beliefs of the persons involved. Also new was the provision permitting the juvenile court to enter an order requiring the parents of the neglected or delinquent child to contribute to his support when the court found they were able to do so.

The act of 1903, although enacted in March 1903, came under judicial scrutiny by the supreme court, en banc, in an opinion handed down in December 1903.<sup>49</sup> The proceedings presented but one question for the court's consideration and that was the validity of the 1903 Juvenile Courts Act. First, the validity of the act was questioned because the title described it as one to regulate the treatment and control of neglected and delinquent children. It was charged that "neglected and delinquent" described two classes of subjects in violation of a constitutional prohibition against a bill containing more than one subject. The court determined that the term "neglected and delinquent children," though referring to two classes, does not refer to classes of different subjects; that there is but one subject, "children," and "neglected and delinquent" indicated the classes or character of children treated in the body of the act.

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49. *Ex parte Loving*, 178 Mo. 194, 77 S.W. 508 (1903).

The second objection to the validity of the act concerned the fact that it was applicable to children in counties having a population of 150,000 and over. It was conceded that at the time of its passage (and when it was considered by the court) it was applicable only to the City of St. Louis (by express provision in the act, the City of St. Louis was deemed a county within the meaning of the act) and to Jackson County, as no other county in the state at that time had a population of 150,000 or over. This being so, it was contended that the act violated the constitutional prohibition against local or special laws. The court held, however, that there was greater need for the juvenile court in densely populated areas than in rural communities, and the legislature was justified in making the law applicable only to urban areas.

The court also denied the validity of a third objection to the act, namely, that it did not provide for the separation of the neglected child from the delinquent child. The court held in effect that such objection was directed to a defect in detail only, not of power, and that such a defect could be obviated in time by amendment of the act.

In holding the act to be a valid exercise of the legislative power under the Missouri Constitution, the court made the following observations:

This is a new law, going out into a comparatively new field of legislation, and it cannot and must not be expected that it would be complete in all the minor details, for its enforcement, but these imperfections can not be made the basis of attack on its constitutionality.

The Legislature doubtless felt that the conditions surrounding the children in large cities, the temptations that daily beset them, the increased danger of such surroundings, justified the distinction made, in the application of this act, and being a co-ordinate branch of the government, due respect should be given the judgment of this branch of the State government, as to whether or not such conditions surrounded the subject of legislation as to authorize and justify the distinguishing features of the act before us.

We are dealing not only with a delicate and tender subject, but also an important one. Every good citizen feels a deep interest in the betterment of the condition of the children of this State; we can not be unmindful that the perpetuity of good government must depend upon the care and attention given those into whose hands it must eventually fall. Hence, it is not only our duty, but in perfect accord with the instincts of a good heart, to imitate the example of our Divine Savior, in manifesting, on all occasions, our interest in this subject, as He did, in the announcement to His disciples, "Suffer little children to come unto me, and forbid them not, for of such is the kingdom of God."

We have thus given expression to our views upon the questions involved in this proceeding. We have reached the conclusion that the act before us is a valid exercise of the legislative power, un-

der the Constitution of this State. While this conclusion is reached, the question as to the constitutionality of this act is not without doubt; but following the well-settled doctrine upon this subject, all reasonable doubts must be resolved in favor of the validity of the act. This we have done in this case.

We highly commend the spirit manifested by members of the bar in the presentation of the questions involved. It was simply a legal proposition, discussed upon a high plane, and for the sole and unselfish purpose of obtaining a judicial expression upon the validity of an act in which the public has a deep interest.

We have declared the act valid. Its proper and successful enforcement depends largely upon the people and upon the conduct of the legal profession of the cities and counties to which it applies. If its provisions are enforced with the same spirit that has prevailed in the submission and discussion of the question involved, then there is no longer any doubt as to the benefits to be derived from this act by the children, their parents, and the public.<sup>50</sup>

The act of 1903 was again considered by the supreme court in a 1906 opinion in *State ex rel. Clarke v. Wilder*.<sup>51</sup> The question involved was whether or not the state was liable for costs in a case involving a defendant under sixteen years of age who was charged with murder. The defendant, because of his age, "was arraigned in the Juvenile Court of the City of St. Louis, Missouri, pleaded not guilty, was tried by the jury, and was acquitted."<sup>52</sup> The court, in concluding that there should be no distinction between trials in the juvenile court and those in the criminal court, said:

We not only do not discover any irreconcilable conflict between the Juvenile Court act and the general statute as to the trial and punishment of "delinquent" children, but the Juvenile Court act on its face, we think, intends to preserve the procedure and general statutes in regard to the prosecution of minors under sixteen just as it was before that act, with the exception that it confers the exclusive jurisdiction upon the circuit court and gives it a wide discretion as to the punishment of said minors and the foregoing of all punishment under certain conditions.<sup>53</sup>

#### THE 1905 ACT

In 1905 the legislature repealed the 1903 Juvenile Courts Act insofar as it applied to counties having less than 500,000 inhabitants and passed an act entitled "CHILDREN: NEGLECTED AND DELINQUENT. AN ACT to regulate the treatment and control of neglected and delinquent children, and to provide necessary places of detention therefor, in counties having a population of one hundred and fifty thousand and less than five hundred thousand inhabitants . . ."<sup>54</sup>

50. *Id.* at 220-21, 77 S.W. at 515.

51. 197 Mo. 27, 94 S.W. 499 (1906).

52. *Id.* at 31, 94 S.W. at 499.

53. *Id.* at 35, 94 S.W. at 501.

54. Mo. Laws 1905, at 56.

The following new matters were included in the 1905 act:

1. The act applied to children "sixteen (16) years of age or under" rather than children "under the age of sixteen years."

2. The juvenile court was authorized to inflict punishment extending beyond the age of majority "*in cases where the delinquent shall be convicted of a crime*" for which the punishment, when such crime is committed by persons over eighteen, is death, or imprisonment in the penitentiary for not less than ten years.

3. The definition of "delinquent child" was extended to include violations of village ordinances, in addition to the violations of state laws and city ordinances previously covered. The definition was also expanded to take in an entirely new category, including incorrigibility, bad associates, visiting saloon or pool room, the habitual use of vile language, immoral conduct in a public place, etc., which is substantially similar to the present statutory definition.<sup>55</sup>

4. For the first time, the law declared that any child committing any of the acts described under the definition of "delinquent child" shall be "deemed a juvenile delinquent person, and shall be proceeded against as such in the manner hereinafter provided."<sup>56</sup> (The 1903 act, which had defined a "delinquent child as one who violates a state law or city ordinance," simply gave the juvenile court discretion to stay execution of all penalties imposed by statute or ordinance for violation thereof.) The juvenile court, in addition to its power to stay execution of all penalties imposed by law, was now specifically authorized, for the first time, to commit a delinquent child to the Missouri Training School for Boys or to the State Industrial School for Girls; this power had been given to the juvenile court by implication in sections 13 and 18 of the 1903 act.<sup>57</sup>

5. The disposition of a delinquent child and the evidence in such case were made unlawful and improper evidence against such child in any other court.

6. Probation officers were vested with the power and authority of sheriffs to make arrests and perform other duties incident to their office.

7. The salary of the probation officer was increased from \$1,000 to \$1,200 per annum and that of his deputies from a maximum of \$800 to \$900 per annum and allowable expenses were increased from a maximum of \$100 to \$200 a year.

8. The duty of the county to provide a place of detention for children was specifically stated. (This had only been implied in the 1903 act.<sup>58</sup>)

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55. MO. REV. STAT. § 211.010-3 (1949).

56. Mo. Laws 1905, at 57.

57. See Mo. Laws 1903, at 216-17.

58. See Mo. Laws 1903, at 215.

9. The act prohibited the confinement of any child fourteen years of age or under in a common jail, and provided that any violation of this prohibition was punishable by contempt proceedings. (This provision was in addition to the prohibition against confining delinquent children with adult convicts, a provision contained in both the 1903 and 1905 acts.)

10. Section 22 of the 1905 act provided:

This act shall be liberally construed to the end that its purposes may be carried out, to-wit, that the care, custody and discipline of the child shall approximate as nearly as may be that which should be given by its parents; and that as far as practicable any delinquent child shall be treated, not as a criminal, but as misdirected and misguided, and needing aid, encouragement, help and assistance.<sup>59</sup>

#### THE 1909 ACT

In 1909 the legislature repealed both the 1903 act (which, after the passage of the 1905 act, was applicable only to counties having 500,000 inhabitants or more) and the 1905 act, and enacted a law captioned "COURTS OF RECORD, JUVENILE: To Regulate Treatment and Control of Delinquent Children in Counties Over 50,000 Population."<sup>60</sup> There appears to be no substantial departure from the language of the 1905 act, but the following additions and changes should be noted:

1. A neglected child could be placed in a public hospital or institution for treatment or care, or in a private hospital or institution by the court if no charge was made.

2. The minimum age for probation officers and deputies was set at twenty-five. The salary of the probation officer was increased from \$1,200 per annum to \$2,500 in counties of 200,000 and over, and was set at \$1,500 in counties having a population between 100,000 and 200,000, and at \$1,000 in counties with populations from 50,000 to 100,000. Deputy probation officers, who under the 1905 act had a maximum salary of \$900 per annum, were given an increase to maximums of \$1,500 in the larger counties, \$1,000 in the middle group of counties, but suffered a decrease to \$800 in the less populated counties. Allowable expenses remained at the \$200 per annum maximum.

3. The larger counties, those with a population of 200,000 and more, were authorized to have both a superintendent and matron in charge of the detention home, who were to receive maximum annual salaries of \$1,800 and \$1,200 respectively.

4. Probation officers, deputy probation officers, and persons in charge of the detention home were to be appointed on the basis of merit after competitive examinations in accordance with rules of the circuit court.

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59. Mo. Laws 1905, at 61.

60. Mo. Laws 1909, at 423.



5. The penalty for confining a child fourteen years old or younger in a common jail was changed to a misdemeanor instead of punishment by contempt, as provided in the 1905 act.

6. The juvenile court was specifically authorized to commit a neglected or delinquent child also found to be feeble-minded or epileptic to an institution "conformable to the laws governing said institution."

#### THE 1911 ACT

The 1911 act,<sup>61</sup> styled "COURTS OF RECORD: Juvenile Courts in Certain Counties Having A Population of 50,000 Inhabitants and Over," repealed the 1909 act and is substantially the body of the law under which juvenile courts operate today in class one and two counties.

The 1911 act made some significant changes over the 1909 act which are here set out:

1. The application of practice and procedure in criminal cases and the right to demand a trial by jury contained in the prior acts were now limited to those cases in which the child was charged with the violation of the criminal statutes of the state. In all other proceedings under the act the trial was before the court without a jury, and equity practice and procedure was to govern.

2. The twenty-five year old age limit for deputy probation officers was eliminated.

3. Places of detention were to provide care for children which was to approximate as closely as possible the care of children in good homes.

4. The court was authorized to approve the expenditure of county funds for the necessary support of a neglected or delinquent child.

The constitutionality of the 1911 act was tested in a proceeding brought by a minor charged with rape and delinquency who sought a writ prohibiting the judge of the juvenile court from proceeding with the case.<sup>62</sup> The minor urged that the act was violative of the state and federal constitutions in that it "attempts to prescribe a summary procedure punishing crimes without providing for indictment, proper information, counsel for the accused, arraignment, bail, jury trial (except on demand), public trial, compulsory process for witnesses."<sup>63</sup>

As an outgrowth of this proceeding, the supreme court, en banc, in an opinion written by Judge Blair, announced the legal principles applicable to the trial of juveniles charged with delinquency in the juvenile court which have permitted that court to develop along the path most beneficial to the state and the children brought before the

61. Mo. Laws 1911, at 177.

62. State *ex rel.* Matacia v. Buckner, 300 Mo. 359, 254 S.W. 179 (1923).

63. *Id.* at 364, 254 S.W. at 180.

court. Judge Blair recognized that there is language in the act which gives color to the charge that it authorizes trial and punishment for crime,"<sup>64</sup> and that a child being tried with a view to his conviction and punishment for the crime itself is entitled to invoke all the constitutional safeguards applicable to a criminal trial. The court, however, pointed out that the principal, if not sole, purpose of the 1911 act

[I]s not trial and punishment for crime, but the protection and support of neglected children and the reformation of delinquent children. It is well settled that in the case of delinquent children the State has the power in proper circumstances to take over their custody in order to insure their security, training and reformation. . . . The power exerted by the State, *parens patriae*, is asserted in its right to supply proper custody and care in lieu of that of which neglected and delinquent children are deprived.<sup>65</sup>

The opinion declared that a proceeding under the juvenile laws is the exercise of the state's power, *parens patriae*, for the reformation of a child and not for his punishment under the criminal law. Therefore, such a proceeding is not a criminal case and the constitutional guarantees protecting defendants in criminal cases are not applicable.

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64. The court was referring to § 2 of Mo. Laws 1911, at 180 which provides: The practice and procedure prescribed by law for the conduct of criminal cases shall govern in all proceedings under this act in which the child stands charged with the violation of the criminal statutes of the state and in such proceedings the child, his parent, or any person standing in *loco parentis* to him may on his behalf demand a trial by jury.

This appears to be an anachronism in the law which intermingles criminal jurisdiction with the jurisdiction of the juvenile court. Since the jurisdiction of the juvenile court was not exclusive (only original, Mo. Laws 1911, at 179; Mo. Rev. STAT. § 211.020 (1949)), it would seem to follow that the criminal court could secure jurisdiction at its option if the child were charged by indictment or information with the violation of the criminal statutes of the state. The provision above quoted might be interpreted as authorizing the juvenile court to try a juvenile, accused of delinquency by reason of violating the criminal statutes of the state, before a jury under the rules of criminal procedure. *State ex rel. Shartel v. Trimble*, 333 Mo. 888, 63 S.W.2d 37, 39 (1933).

Some of the confusion resulting from the inclusion of the above provision in the juvenile court laws was removed by Mo. Laws 1927, at 129; Mo. Rev. STAT. § 211.520 (1949), which authorized the juvenile court judge to dismiss any petition alleging a child to be delinquent and thereupon such child could be prosecuted under the "general law." This, of course, could only apply to children charged with violation of a state law. The original provision considered by Judge Blair remains in the juvenile court laws and its application continues to be vague. The confusion resulting from this provision can be traced through the opinions in *State ex rel. Boyd v. Rutledge*, 321 Mo. 1090, 13 S.W.2d 1061 (1928); *State ex rel. Wells v. Walker*, 326 Mo. 1233, 34 S.W.2d 124 (1930); *Ex parte Bass*, 328 Mo. 195, 40 S.W.2d 457 (1931); and, finally, *State ex rel. MacNish v. Landwehr*, 332 Mo. 622, 60 S.W.2d 4, 8 (1932). This latter decision disposes of the entire controversy by pointing out that there is in fact no Juvenile Court, that "Juvenile Court" is a term of convenience only ("and the court may for convenience be called the juvenile court," Mo. Rev. STAT. § 211.020 (1949)); that by statute the circuit court has original jurisdiction of all cases arising under the juvenile laws and likewise has criminal jurisdiction, and that court rules providing for the assignment of cases to criminal divisions or domestic relations divisions (which by court rule includes causes arising under the "Juvenile Court Laws") are for convenience but do not affect the question of jurisdiction.

65. *State ex rel. Matacia v. Buckner*, 300 Mo. 359, 365, 254 S.W. 179, 180 (1923).

Further, the opinion clarified the distinction between a charge of crime and a charge of delinquency by reason of crime in the following language:

In this case the alleged criminal act . . . is not set up as a charge of crime and a predicate of punishment under the criminal law but merely as the thing which brings relator within the definition of "delinquent children" in the act and shows he is within the class over which the State is authorized to exert its power of *quasi-parental control*.<sup>66</sup>

....

.... Under the statute relator is a delinquent child if he has committed rape. The charge is that he is a delinquent child, and the proof of it is alleged to be that he is guilty of rape. It is not sought to punish him as a rapist, but to reform him from his state of delinquency.<sup>67</sup>

The supreme court thereupon dismissed the application for the writ of prohibition, thus permitting the juvenile court to proceed with the hearing on the charge of delinquency.

The principle that a proceeding brought against a child alleged to be delinquent is an exercise of the state's power as *parens patriae* for the reformation of the child and not for punishment as in criminal proceedings, and that constitutional guarantees respecting a defendant in a criminal case do not apply in a delinquency case, has been reaffirmed by the supreme court.<sup>68</sup>

#### PROPOSED JUVENILE COURT LEGISLATION

The growing recognition of the need for specialized supervision, guidance, and treatment for children displaying unacceptable social behavior has been the most important single factor in the development of the juvenile court. Although this may be considered at first glance a radical change in the direction of our law, yet it is well recognized that one of the basic factors of the Anglo-Saxon heritage of common law is that it is a living body of law which ultimately responds to the social and human needs of the people who live by it. These changes need not be evolutionary in character but may arise from legislation which has given direction to our social development.<sup>69</sup>

The departure from criminal procedure in the handling of juveniles was a substantial obstacle which had to be met. Since the first juvenile court act in 1903 this matter had been a troublesome one in the decisions of the courts. Criminal procedure now has been definitely

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66. *Id.* at 366, 254 S.W. at 181.

67. *Id.* at 368, 254 S.W. at 182.

68. *State v. Harold*, 364 Mo. 1052, 271 S.W.2d 527 (1954); *State v. Heath*, 352 Mo. 1147, 181 S.W.2d 517 (1944); *Ex parte Naccarat*, 328 Mo. 722, 41 S.W.2d 176 (1931).

69. *State ex rel. Schlueter Mfg. Co. v. Beck*, 337 Mo. 839, 848, 85 S.W.2d 1026, 1030 (1935).

removed from the area of the juvenile court by court decisions. There remains the task of enacting legislation which gives proper recognition to this development and the implementation of the juvenile court with such facilities as may be necessary to accomplish its proper purposes.

A Joint Committee on Juvenile Delinquency of the Sixty-eighth Missouri General Assembly has drafted proposed legislation that will accomplish much in the direction of absorbing into statute law the substantial progress that has been made in Missouri in the handling and treatment of juveniles brought before the juvenile court. This draft has been incorporated into a senate bill<sup>70</sup> which is currently before the Sixty-ninth General Assembly, and appears as an appendix to this article. The bill indicates that the committee is not only giving recognition to the progress that has been made since the 1911 act, but is also attempting to give to the juvenile court those tools that are so essential for it to accomplish its proper purposes. The proposed act falls into the following general subdivisions:<sup>71</sup>

General Purpose and Definitions  
Jurisdiction  
Procedure  
Apprehension and Detention  
Hearing and Decree  
Juvenile Officers and Services  
General

*General Purpose and Definitions*

The proposed juvenile court law for Missouri generally seeks to consolidate two sets of such laws (one applicable to class one and two counties and the other applicable to class three and four counties) into one act applying to all counties alike insofar as it appears possible to do so. It also represents an effort to profit by the experiences of the courts in recognizing that the basic philosophy of the juvenile court is the protection and support of neglected children and the reformation of delinquent children.

The general purpose section,<sup>72</sup> although more explicit than the present section,<sup>73</sup> lacks the specific direction contained in the present section that a delinquent child shall not be treated as a criminal.

The definition section<sup>74</sup> increases the age of those persons subject to

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70. SENATE BILL No. 15, 69th Missouri General Assembly (first read January 7, 1957).

71. References to sections of the proposed act will be indicated by "Proposed Act" followed by the section number used in the senate bill (*ibid.*). References to the present law will be by section number as found in MO. REV. STAT. (1949).

72. Proposed Act § 211.010.

73. MO. REV. STAT. § 211.180 (1949).

74. Proposed Act § 211.020-2.

the jurisdiction of the juvenile court from children under the age of seventeen years<sup>75</sup> to those under eighteen years of age. This makes the jurisdiction of the Missouri courts over juveniles the same as that now existing in thirty-one other states. The proposed section also confines jurisdiction over juveniles to circuit courts,<sup>76</sup> thereby eliminating from this field the magistrate court in counties with a population less than 70,000.<sup>77</sup>

### *Jurisdiction*

The jurisdiction section<sup>78</sup> represents, in many of its aspects, long-needed clarification and modernization of the definition of the children who are subject to the juvenile court jurisdiction. It establishes the jurisdiction of the court as not only original but exclusive, thus doing away with even the possibility of the criminal court's jurisdiction being exercised in the first instance. It ends the use of the judicial finding of "neglected" and "delinquent" to predicate jurisdiction and establishes in its place the proper basis for jurisdiction, to wit, the need of the child for care and treatment resulting from (a) parental neglect or refusal to provide proper support, education, and medical care, (b) behavior, environment, or association of the child that is injurious to his welfare or the welfare of others, or (c) violation by the child of a state law or municipal ordinance. The proposed provision also gives the court exclusive original jurisdiction in proceedings for the suspension or revocation of a license to operate a motor vehicle. Jurisdiction over adoptions is retained and there is a specific provision authorizing the commitment of a child to the guardianship of the Missouri State Department of Public Health and Welfare.

The obligation of a magistrate, police magistrate, or judge of any other court to transfer juveniles and their cases immediately to the juvenile court is restated.<sup>79</sup> The time when the jurisdiction of the juvenile court attaches is established at the point when the child is taken into custody,<sup>80</sup> and proposed section 211.060 provides that the jurisdiction of the juvenile court shall be continuing until a child's twenty-first birthday, except for a child sent to the state board of training schools. This latter section is significant because it eliminates the present provision<sup>81</sup> which authorizes the juvenile court to inflict punishment, extending beyond the twenty-first birthday, upon a child convicted of a crime punishable by death or imprisonment for ten years or more. It was this provision that implied there existed crimi-

75. MO. REV. STAT. § 211.010 (1949).

76. Proposed Act § 211.020-3. The Cape Girardeau Court of Common Pleas is also given jurisdiction.

77. MO. CONST. art. V, § 20.

78. Proposed Act § 211.030.

79. Proposed Act § 211.050-2; MO. REV. STAT. § 211.060 (1949).

80. Proposed Act § 211.130-3.

81. MO. REV. STAT. § 211.010(1) (1949).

nal jurisdiction in the juvenile courts and caused the appellate courts so much difficulty. The non-criminal nature of juvenile court proceedings is affirmatively stated in proposed section 211.270-2, which prohibits charging or convicting a child of a crime unless the case is transferred to a court of general jurisdiction.

Turning back to the existing laws, it should be noted that one of the few additions to the 1911 act was section 211.520<sup>82</sup> which did little to eliminate the confusion concerning the prosecution of juveniles in the criminal courts. It gave the juvenile court the right to dismiss a pending delinquency petition and permit the child to be prosecuted under the "general law." But, it also authorized the criminal court to deny a motion to transfer a case pending against any delinquent child, thus implying the juvenile could be prosecuted, presumably when charged with a crime, in the criminal court in the discretion of the judge of the criminal court. Add to this the provisions of MO. REV. STAT. § 211.080 (1949) (211.350 in class three and four counties), which preserves the right of other courts to file complaints and issue warrants for the arrest of children although all subsequent proceedings are to be had in the juvenile court, and the conflict is rather apparent.

The proposed section 211.070 contains no reference requiring a motion to transfer to the juvenile court to be filed in a case pending in the criminal court. It gives the juvenile court discretion to dismiss a petition alleging a child fourteen years or older has committed an offense which would be a felony if committed by an adult, so that such child may be prosecuted under the general law. This action requires a finding by the juvenile court that the child is not a proper subject to be dealt with under the provisions of the juvenile court laws after the court has heard evidence and has received the investigation report required by the act.

The proposed provision still leaves a gap between the order of the juvenile court dismissing the petition and the institution of proceedings in the criminal court which, it is submitted, should be closed. If the juvenile court's jurisdiction terminates when it dismisses the pending petition,<sup>83</sup> it cannot thereafter make any order affecting the custody of the child pending the filing of charges in the criminal court. Even upon the filing of the criminal charges the place where the child can be detained has been a troublesome question.<sup>84</sup> This hiatus could be eliminated by a provision authorizing the juvenile court to determine where the child should be held pending trial in the criminal court.

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82. Mo. Laws 1927, at 129; MO. REV. STAT. § 211.520 (1949).

83. *Ex parte* Bass, 328 Mo. 195, 40 S.W.2d 457 (1931).

84. See MO. REV. STAT. § 211.090 (4) (1949).

*Procedure*

The procedure established under the proposed act reflects modern attitudes toward the children brought before the juvenile court. The 1911 act, while providing for institution of neglect proceedings by any resident filing a verified petition setting out the facts,<sup>85</sup> states that delinquency proceedings may be started by an information or sworn complaint filed by the city, prosecuting, or circuit attorney, as in cases under the general law, or by the probation officer.<sup>86</sup> This method of starting proceedings in the 1911 act is indicative of the influence criminal procedure had on juvenile procedure.

Under the proposed act, section 211.080 would not only finally cut off this vestige of criminal procedure but would also take a tremendous step forward in making the proper functions and facilities of the juvenile court available to many who could benefit thereby without the social stigma that is sometimes attached to appearances in that court. Under the proposed act, prosecuting officials are not authorized to institute juvenile court proceedings, and informations and sworn complaints are eliminated. Only the juvenile officer is authorized to start the proceedings.

Of even greater significance is the provision authorizing the juvenile court to make a preliminary inquiry when any person informs the court "in person and in writing that a child appears to be within the purview of the applicable provisions of section 211.030 of this act . . ."<sup>87</sup> After this preliminary inquiry, the court may make "such informal adjustment as is practicable." This is intended not only to permit the court or its officers to investigate the complaint further, but also to bring into operation any of its functions and facilities which may be beneficial to the child, or to allow referral of the child to some agency for treatment. In doing so the court may in many instances, where no serious aspect of delinquency appears, obviate the necessity for further proceedings under the law.

A proper use of this provision can be made in connection with the diagnostic and treatment facilities that would be made available to the court under the provisions of proposed section 211.180. It is felt that such use is intended by this section, not only from its own wording, but also when it is read in connection with proposed section 211.130-3, which provides that the jurisdiction of the court "attaches" when the child is taken into custody, and also with section 211.130-1, which permits any child to be taken into custody who violates any law or ordinance, or whose behavior, environment, or association is in-

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85. MO. REV. STAT. § 211.030 (1949).

86. MO. REV. STAT. § 211.070 (1949).

87. Proposed Act § 211.080.

jurious to his welfare or the welfare of others, or who is without proper care, custody, or support.

If the informal adjustment thus authorized by the proposed act achieves satisfactory results, further proceedings under the act become unnecessary, thus permitting the disposition of many complaints without a juvenile court "record" for the child. If a satisfactory result is not achieved, the court may authorize the filing of a petition by the juvenile officer of the court.

The petition to be filed by the juvenile officer under the proposed legislation is styled "In the interest of [Johnny Doe], a child under eighteen years of age," rather than "State of Missouri v. John Doe." The petition is to contain the facts which bring the child within the court's jurisdiction, the full name, birth date, and residence of the child, the names and residence of his living parents, legal guardian, person having custody, or nearest known relative, and any other pertinent data.<sup>88</sup>

Upon the filing of the petition, the child and the person having custody shall be summoned to appear before the court, unless they appear voluntarily, and if the person having custody is someone other than the parent or guardian, then the latter shall also be notified of the pendency of the case and the time and place of the hearing. The court may order the officer serving the summons to take the child into immediate custody if the child's welfare requires such action.<sup>89</sup> The summons must be served at least twenty-four hours before the time set for the hearing.<sup>90</sup> Proposed section 211.120 specifically authorizes the juvenile court to punish for contempt a failure to obey the summons. In view of the fact that the juvenile court as defined by proposed section 211.020 is the circuit court of each county, this provision is a proper and accurate restatement of the law.

#### *Apprehension and Detention*

The non-criminal nature of the juvenile court is continually reflected in the use of terminology and the elimination of procedures applicable to arrests under the criminal laws. The proposed act specifically states that the taking of a child into custody is not to be considered an arrest.<sup>91</sup> Parents are to be notified as soon as possible after a child is taken into custody.<sup>92</sup> The use of bail bonds appears to have been eliminated, in fact, the child must be released to his parents un-

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88. Proposed Act § 211.090.

89. Proposed Act § 211.100.

90. Proposed Act § 211.110.

91. Proposed Act § 211.130-1.

92. Proposed Act § 211.130-2.



less the court, by its written order issued within twenty-four hours, specifies the reason for detention.<sup>93</sup>

Proper detention of children pending the disposition of their cases in the juvenile court has long been of prime importance in laws pertaining to juveniles. As has been heretofore noted, the establishment of places of detention by the county was provided for in the early Missouri juvenile court laws. The proposed act provides an additional detention facility in the form of foster homes.<sup>94</sup> One of the proposed provisions permits a child's detention prior to hearing in a jail or other facility used for adults, provided he is placed in a room or ward separate from adults, in those cases in which the child's conduct is such as to constitute a menace to himself or others.<sup>95</sup> There may be some question as to the wisdom of this provision, particularly in view of the fact that few, if any, jails in the state have a "room or ward entirely separate from adults confined therein." The possible improper use of this new "facility" could well outweigh any advantage that might be derived from it. It is well to remember that one of the first steps in the differential treatment of children in the criminal courts came about through the popular movement to separate confined children from confined adults. There are many who undoubtedly will consider this proposed provision a step backward. The need for such confinement of children in jails, if it exists at all, is undoubtedly restricted to isolated cases and could be avoided entirely by providing proper facilities in the county's detention home. This section prohibits the fingerprinting or photographing of children without the consent of the juvenile court.<sup>96</sup>

The customary provision requiring the establishment of a detention home recognizes the expansion of the court's facilities in that the county has the duty to provide offices for the personnel of the juvenile court.<sup>97</sup> This is broader than the present phrase "offices for the Probation Officers"<sup>98</sup> and gives recognition to the potential contained in proposed section 211.180. The proposed legislation provides that the court, in addition to appointing a superintendent, assistants, or other personnel for operating detention facilities, shall also establish the amount of their compensation and maintenance.<sup>99</sup> This replaces the present provision which fixes the salary of a superintendent at \$1,800 per annum and that of a matron at \$1,200 per annum. The provision

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93. Proposed Act § 211.140.

94. Proposed Act § 211.150.

95. Proposed Act § 211.150-4; Mo. REV. STAT. § 211.090(2) (1949) (This use of the word "commit" in this latter section is confusing but we construe it to mean pre-hearing confinement.).

96. Proposed Act § 211.150-2.

97. Proposed Act § 211.160-1.

98. Mo. REV. STAT. § 211.100 (1949).

99. Proposed Act § 211.360.

also gives cognizance to the broadening of the facilities and treatment required of the juvenile court.

Undoubtedly the most significant provision in the proposed law is contained in section 211.180. One of the elements considered essential for a juvenile court to become an effective tribunal operating for the general welfare is the availability of sufficient facilities to insure that the action of the court be based on the best available knowledge of the needs of the child and that, if required, he receive care and treatment from facilities adapted to his needs and administered by qualified persons.<sup>100</sup> All delinquent children are not "sick children" in the sense that they need medical or psychiatric care. However, it is vital that all children who come in contact with the juvenile court be screened by qualified persons to determine those who require psychiatric attention or other special medical services. Juvenile court officers, no matter how well trained and qualified they may be as social workers, are not, nor do they claim to be, psychiatrists or psychologists. It is this vital need that can be supplied by section 211.180-1, which would permit the court to cause any child within its jurisdiction to be examined<sup>101</sup> by a physician, psychiatrist, or psychologist appointed by the court so that all factors affecting the child's behavior may be given consideration in the disposition of his case.

Paragraph three of this same section provides for the establishment of court-connected medical, psychiatric, and other facilities for the diagnosis and treatment of children coming before the court. This entire section demonstrates the awareness by the legislative committee of the problem confronting the present-day juvenile court and represents an enlightened step forward toward placing that court in a better position to discharge its obligation to the child and to protect the community.

Lest there be an inference from the foregoing discussion of medical-psychiatric aspects of the proposed legislation that this writer believes all punitive treatment will be dumped overboard, we must point out that every case depends upon its particular facts and circumstances and upon the individual as well. There may be circumstances and there may be individuals requiring the application of punishment as a deterrent not only to the offender himself but also to the potential offender. Yet everyone must concede that, if corrective techniques can be perfected to the point where they reform and rehabilitate, then the use of punishment exclusively as a deterrent is not ap-

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100. SOCIAL SECURITY ADMINISTRATION, CHILDREN'S BUREAU, DEP'T OF HEALTH, EDUCATION, & WELFARE, PUB. NO. 346, STANDARDS FOR SPECIALIZED COURTS DEALING WITH CHILDREN 2 (1954).

101. The words "and treated" were probably inadvertently omitted from Senate Bill No. 15. Paragraph two of this same section provides that a public-maintained psychiatric or health institution or clinic may be used for the purpose of this *examination and treatment*.

propriate. In theory it presently appears that youthful offenders may roughly be separated into two groups, corrigible and incorrigible. Obviously such classification arbitrarily disregards the very problem that we cannot yet resolve.

Yet with this artificial division as a starting point, society must use all available technical skill at its command in a determined effort to separate the corrigible sheep from the incorrigible goats. If, after proper investigation, we find that we are dealing with an incorrigible offender, it is apparent that he should be handled in a manner entirely different from an offender who is considered, also after proper investigation, to be corrigible. Actually, the proposed legislation is an effort to make available those indispensable services which will permit the court to attempt an intelligent screening of children to determine, first, appropriate handling and, second, where applicable, proper treatment. There is no valid reason to refuse stubbornly to acknowledge the accomplishments achieved in a scientific field that is so directly related to this particular development of the juvenile court law.

#### *Hearing and Decree*

Children's cases would be heard separately from those of adults and the general public would be excluded under the proposed act. Practice and procedure customary in equity proceedings would apply to hearings and the old provision referring to criminal procedure<sup>102</sup> would be finally and properly eliminated. Proposed section 211.190 states that the procedure may be as formal or informal as the juvenile court judge considers desirable. Any variation in procedure, however, must be within the other limitations prescribed by the act, including, of course, the provision that practice and procedure customary in equity proceedings shall govern.

Section 211.200 of the proposed legislation makes some changes in provisions for the disposition of the case after the finding of fact upon which the court exercises its jurisdiction. The right to suspend sentence or execution<sup>103</sup> is not retained; however, a subsequent section<sup>104</sup> provides that a decree<sup>105</sup> may be modified at any time on the court's own motion.<sup>106</sup> The restriction placed on the juvenile court by *In re Church*<sup>107</sup> (the juvenile court had no authority to commit a minor to a private school in another state) is lifted and institutions in other states may be used.<sup>108</sup> The power to place a child in a hospital or

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102. MO. REV. STAT. § 211.020 (1949).

103. MO. REV. STAT. § 211.110 (1949).

104. Proposed Act § 211.250-1.

105. Proposed Act § 211.200.

106. Proper notice of the court's action is implied. Cf. Albert J. Hoppe, Inc. v. St. Louis Pub. Serv. Co., 361 Mo. 402, 405, 235 S.W.2d 347, 349 (1951).

107. 204 S.W.2d 126, 129 (Mo. App. 1947).

108. Proposed Act § 211.200(2) (c).

institution for treatment or care, which is now restricted to neglected children,<sup>109</sup> is broadened to cover all children subject to the court's jurisdiction and is extended to include examination and treatment<sup>110</sup> by a physician, psychiatrist, or psychologist.

Proposed section 211.210-2 gives recognition to the importance of social information concerning the child and requires the court to send information concerning the child to the agency or institution to which the child is committed. The court is to receive such information as it may require from time to time from the agency or institution so long as the child is subject to the court's jurisdiction. All such records are privileged.

If the court finds a child to be mentally defective or otherwise mentally disordered it may commit the child to any state hospital or institution under such conditions as the court may prescribe; the order of commitment is binding upon the hospital or institution.<sup>111</sup> This is a new authorization and one that is sorely needed by the court. Although the present law provides for committing feeble-minded and epileptic children to the Missouri State School, there is presently no requirement that the institution accept the child. There is no provision in the juvenile court laws at this time for the care of mentally defective children in this manner. Certainly if there is any validity to the doctrine of *parens patriae*, this is a special area in which society should not be permitted to avoid its obligation to care for and protect its charges.

The 1911 act<sup>112</sup> requires the juvenile court, when committing children to other than public institutions, to place them as far as practicable with an association controlled by persons of the same religious faith as the parents of such child, or in the care and custody of some individual holding the same religious belief as the child's parents. Since the term "commit" is used in the sections dealing with neglected<sup>113</sup> and delinquent<sup>114</sup> children, but is not used in the adoption sections,<sup>115</sup> it is certainly arguable that this religious faith provision is not applicable to adoption proceedings. Section 211.230 of the proposed act, however, makes this provision specifically applicable to adoption matters.

The power of the juvenile court to enforce the obligation of parents to support their child who is before the juvenile court is retained in

109. Mo. REV. STAT. § 211.050 (1949).

110. In the proposed legislation "and treated" is specified. See note 101 and text supported thereby *supra*.

111. Proposed Act § 211.220.

112. Mo. REV. STAT. § 211.140 (1949).

113. Mo. REV. STAT. § 211.050 (1949).

114. Mo. REV. STAT. § 211.110 (1949).

115. Mo. REV. STAT. § 453.070 ("transfer of custody . . . ordered"); Mo. REV. STAT. § 453.080 (1949) ("a decree shall be entered" concerning adoption).

the proposed legislation.<sup>116</sup> In addition, there is a new provision in this section stating that no property is exempt from execution on such a judgment. This conforms with a provision in divorce proceedings relating to maintenance.<sup>117</sup>

We have mentioned previously the right of the court to modify its decree placing or committing the child in accordance with proposed section 211.200 at any time on the court's own motion. In the proposed act, a similarly broad provision gives a child committed to the custody of an institution or agency the right, through its parents, guardian, legal custodian, spouse, relative, or next friend, to petition the court for a modification of the order of custody *at any time*. The court may deny such a petition without a hearing or, upon a hearing, may make appropriate orders.<sup>118</sup>

A substantial change is proposed in the appeal section in that appeals do not act as a supersedeas unless so ordered by the court.<sup>119</sup> At present the filing of an appeal bond automatically acts as a supersedeas.<sup>120</sup> The present provision has had the unfortunate result of preventing the effective treatment of children before the court because of the delay occurring between the court hearing and, in the event of affirmance, the carrying out of the treatment ordered by the court. It has also resulted in situations requiring the discharge of a juvenile before the appeal is heard because he has reached his majority.<sup>121</sup> The time for filing the notice of appeal is definitely established as thirty days after the entry of the "final order." Although no definition is given of "final order," it is assumed that any order under proposed section 211.200 and any modification under proposed section 211.250-1 and 2 qualify as appealable orders.

Again stressing the non-criminal approach of the law and emphasizing that its prime purpose is care and guidance, the proposed act provides that the juvenile court decree is not a conviction and shall not cause imposition of civil disabilities.<sup>122</sup> The restriction against the use of evidence adduced in the juvenile court in any other proceeding is continued.<sup>123</sup> A new provision would prevent the juvenile court proceeding from disqualifying the child in any future civil or military service application or appointment.<sup>124</sup>

116. Proposed Act § 211.240; Mo. REV. STAT. § 211.160 (1949).

117. Mo. REV. STAT. § 452.140 (1949).

118. Proposed Act § 211.250-2.

119. Proposed Act § 211.260. Presumably "the court" refers to appellate as well as juvenile court.

120. Mo. REV. STAT. § 211.170 (1949).

121. *State v. Witt*, 228 Mo. App. 432, 67 S.W.2d 817 (1934).

122. Proposed Act § 211.270-1.

123. Proposed Act § 211.270-3; Mo. REV. STAT. § 211.010(4) (1949).

124. This is of doubtful effect since it has no enforcement provisions. In any event, it could not be enforced as far as the federal military service is concerned. Proposed Act § 211.270-4.

The non-public nature of the juvenile courts' records in adoption proceedings established in the laws of 1941<sup>125</sup> is now extended to all its records, including social records, and to the records of peace officers relating to children. These records may be inspected only by order of the court. Peace officers' records are not subject to this restriction if the child is transferred to a court of general jurisdiction.<sup>126</sup>

### *Juvenile Officers and Services*

Probation officers are more appropriately designated juvenile officers.<sup>127</sup> Their minimum age requirement is changed from twenty-five to twenty-two. They must have satisfactorily completed four years of college education with a major in sociology or related subjects, or have at least four years' experience in social work with juveniles in probation or allied services.<sup>128</sup> This is a worth-while effort to establish professional standards within the administrative structure of the juvenile court. The public may rightly expect, even demand, that the problems of delinquent and neglected children be handled by trained, competent personnel. This section contains a "grandfather clause," which excludes its application to present incumbents until their existing appointments terminate.<sup>129</sup>

Salaries of the juvenile officers have been increased to keep pace with the effort to increase professional standards. The maximum payable to the chief juvenile officer in first-class counties and the City of St. Louis is set at \$8,000 per annum. This is an increase from \$6,600 or \$6,300, depending upon the population of the county. Deputy juvenile officers are to receive such salary as may be prescribed by the court. For the first time juvenile officers in counties of the first class are to be reimbursed for their actual expenses incurred while in the performance of their official duties and are not limited to a maximum reimbursement of \$200 per year.<sup>130</sup>

One of the most effective moves to strengthen the court's services to the public throughout the state is the provision in proposed section 211.360, whereby the state comes to the financial assistance of the county by paying one-half the salaries of the juvenile officer and a specified number of his deputy juvenile officers.

The duties of the juvenile officer, although more detailed in the pro-

125. MO. REV. STAT. § 453.120 (1949).

126. Proposed Act § 211.310.

127. Proposed Act § 211.350. In counties of the second class, the term "juvenile officer" came into use in 1945. MO. REV. STAT. § 211.220 (1949).

128. Proposed Act § 211.350.

129. It is suggested that this section meant to refer to education and training in social work rather than in sociology. If this is correct, the four-year college requirement is not pertinent since it is the writer's understanding that most schools of social work are now graduate schools and that a degree in social work requires two years of graduate work.

130. Proposed Act § 211.360; see MO. REV. STAT. § 211.250 (1949).

posed act, remain substantially the same as at present with one exception. It is stated that his presence is required at all proceedings in the juvenile court "except in adoption proceedings."<sup>131</sup> This writer believes that the juvenile officer presently performs an important function in adoption hearings and his presence certainly should not be prohibited even by implication.

### *General*

The continuation of the obligation of prosecuting officials to lend assistance to the juvenile officers<sup>132</sup> is again a mark of the impact of criminal procedure on the juvenile courts. Inasmuch as this proposed legislation has made it abundantly clear that the court is no longer to be used for criminal prosecutions, it would appear that any legal assistance the juvenile officer may require in the preparation of documents or in hearings before the court could be given more appropriately by counsel appointed by the court under the provision of proposed section 211.340-1 relating to the appointment of "other necessary juvenile court personnel."

Peace officers who take a child into custody are required to so advise the juvenile officer "immediately" and to furnish the juvenile officer all facts in their possession pertaining to the child.<sup>133</sup> This supplements the provisions of section 211.050-1 of the proposed act and section 211.060 of the Revised Statutes of 1949. It seems to make rather clear the obligation of all peace officers to cooperate with the juvenile court in all matters properly in that court's jurisdiction. This may do much to aid the juvenile court in functioning at full effectiveness in a field that heretofore has been, to some extent at least, usurped by unauthorized officials. If the juvenile court is to bear the responsibility for the improper acts of children, it should be given the opportunity to discharge those functions vested in it by law.

A further provision in section 211.390-3, authorizing the juvenile court to seek the cooperation of all persons or organizations interested in the welfare of children, is a proper admonition to the court. The court should not remain aloof from others seeking to aid and protect children. Likewise, the cooperation of these other groups should be made readily available to the juvenile court, for with their help the court can be materially assisted in accomplishing its purposes. This is particularly true in the court's relation to the families of children, and it is with this problem particularly that private agencies should be willing to cooperate closely with the court.

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131. Proposed Act § 211.380-1(4).

132. Proposed Act § 211.390-1.

133. Proposed Act § 211.390-2.

## CONCLUSION

It is not strange to find that the juvenile court is criticized by some who resent what they call the legalistic emphasis that they seem to think is developing within it, and by others who are equally resentful of what to them appears to be the summary manner in which the court in some instances has dealt with parental rights and the freedom of children. Even these critics must concede, however, that the juvenile court is operating in a field that is fundamentally based on law and is a highly specialized field, and that the court can function properly only if it has as many services available to it as public and private resources can provide. The writer is in agreement with the thinking that juvenile laws should be administered by a court of general jurisdiction,<sup>134</sup> as the circuit court, having at its disposal all those specialized services and facilities necessary to carry out its proper functions. There is a danger that a separate court, which by definition must be a court of limited jurisdiction, might, in its single-mindedness and near-sighted enthusiasm, attain an imbalance between the protection of the rights of parents and children and the care and treatment it insists must be accorded children.

It is submitted that the ultimate goal of laws affecting juveniles is prevention of serious delinquency and criminality. This may be accomplished initially by making available to the juvenile court all facilities for the discovery of delinquent children and those evidencing marked personality defects. Prevention of delinquency and emotional disorders is the goal of other children's services including child guidance clinics. It is, however, well known that, because of the lack of basic authority in dealing with delinquent children, such treatment often fails to accomplish the most desired results. It is submitted that the juvenile court may serve as a more effective substitute parental authority in setting proper and consistent limits for the child's behavior. In exercising this authority, once the delinquent is discovered, it becomes necessary to diagnose his problem. Here the services of a competent psychiatrist and a properly trained staff are fundamental. After diagnosis comes treatment. Treatment to be effective requires as an absolute minimum the technical skill of competent professional personnel. It is these fundamental services<sup>135</sup> that the joint legislative

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134. This is not meant to imply approval of what Judge Julian W. Mack condemns as "the vicious practice . . . indulged in of assigning a different judge to the juvenile-court work every month or every three months. . . . The service should under no circumstances be for less than one year, and preferably for a longer period. . . ." *The Juvenile Court*, 23 HARV. L. REV. 104, 119 (1909). Judge Mack was at one time a juvenile court judge "by assignment."

135. It is the opinion of the writer that these facilities may be, in fact, so fundamental and necessary to the proper functioning of the circuit court, acting as a juvenile court, that they are a part of the "inherent powers" of the court. Such powers are those recognized as existing in the court to do all things that are reasonably necessary for the court to preserve its existence and to function



committee would make available to the juvenile court and to the public in the proposed juvenile court act it has drafted.

It is felt that the proposed legislation presented by the joint committee of the Missouri legislature proceeds on a sound basic formula and would make it possible for the circuit courts of Missouri to do a capable job in the juvenile court field.

## APPENDIX

SENATE BILL No. 15  
69th General Assembly

### AN ACT

211.010. 1. The purpose of this act is to facilitate the care, protection and discipline of children who come within the jurisdiction of the juvenile court. This act shall be liberally construed, therefore, to the end that each child coming within the jurisdiction of the juvenile court shall receive such care, guidance and control, preferably in his own home, as will conduce to the child's welfare and the best interests of the state and that when such child is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which should have been given him by them.

211.020. As used in this act, unless the context clearly requires otherwise:

(1) "Adult", means a person eighteen years of age or older;  
 (2) "Child", means a person under eighteen years of age;  
 (3) "Juvenile court", means the Cape Girardeau court of common pleas and the circuit court of each county, except that in the judicial circuits having more than one judge, the term means the juvenile division of the circuit court of the county;

(4) "Legal custody", means the right to the care, custody and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, treatment and discipline of a child. Legal custody may be taken from a parent only by court action and if the legal custody is taken from a parent without termination of parental rights, the parent's duty to provide support continues even though the person having legal custody may provide the necessities of daily living;

(5) "Parent" means either a natural parent or a parent by adoption and if the child is illegitimate, "parent" means the mother.

211.030. Except as otherwise provided herein, the juvenile court shall have exclusive original jurisdiction in proceedings:

(1) Involving any child who may be within the county who is alleged to be in need of care and treatment because:

(a) The parents or other persons legally responsible for the care and support of the child neglect or refuse to provide proper support, education which is required by law, medical, surgical or other care necessary for his well-being; except that reliance by a parent, guardian or custodian upon remedial treatment other than medical or surgical treatment for a child shall not be construed as neglect when the treatment is recognized or permitted under the laws of this state; or

(b) The child is otherwise without proper care, custody or support; or

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as a court. These powers exist merely because it is a court irrespective of legislative or constitutional grant. State *ex rel.* Gentry v. Becker, 351 Mo. 769, 777-78, 174 S.W.2d 181, 183-84 (1943); Clark v. Austin, 340 Mo. 467, 487-88, 101 S.W.2d 977, 988 (1937) (concurring opinion). This principle was stated by Judge Lamm as follows:

It has always been the rule that, when a clear main power is granted by the law, everything necessary to make it effectual to attain its principal end is necessarily implied. A grant of power is to be construed so as to include the authority to do all usual things necessary to accomplish the object so granted.

Shull v. Boyd, 251 Mo. 452, 477, 158 S.W. 313, 320 (1913).

- (c) The behavior, environment or associations of the child are injurious to his welfare or to the welfare of others; or
- (d) The child has violated a state law or municipal ordinance;
- (2) Concerning any minor eighteen years of age or older who may be within the county, and who is alleged to have violated a state law or municipal ordinance prior to having become eighteen years of age;
- (3) For the suspension or revocation of a state or local license or authority of a child to operate a motor vehicle;
- (4) For the adoption of a person;
- (5) For the commitment of a child to the guardianship of the department of public health and welfare as provided by law.

211.040. Nothing contained in this act deprives other courts of the right to determine the legal custody of children upon writs of habeas corpus or to determine the legal custody or guardianship of children when the legal custody or guardianship is incidental to the determination of causes pending in other courts. Such questions, however, may be certified by another court to the juvenile court for hearing, determination or recommendation.

211.050. 1. When a child is taken into custody with or without warrant for an offense, the child together with any information concerning him and the personal property found in his possession, shall be taken immediately and directly before the juvenile court or delivered to the juvenile officer or person acting for him.

2. If any person is taken before a magistrate or police judge of another court, and it is then, or at any time thereafter, ascertained that he was under the age of eighteen years at the time he is alleged to have committed the offense, or that he is subject to the jurisdiction of the juvenile court as provided by this act, it is the duty of the magistrate or judge forthwith to transfer the case or refer the matter to the juvenile court, and direct the delivery of such person, together with information concerning him and the personal property found in his possession, to the juvenile officer or person acting as such. The juvenile court shall proceed as in other cases instituted under this act.

211.060. When jurisdiction over the person of a child has been acquired by the juvenile court under the provisions of this act in proceedings coming within the applicable provisions of section 211.030, the jurisdiction of the child may be retained for the purpose of this act until he has attained the age of twenty-one years, except in cases where he is committed to and received by the state board of training schools.

211.070. In the discretion of the judge of a juvenile court, any petition under this act alleging that a child of the age of fourteen years or older has committed an offense which would be a felony if committed by an adult, or that a minor, between the ages of eighteen and twenty-one years or over whom the juvenile court has jurisdiction has violated any state law or municipal ordinance, may be dismissed and such child or minor may be prosecuted under the general law, whenever the judge after receiving the report of the investigation required by this act and hearing evidence finds that such child or minor is not a proper subject to be dealt with under the provisions of this act.

211.080. Whenever any person informs the court in person and in writing that a child appears to be within the purview of applicable provisions of section 211.030 of this act, the court shall make or cause to be made a preliminary inquiry to determine the facts and to determine whether or not the interests of the public or of the child require that further action be taken. On the basis of this inquiry the juvenile court may make such informal adjustment as is practicable without a petition or may authorize the filing of a petition by the juvenile officer.

211.090. 1. The petition shall be entitled "In the interest of .....  
....., a child under eighteen years of age".

- 2. The petition shall set forth plainly:
  - (1) The facts which bring the child within the jurisdiction of the court;
  - (2) The full name, birth date, and residence of the child;
  - (3) The names and residence of his parents, if living;
  - (4) The name and residence of his legal guardian if there be one, of the person having custody of the child or of the nearest known relative if no parent or guardian can be found; and
  - (5) Any other pertinent data or information.
- 3. If any facts required in subsection 2 of this section are not known by the petitioner, the petition shall so state.

211.100. 1. After a petition has been filed, unless the parties appear voluntarily, the juvenile court shall issue a summons in the name of the state of Missouri requiring the person who has custody of the child to appear personally and, unless the court orders otherwise, to bring the child before the court, at the time and place stated.

2. If the person so summoned is other than a parent or guardian of the child, then the parent or guardian or both shall also be notified of the pendency of the case and of the time and place appointed.

3. If it appears that the child is in such condition or surroundings that his welfare requires that his custody be immediately assumed by the court, the judge may order, by endorsement upon the summons, the officer serving it to take the child into custody at once.

4. Summons may be issued requiring the appearance of any other person whose presence, in the opinion of the judge, is necessary.

211.110. 1. Service of summons shall be made personally by the delivery of an attested copy thereof to the person summoned. But if the juvenile court is satisfied after thorough investigation that it is impracticable to serve the summons personally, it may order service by registered mail to the last known address of the person.

2. Personal service shall be effected at least twenty-four hours before the time set for the hearing. Registered mail shall be mailed at least five days before the time of the hearing.

3. Service of summons may be made by any suitable person under the direction of the court.

211.120. If any person summoned by personal service fails without reasonable cause to appear, he may be proceeded against for contempt of court. In case the parties fail to obey the summons or, in any case when it appears to the court that the service will be ineffectual a *capias* may be issued for the parent or guardian, or for the child.

211.130. 1. When any child found violating any law or ordinance or whose behavior, environment or associations are injurious to his welfare or to the welfare of others or who is without proper care, custody or support is taken into custody, the taking into custody is not considered an arrest.

2. When a child is taken into custody, the parent, legal custodian or guardian of the child shall be notified as soon as possible.

3. The jurisdiction of the court attaches from the time the child is taken into custody.

211.140. 1. When a child is taken into custody as provided in section 211.130 the person taking the child into custody shall, unless it is impracticable, undesirable, or has been otherwise ordered by the court, return the child to his parent, guardian or legal custodian on the promise of such person to bring the child to court, if necessary, at a stated time or at such times as the court may direct. If the person taking the child into custody believes it desirable, he may request the parent, guardian or legal custodian to sign a written promise to bring the child into court.

2. If the child is not released as provided in subsection 1 of this section, he may be detained in any place of detention specified in section 211.150 but only on order of the court specifying the reason for detention. The parent, guardian or legal custodian of the child shall be notified of the place of detention as soon as possible.

3. If, because of the unreasonableness of the hour or the fact that it is a Sunday or holiday, it is impractical to obtain a written order from the court, the child may be detained without an order of the court for a period not to exceed twenty-four hours, but a written record of such detention shall be kept and a report in writing filed with the court. In the event that the judge is absent from his circuit, or is unable to act, the approval of another circuit judge of the same or adjoining circuit must be obtained as a condition for detaining a child for more than twenty-four hours.

211.150. 1. Pending disposition of a case, the juvenile court may order in writing the detention of a child in one of the following places:

- (1) A detention home provided by the county;
- (2) A foster home, subject to the supervision of the court;
- (3) A suitable place of detention maintained by an association having for one of its objects the care and protection of children;

(4) A jail or other facility for the detention of adults, if the child's habits or conduct are such as to constitute a menace to himself or others and then only if he is placed in a room or ward entirely separate from adults confined therein;

(5) Or such other suitable custody as the court may direct.

2. Neither finger prints nor a photograph shall be taken of a child taken into custody for any purpose without the consent of the juvenile judge.

211.160. 1. In each county of the first and second classes and in the city of St. Louis, it is the duty of the county court, or, where there is no county court, such other authorized body, to provide a place of detention for children coming within the provisions of this act. It is also the duty of the county court or other authorized body to provide offices for the personnel of the juvenile court.

2. The place of detention shall be so located and arranged that the child being detained does not come in contact, at any time or in any manner, with adults convicted or under arrest, and the care of children in detention shall approximate as closely as possible the care of children in good homes.

3. The place of detention shall be in charge of a superintendent. The judge of the juvenile court shall appoint and fix the compensation and maintenance of the superintendent and of any assistants or other personnel required to operate the detention facility. Such compensation and maintenance are payable out of funds of the county.

4. The county court or other governing body of the county is authorized to lease or to acquire by purchase, gift or device [*sic*] land for such purpose, and to erect buildings thereon and to provide funds to equip and maintain the same for the subsistence and education of the children placed therein.

211.170. 1. Counties of the third and fourth classes within one judicial circuit, shall, upon the written recommendation of the circuit judge of that judicial circuit, establish a place of juvenile detention to serve all of the counties within that judicial circuit, and in like manner, the counties shall supply offices for the juvenile officers of that circuit. The recommendation of the circuit judge shall be made only after a hearing conducted by him, after thirty days' notice, to determine the need and feasibility of establishing such a place of detention within the judicial circuit. The provisions of section 211.160 apply as to the form of operation and means of maintenance of the place of detention, except that the total cost of establishment and operation of the places of detention shall be prorated among the several counties within that judicial circuit upon a ratio to be determined by a comparison of the respective populations of the counties. The point of location of the place of juvenile detention shall be determined by the circuit judge of the judicial circuit.

2. Circuit judges of any two or more adjoining judicial circuits after a hearing as provided in subsection 1 of this section may, by agreement confirmed by judicial order, and in the interest of economy of administration, establish one place of juvenile detention to serve their respective judicial circuits. In such event, the circuit judges so agreeing shall jointly govern the affairs of the place of detention and the cost thereof shall be apportioned among the counties served in the manner provided for in subsection 1 of this section.

3. Any county of the third or fourth classes desiring to provide its own place of juvenile detention may do so in the manner prescribed for counties of the first and second classes.

211.180. 1. The court may cause any child within its jurisdiction to be examined by a physician, psychiatrist or psychologist appointed by the court in order that the condition of the child may be given consideration in the disposition of his case. The expenses of the examination, when approved by the court shall be paid by the county.

2. The services of a state, county or municipally maintained hospital, institution, or psychiatric or health clinic may be used for the purpose of this examination and treatment.

3. A county may establish medical, psychiatric and other facilities, upon request of the juvenile court, to provide proper services for the court in the diagnosis and treatment of children coming before it and these facilities shall be under the administration and control of the juvenile court. The juvenile court may appoint and fix the compensation of such professional and other personnel as it deems necessary to provide the court proper diagnostic, clinical and treatment services for children under its jurisdiction.

211.190. 1. The procedure to be followed at the hearing shall be determined by the juvenile court judge and may be as formal or informal as he considers

desirable. He may take testimony and inquire into the habits, surroundings, conditions and tendencies of the child to enable the court to render such order or judgment as will best promote the welfare of the child and carry out the objectives of this act.

2. The hearing may, in the discretion of the court, proceed in the absence of the child and may be adjourned from time to time.

3. All cases of children shall be heard separately from the trial of cases against adults.

4. Stenographic notes or an authorized recording of the hearing shall be required if the court so orders or if requested by any party interested in the proceeding.

5. The general public shall be excluded and only such persons admitted as have a direct interest in the case or in the work of the court.

6. The practice and procedure customary in proceedings in equity shall govern all proceedings in the juvenile court.

211.200. When a child is found by the court to come within the applicable provisions of section 211.030 of this act, the court shall so decree and make a finding of fact upon which it exercises its jurisdiction over the child and the court may, by order duly entered, proceed as follows:

(1) Place the child under supervision in his own home or in custody of a relative or other suitable person upon such conditions as the court may require;

(2) Commit the child to the custody of:

(a) A public agency or institution authorized by law to care for children or to place them in family homes;

(b) Any other institution or agency which is licensed to care for children or to place them in family homes;

(c) An association, school or institution willing to receive it in another state if the approval of the agency in that state which administers the laws relating to importation of children into the state has been secured;

(d) The juvenile officer; or

(3) Place the child in a family home;

(4) Cause the child to be examined and treated by a physician, psychiatrist or psychologist and when the health or condition of the child requires it, cause the child to be placed in a public or private hospital, clinic or institution for treatment and care, except that nothing contained herein authorizes, the court to take jurisdiction of a child when the parent or guardian, relies upon remedial treatment other than medical or surgical when the treatment is recognized or permitted under the laws of this state;

(5) Suspend or revoke a state or local license or authority of a child to operate a motor vehicle.

211.210. 1. All commitments made by the juvenile court shall be for an indeterminate period of time and shall not continue beyond the child's twenty-first birthday.

2. Whenever the court commits a child to an institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child, and the institution or agency shall give to the court such information concerning the child as the court may require from time to time so long as the child is under the jurisdiction of the juvenile court. This information, together with all other records transmitted to the institution or agency, are privileged and for the benefit of the child only. They may be examined or subpoenaed only upon approval of the court which committed the child to the institution or agency.

211.220. 1. When a child coming under the jurisdiction of the juvenile court is found to be feeble-minded, epileptic, mentally defective or otherwise mentally disordered, the juvenile court may commit the child to the Missouri state school, the St. Louis training school or other state hospital or institution under such condition, as the court may prescribe and the order of commitment shall be binding upon the hospital or institution to which the child is committed.

2. Whenever a child is committed to the state board of training schools and subsequently is found to be feeble-minded, epileptic, mentally defective or otherwise mentally disordered, the state board of training schools may order the transfer of the child to a proper state supported hospital or institution for care and treatment subject to the jurisdiction of the board. Such hospital or institution shall, without delay, accept the child for care and treatment for so long a period as is deemed necessary except that when a child for any reason ceases to come

under the jurisdiction of the state board of training schools, he may be retained as a patient in the institution or hospital only after proper proceedings have been instituted and held as otherwise required by law.

211.230. In placing a child in or committing a child to the custody of an individual or of a private agency or institution and in granting adoptions the court shall whenever practicable select either a person, or an agency or institution governed by persons, of the same religious faith as that of the parents of such child, or in case of a difference in the religious faith of the parents, then of the religious faith of the child, or if the religious faith of the child is not ascertainable, then of the faith of either of the parents.

211.240. 1. When the juvenile court finds a child to be within the purview of applicable provisions of section 211.030 of this act it may in the same or subsequent proceedings, either on its own motion or upon the application of any person, institution or agency having the custody of such child, proceed to inquire into the ability of the parent of the child to support it or to contribute to its support. If the parent does not voluntarily appear for the proceeding, he shall be summoned in the same manner as in civil cases and the summons in the case may issue to any county of the state.

2. If the court finds that the parent is able to support the child or to contribute to its support, the court may enter an order requiring the parent to support the child or to contribute to its support and to pay the costs of collecting the judgment.

3. The court may enforce the order by execution and the execution may issue on request of the juvenile officer or any person, agency or institution which has been awarded custody of the child. No deposit or bond for costs shall be required as a condition for the issuance or service of the execution. No property is exempt from execution upon a judgment or decree made under this section, and all wages or other sums due the parent is subject to garnishment or execution in any proceedings under this section.

4. Otherwise the necessary support of the child shall, unless the court commits the child to a person or institution willing to receive it without charge, be paid out of the funds of the county but only upon approval of the judge of the juvenile court.

211.250. 1. A decree of the juvenile court made under the provisions of section 211.200 may be modified at any time on the court's own motion.

2. The parent, guardian, legal custodian, spouse, relative or next friend of a child committed to the custody of an institution or agency may, at any time, petition the court for a modification of the order of custody. The court may deny the petition without hearing or may, in its discretion, conduct a hearing upon the issues raised and may make any orders relative to the issues as it deems proper.

3. The authority of the juvenile court to modify a decree is subject to the provisions of chapter 219, RSMo 1949.

211.260. An appeal shall be allowed to the child from any final judgment, order or decree made under the provisions of this act and may be taken on the part of the child by its parent, guardian, legal custodian, spouse, relative or next friend. An appeal shall be allowed to a parent from any final judgment, order or decree made under the provisions of this act which adversely affects him. Notice of appeal shall be filed within thirty days after the final judgment, order or decree has been entered but neither the notice of appeal nor any motion filed subsequent to the final judgment acts as a supersedeas unless the court so orders.

211.270. 1. No adjudication by the juvenile court upon the status of a child shall be deemed a conviction nor shall the adjudication operate to impose any of the civil disabilities ordinarily resulting from conviction nor shall the child be found guilty or be deemed a criminal by reason of the adjudication.

2. No child shall be charged with a crime or convicted unless the case is transferred to a court of general jurisdiction as provided in this act.

3. Evidence given in cases under this act is not lawful or proper evidence against the child for any purpose whatever in a civil, criminal or other proceeding except in subsequent cases under this act.

4. The disposition made of a child and the evidence given in the court does not operate to disqualify the child in any future civil or military service application or appointment.

211.280. 1. In counties of the first and second class and in the city of St. Louis a court room, to be designated the juvenile court room, shall be provided by

the county or circuit court of the county or city, as the case may be, for the hearing of cases under this act.

2. In case of the absence or inability of the judge of the juvenile court in any such county to hold court, any one of the circuit judges in the judicial circuit may perform that duty.

211.290. 1. In counties of the third and fourth class hearings may be conducted in the judge's chambers or in such other room or apartment as may be provided or designated by the judge of the juvenile court.

2. In case of the absence of [sic] inability of the juvenile judge to hold court, he may call in another circuit judge to perform that duty. Any juvenile judge having more than one county within his circuit, may, in his discretion, and in the interests of the welfare of the child involved, act upon a juvenile case arising within that circuit, irrespective of where, within the circuit, he may then be holding court.

211.300. The clerk of the Cape Girardeau court of common pleas and the clerk of the circuit court shall act as the clerk of the juvenile court.

211.310. 1. The proceedings of the juvenile court shall be entered in a book kept for that purpose and known as the juvenile records. These records as well as all information obtained and social records prepared in the discharge of official duty for the court shall be open to inspection only by order of the court to persons having a legitimate interest therein.

2. Peace officers' records, if any are kept, of children, shall be kept separate from the records of persons over seventeen years of age and shall not be open to inspection or their contents disclosed, except by order of the court. This subsection does not apply to children who are transferred to courts of general jurisdiction as provided by section 211.070 of this act.

3. During the month of January in each year, the court may make an order to destroy all social histories and information other than the official court file, pertaining to any person who has reached the age of twenty-one years.

211.320. The costs of the proceedings in any case in the juvenile court may, in the discretion of the court, be adjudged against the parents of the child involved or the informing witness as provided in section 211.080, as the case may be, and collected as provided by law. All costs not so collected shall be paid by the county.

211.330. 1. After any child has come under the care or control of the juvenile court as provided in this act, any person who thereafter encourages, aids, or causes the child to commit any act or engage in any conduct which would be injurious to his morals or health or who knowingly or negligently disobeys, violates or interferes with a lawful order of the court with relation to the child, is guilty of contempt of court, and shall be proceeded against as now provided by law and punished by imprisonment in the county jail for a term not exceeding six months or by a fine not exceeding five hundred dollars or by both such fine and imprisonment.

2. If it appears at a juvenile court hearing that any person eighteen years of age or over has violated section 559.360, RSMo 1949, by contributing to the delinquency of a minor, the judge of the juvenile court shall refer the information to the prosecuting or circuit attorney, as the case may be, for appropriate proceedings.

211.340. 1. The juvenile court shall appoint a juvenile officer and other necessary juvenile court personnel to serve under the direction of the court in each county in the judicial circuit except that in counties where such appointments are deemed impracticable for any reason:

(1) The juvenile court may appoint a juvenile officer and other necessary personnel to serve two or more counties in the judicial circuit; or

(2) Circuit judges of any two or more adjoining circuits may by agreement, confirmed by judicial order, appoint a juvenile officer and other necessary personnel to serve their respective judicial circuits and in such a case the juvenile officers and other persons appointed shall serve under the joint direction of the judges so agreeing.

2. In the event a juvenile officer and other juvenile court personnel are appointed to serve two or more counties as provided in subdivisions (1) and (2) of subsection 1 of this section, the total cost to the counties for the compensation of these persons shall be prorated among the several counties and upon a ratio to be determined by a comparison of the respective populations of the counties.

211.350. 1. Whenever the need arises for the appointment of a juvenile officer, the juvenile court may:

(1) Provide, by rule of court, for open competitive written and oral examinations and create an eligible list of persons who possess the qualifications prescribed by subdivision (2) of this section and who have successfully passed such examination; or

(2) The court may appoint any person over the age of twenty-one years who has completed satisfactorily four years of college education with a major in sociology or related subjects or who, in lieu of such academic training, has had four years or more experience in social work with juveniles in probation or allied services.

2. This section does not terminate the existing appointment nor present term of office of any juvenile officer or deputy juvenile officer in any county, but it applies to any appointment to be made after the existing appointment or term of office of any incumbent terminates or expires for any reason whatsoever.

211.360. 1. In each county of the first class and in the city of St. Louis, the juvenile officer shall receive such salary as may be prescribed by the circuit court, but not less than four thousand five hundred dollars per year nor more than eight thousand dollars per year. Each deputy juvenile officer shall receive such salary as may be prescribed by the circuit court. The salary of the supervising officer assigned to courts of domestic relations shall be prescribed by the circuit court and shall not exceed six thousand dollars per year.

2. Clerical and stenographic assistants to the juvenile court shall receive such salary as the circuit court may determine.

3. Actual expense, exclusive of office expense, incurred by the juvenile officer and deputy juvenile officers while in the performance of their official duties shall be reimbursed to them out of county or city funds upon the approval of the judge of the juvenile court.

4. The salaries of juvenile officers and of not more than ten deputy juvenile officers in each such county are payable monthly, one half by the state out of the state treasury and one half by the county or city. The salaries of clerks, stenographers, and deputy juvenile officers in excess of ten, in each county, are payable monthly out of the funds of the city or county.

211.370. 1. Juvenile officers in counties of the second, third or fourth class shall receive such salary as may be prescribed by the circuit courts served by them, but not less than two thousand four hundred dollars per year and not more than six thousand dollars per year. Deputy juvenile officers, clerical and stenographic assistants shall receive such salary as the circuit court may determine.

2. Actual expenses, exclusive of office expense, incurred by the juvenile officer and deputy juvenile officers while in the performance of their official duties shall be reimbursed to them out of the funds of the county or counties.

3. The salaries of the juvenile officer and of not more than two deputy juvenile officers serving under him are payable monthly, one-half by the state out of the state treasury and one half [*sic*] by the county out of county funds. The salaries of deputy juvenile officers in excess of two for each juvenile officer appointed and of clerks and stenographers are payable monthly out of county funds. That part of the salaries and expenses of a juvenile officer and other juvenile court personnel serving two or more counties which is payable out of county funds shall be prorated among the several counties served upon a ratio to be determined by a comparison of the respective populations of the counties.

211.380. 1. The juvenile officer shall, under direction of the juvenile court:

(1) Organize, direct and develop the administrative work of the court;

(2) Make such investigations and furnish the court with such information and assistance as the judge may require;

(3) Keep a written record of such investigations and submit reports thereon to the judge;

(4) Be present during all proceedings in the juvenile court, except in adoption proceedings, in order to represent the interests of children coming within the purview of this act;

(5) Take charge of children before and after the hearing as may be directed by the court;

(6) Perform such other duties and exercise such powers as the judge of the juvenile court may direct.

2. The juvenile officer is vested with all the power and authority of sheriffs to make arrests and perform other duties incident to his office.



3. The juvenile officers or other persons acting as such in the several counties of the state shall cooperate with each other in carrying out the purposes and provisions of this act.

211.390. 1. It is the duty of circuit, prosecuting and city attorneys, and county counsellors representing the state or a city in any court, to give the juvenile officer such aid and cooperation as may not be inconsistent with the duties of their offices.

2. It is the duty of police officers, constables, sheriffs and other authorized persons taking a child into custody to give information of that fact immediately to the juvenile officer or one of his deputies and to furnish the juvenile officer all the facts in his possession pertaining to the child, its parents, guardian or other persons interested in the child together with the reasons for taking the child into custody.

3. It is the duty of all other public officials and departments to render all assistance and cooperation within their jurisdictional power which may further the objects of this act. The court is authorized to seek the cooperation of all societies and organizations having for their object the protection or aid of children and of any person or organization interested in the welfare of children.

211.400. Nothing in this act shall be construed to repeal any part of the law relating to the state training school for girls or the state training school for boys; and in all commitments to either of these institutions the law in reference to them shall govern.

211.410. Any person over the age of seventeen years who willfully violates, neglects or refuses to obey or perform any lawful order of the court, or who violates any provision of this act is guilty of a misdemeanor.

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