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THE JUVENILE COURT LAW OF WASHINGTON ITS HISTORY AND BASIC CONSIDERATIONS FOR ITS REVISION

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Although the Juvenile Court is considered a 20th-century development, the middle of the 19th century saw the establishment in several eastern states of private hearings in cases involving children and the creation of special reform schools for juveniles. This action marked the first formalized recognition of the need for specialized procedures whereby the Anglo-Saxon judicial tradition of affording special protection to children might be continued.

History of Specialized Services to Children in Washington

The use in Washington State of specialized institutions for the care and training of children, a vitally important tool for the adequate operation of the modern juvenile court, had its inception in 1890 when the legislature authorized the establishment of the Washington State Reform School for "the keeping and reformatory training of all youths between the ages of eight and eighteen. . . ."[1]

In 1891 "An act to provide for the committing of juvenile offenders to the state reform school at Chehalis"[2] was passed, vesting jurisdiction over every boy and girl between 8 and 16 years of age found guilty in the courts of record in this state "of any crime except murder or manslaughter, or who for want of proper paternal care is growing up in mendicancy or vagrancy, or is incorrigible, and complaint thereof is made and properly sustained, the court may, if in its opinion the accused is a proper subject therefor, instead of entering judgment cause an order to be entered that said boy or girl be sent to the state reform school."

Though the 1891 law provided for a special hearing to determine if "the boy or girl is a fit subject for the state reform school," the criminal aspects of the proceeding remained clearly dominant.

The laws of 1905 created a special department known as the "Juvenile Court Session" for the hearing of cases involving "the apprehension, trial, treatment and control" of delinquent children. The act vested original jurisdiction of all such cases in the Superior Court and

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[1] Wash. Sess. Laws 1889-90, c. 271 § 2.

[2] Wash. Sess. Laws 1891, c. 103.

provided that said court "may, for convenience, be called the 'Juvenile Court.' "[3]

This 1905 legislation, which appeared as the first positive step in achieving our modern concept of a juvenile court, set forth this laudatory objective:

> That the care, custody and discipline of a child shall approximate, as nearly as may be, that which should be provided 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.[4]

As part of the School Code of 1909, the name of the reform school established at Chehalis was changed to the Washington State Training School;[5] and administrative responsibility, formerly vested in a local Board of Trustees, was placed in the three-member State Board of Control.

The establishment of a second correctional institution, to be known as the State School for Girls, was authorized in 1913 for "Any girl more than ten and under eighteen years of age, who has been found delinquent under the juvenile delinquency law of this state, . . ."[6] This was the same year that Washington adopted its basic Juvenile Court Law.[7]

PRESENT JUVENILE CORRECTIONAL PROGRAM

That confusion still exists with respect to the statutes cited above is clearly indicated by the reviser's note to the latest codification of Washington's laws, which reads as follows:

> These several sections are in hopeless confusion, having been enacted at different times without regard for earlier provisions on the same subject. The juvenile act of 1891 as amended in 1905 apparently was not consulted, nor repealed, when the school code of 1909, the criminal code of 1909 and the act of 1913 setting up a separate girls' school was enacted, each in turn fixing varying age limits on commitment, detention, etc.
> Chapter 13.08 as it appeared in the 1951 edition of RCW consisted of RCW 13.08.010 through 13.08.070 all of which had been extensively rewritten by the 1941 code committee 'with a view to obtaining a compact workable chapter relating to juvenile offenders.' RCW 13.08.010 through 13.08.070 were never enacted by the legislature and therefore

[3] Wash. Sess. Laws 1905, c. 18, § 3.
[4] Wash. Sess. Laws 1905, c. 18, § 12.
[5] Wash. Sess. Laws 1909, c. 97, Title III, sub-c. 4, § 1.
[6] Wash. Sess. Laws 1913, c. 157, § 6.
[7] Wash. Sess. Laws 1913, c. 160.

> are not law. They have therefore been stricken and the sections as enacted by the legislature (RCW 13.08.080 through 13.08.180) have been substituted.[8]

By action of the 1955 legislature, the names of the two juvenile correctional facilities in Washington were formally changed to Maple Lane School and Green Hill School.[9] These two state institutions, located at Grand Mound in Thurston County and Chehalis in Lewis County, respectively, have taken much criticism over the years, as have like facilities for juveniles elsewhere.

Difficulties in connection with Washington's correctional institutions was a factor which led to the creation in 1951 of a Division of Children and Youth Services in the Department of Institutions charged with supervisory responsibility for these programs.[10] This law, often referred to as the "Youth Protection Act," provided that:

> The department, through the division, shall have power to acquire, establish, maintain, and operate 'minimum security' facilities for the care, custody, education, and treatment of children with less serious behavior problems. Such facilities may include parental schools or homes, farm units, and forest camps.

An arrangement with the Division of Forestry under which a 32-boy camp, namely, Cedar Creek Forestry Camp located on state lands in Thurston County, represents an important area of implementation.

It should be noted that though studies of Washington institutions for delinquent juveniles show heterogeneous populations with wide age spans, with a great variety of backgrounds and with complex and varying needs on the part of the youths committed to their care, it was not until 1957 that the legislature recognized the need for smaller and more homogenous groupings by authorizing the purchase of Fort Worden at Port Townsend as a permanent additional facility.[11]

An appropriation earmarked to establish diagnostic services at this location indicated a legislative mandate for provision of clinical services as first authorized by the Youth Protection Act of 1951. While this location is not as well situated geographically as could be desired, it undoubtedly precedes a second diagnostic center to be established for the courts of Eastern Washington.

Since residential facilities and clinical services are expensive and

[8] RCW 13.08 (Reviser's note at p. 2).
[9] Wash. Sess. Laws 1955, c. 230.
[10] Wash. Sess. Laws 1951, c. 234.
[11] Wash. Sess. Laws 1957, c. 217.

available professional staff is limited, the state must of necessity supply this resource to the counties of the state. "Another distinct trend in the legislation is to increase state responsibility for services to the juvenile court for detention, diagnosis, and probation."[12]

The 1957 legislature also approved a leasing arrangement whereby Luther Burbank and Martha Washington, parental schools operated by the Seattle School Board, should be integrated into the state's residential treatment program for delinquent juveniles, beginning July 1, 1957.[13]

Inception of the Modern Juvenile Court

As a result of the pioneering work of the Chicago Bar Association under the leadership of Judge Harvey B. Hurd, the Illinois legislature on April 21, 1899, adopted an act entitled "Juvenile Courts for Dependent, Neglected and Delinquent Children."[14]

At about the same time Judge Ben Lindsey successfully spearheaded an effort that resulted in the Colorado legislature amending its existing "School Law." On April 12, 1899, an act was passed which related to children between the ages of eight and eighteen who were habitual truants, vicious, immoral, etc. Judge Lindsey then organized a limited juvenile court, but it was not until 1903 that Colorado by law established juvenile courts.[15]

All other states of the Union have adopted similar legislation, including Washington, among the vanguard, which enacted its Juvenile Court Law in 1913.

It is interesting to note that there has been an international impact resulting from the juvenile court movement in the United States, with Great Britain and Canada establishing juvenile courts in 1908; Switzerland in 1910; Belgium and Hungary in 1914; India in 1920; Holland and Japan in 1922; Germany and Brazil in 1923; and subsequently many other countries including Spain, South Africa and New Zealand. Soviet Russia abolished its juvenile court system in 1932.

Though the basic constitutionality of legislation establishing juvenile courts has now been well established, there were initially numerous attacks upon the concept. Jurisdiction was early upheld as a principle of American jurisprudence by the United States Supreme Court,

[12] Sol Rubin, Legal Consultant, National Probation and Parole Association (Unpublished communication, September 12, 1957).
[13] Wash. Sess. Laws 1957, c. 297.
[14] Ill. Sess. Laws 1899, at p. 131.
[15] Colo. Sess. Laws 1903, at p. 187.

the first enunciation being by Chief Justice Gibson in *Ex Parte Crouse:*[16]

> May not the natural parents, when unequal to the task of education, or unworthy of it, be superseded by the parens patriae, or common guardian of the community? It is to be remembered that the public has a paramount interest in the virtue and knowledge of its members, and that of strict right the business of education belongs to it.... The right of parental control is a natural, but not an inalienable one.

Among the statements by legal educators and courts upholding the philosophical justification for special procedures in the handling of juvenile offenders, probably the most quoted is the following observation from Dean Roscoe Pound:[17]

> The fundamental idea of the Juvenile Court Law is that the state must step in and exercise guardianship over a child found under such adverse social or individual conditions as develop crime.... It proposes a plan whereby he may be treated, not as a criminal, or legally charged with crime, but as a ward of the state, to receive practically the care, custody and discipline that are accorded the neglected and dependent child, and which, as the act states, "shall approximate as nearly as may be that which should be given by its parents."

A well-stated summary of the theory of jurisprudence upon which juvenile court statutes are predicated is given by the Michigan Supreme Court in an early case in this field.[18]

> That the state should be, and is, profoundly interested in the moral and physical conditions of infant citizens, goes without saying. The law recognizes as the physical and the social senses recognize, the requirements of nurture and of education, mental and moral. Infancy imports wardship. It implies control, direction, restraint, supervision. Depending, as it may and does, upon the natural and usual sentiments attending parentage and family, society is conscious, and has from earliest times been conscious, of the fact that conditions may be such that these dependencies are without support, and that the state itself must in some cases be parent to children of the state. From the earliest times the law, which regards the natural rights of parents and deciding between estranged parents with equal natural rights, according to rules more or less certain, has always in the last analysis of the particular case, set the welfare of the child, and the interest of the community in the welfare of the child, above every other consideration.

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[16] 4 Whart. 9 (Pa. 1838).

[17] *The Juvenile Court and the Law,* YEAR BOOK OF THE NATIONAL PROBATION AND PAROLE ASSOCIATION (1944).

[18] Hunt v. Wayne Circuit Judges, 142 Mich. 93, 105 N.W. 531 (1906).

WASHINGTON'S JUVENILE COURT LAW—CURRENT CONCERNS

Though some minor amendments have been added to the 1913 Juvenile Court Law to adapt it to changing conditions, no serious effort at its modernization has been undertaken since its passage. Support for such a project has been evidenced by numerous statewide organizations concerned with the welfare of children and youth.[19]

One of the Superior Court Judges of Washington, confronted with the critical need for adequate services on behalf of our state's delinquent youth and a modern juvenile court code, has referred to the present law as having been given to us "in the era of horses and long skirts" and urges the Bar of Washington "to rise to the heights of public service and leadership of which it is fully capable" in meeting crucial needs in this important area of responsibility to the youth of our state.[20]

Among the objections to the Juvenile Court Law as it now exists and features to be considered in any reactment of the measure are the following:

Jurisdiction

The jurisdictional provision of a juvenile court act is considered one of its most vital parts and herein Washington's law leaves much to be desired. This portion of the law is deemed archaic in such areas as terming a "delinquent child" as one who uses indecent language or who is found about railroad tracks or jumps on or off trains or cars.

The same section attempts to describe a "dependent child" by eighteen separate definitive categories. Some of the elements in the dependency definition set forth dependency without neglect, e.g., a child who is destitute. Such circumstances today are ordinarily not deemed a juvenile court matter but rather an administrative welfare responsibility. Other references of dependency, such as playing musical instruments for gain upon public streets, appear quite obsolete in view of changes that have transpired in our society in the forty-four years since the law was enacted.

Today's trend in conferring jurisdiction is to describe the conduct or circumstances which will bring a child within the purview of the

[19] Washington Probation and Parole Association; Washington Association for Mental Health; Washington Association for Social Welfare, Council for Children and Youth; American Association of Social Workers, Washington Chapter; Washington Federation of Women's Clubs; Washington Juvenile Police Officers Association; Washington Congress of Parents and Teachers; League of Women Voters of Washington; King County Health and Welfare Council.

[20] Long, *Headaches of a Judge—A Challenge to the Bar*, 27 WASH. L. REV. 130 (1952).

juvenile court rather than to attempt legalistic definitions under which a child is labeled or categorized. "It is generally agreed that in dealing with the child as an individual the attempt to classify and label is unnecessary and often impractical and harmful."[21] Thus, California, Georgia, Michigan, Nevada, North Dakota, and Wyoming have substantially followed the provision suggested by the Standard Act[22] granting jurisdiction over any child living or found within the county:

> (a) who is neglected as to proper or necessary support or education as required by law, or as to medical, psychiatric, psychological or other care necessary for his well-being; or who is abandoned by his parent or other custodian;
> (b) whose occupation, behavior, condition, environment or associations are such as to injure or endanger his welfare or that of others;
> (c) who is beyond the control of his parent or other custodian;
> (d) who is alleged to have violated or attempted to violate any federal, state or local law or municipal ordinance, regardless of where the violation occurred.

Wardship

All children found delinquent or dependent under Washington's 1913 law are "considered wards of the state." The concept of wardship is now used in only a few states, the basis being that, while the court exercises control and may affect custody, it does not wish to serve as guardian. In any revision this point deserves study, and if the conclusion reached by those states[23] which have recently enacted new Juvenile Court statutes is deemed worthy of following, wardship will not be carried into a new law.

Any consideration of the matter of wardship will also involve study of the section[24] wherein authority is given the court to award a child to the care of an individual or association, vesting guardianship in such person or association and "... with the assent of the court, to place such child in a family home, either temporarily or for adoption...."

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[21] Virginia Advisory Legislative Council Report on Senate Bill 175, at p. 8 (1948).
[22] Art. II, Jurisdiction, *A Standard Juvenile Court Act,* National Probation and Parole Association (Rev. ed. 1949).
[23] Idaho Sess. Laws 1955, c. 259.
N.M. Sess. Laws 1955, c. 205.
Tenn. Sess. Laws 1955, c. 77.
Wis. Sess. Laws 1955, c. 575.
Okla. Sess. Laws 1951, c. 11.
Ky. Sess. Laws 1953, c. 208.
La. Sess. Laws 1950, c. 82.
Nev. Sess. Laws 1949, c. 62.
Code of Va. §§ 16.1-139 to 16.1-217 (Supp. 1956).
[24] RCW 13.04.110.

This broad power has not been literally applied, and the special statutes on adoption may have repealed this section by implication.

Orders and Commitment Process

A further section[25] of the 1913 Juvenile Court Law provides that "After acquiring jurisdiction over any child, the court shall have power to make an order with respect to the custody, care or control of such child, or any order, which in the judgment of the court, would promote the child's health and welfare...." That this provision, granting such broad power *prior to adjudication,* is illegal is conceded by judges who have studied the act with a view toward safeguarding the legal rights of children and their parents in juvenile proceedings no less than in criminal matters involving adults.

The same section authorizes private hearings, but does not require them as the Standard Act does. While protection of privacy is afforded the records, an unusual provision, not in the Standard Act, is set forth:

> Such records shall be kept as unofficial records of the court and shall be destroyed at any time in the discretion of any judge presiding in said court on or before the child shall arrive at the age of twenty-one years.

This procedure for destruction of records may be questioned on two grounds: (1) Does it actually afford additional protection to the child? and (2) In the event of continued criminal activity as an adult and prosecution in the criminal court, should not the latter court have knowledge of the juvenile court's experience with the individual?

This section also provides for disposition of the child upon adjudication following hearing and for commitment "to a suitable institution for the care of delinquent or dependent children." No distinction is made between private and public institutions. Provision is made that

> A child committed to such institution shall be subject to the control thereof and the said institution shall have the power to parole such child, on such conditions as may be prescribed, and the court shall have power to discharge such child from custody, whenever, in the judgment of the court, his or her reformation shall be complete.

This co-mingling of authority between the judicial and administrative branches of state government has led to controversy which, fortunately, has been minimal but should be finally resolved if a reenactment is undertaken.

Under the Standard Act the court terminates jurisdiction upon commitment to a training school. Chapter 297, Laws of 1957, providing

[25] RCW 13.04.090.

for commitment to the Department of Institutions, Division of Children and Youth Services, has led most of the juvenile courts of Washington to take the position that it is beyond the limits of good judicial administration to get into the institutional treatment area. These same courts recognize, however, that it is a violation of basic rights to permit controls other than those of the child's family to be imposed except after full and fair trial safeguarded by constitutional guarantees.

It would appear that not only should the "hopeless confusion" existing with reference to the statutes pertaining to the state's juvenile correctional institutions be resolved by a new piece of legislation, but that the most effective use of the state's auxiliary services to the courts as administered by the executive branch should be well defined.

In addition to modernizing the Juvenile Court Law and clarifying the relationship between the judicial prerogatives of the courts and the state's treatment resources, these additional subjects occur to the writer as pertinent to such a study:

(1) Would not a "probation" officer as designated by the present Juvenile Court Law be more appropriately named as "juvenile" or "juvenile probation" officer?

(2) In order to have the problems of delinquent and dependent children handled by trained, competent personnel, should not minimum professional standards be established, with present incumbents protected until existing appointments terminate?

(3) To provide aid to counties that do not now have probation officers and to strengthen counties that are understaffed, should not the state come to the financial assistance of those counties seeking to strengthen the professional standards of their court-appointed staff by paying one-half the salaries of a specified number of such officers?[26]

(4) Should not juvenile courts have power to enforce the obligation of the parents for financial support of their child while in detention and during the period of residential care and training, if such is decreed as necessary?

(5) Should "informal" or "unofficial" probation, which is generally used throughout Washington but which has no legal sanction at the present time, be approved by statute?

The foregoing is by no means inclusive of all the legal ramifications involved in a legislative project of this scope. It should, however, indicate the advisability of a representative session from the bench and bar

[26] Twenty-four of Washington's thirty-nine counties had full-time paid probation officers in 1956.

of the state, as well as interested lay organizations, convening for study of an appropriate measure in time for the 1959 legislative session.

INTEREST OF THE GOVERNOR AND PRESIDENT OF THE JUDGES' ASSOCIATION

Since the foregoing comments were written, Governor Albert D. Rosellini has authorized the following statement:

> A sound, modern and realistic Juvenile Court Act with clearly defined areas of responsibility is basic to an effective attack upon the problem of juvenile delinquency. I am prepared to call together representatives from those organizations and agencies concerned with modernizing our 1913 Juvenile Court Act at an early date. I am hopeful the Superior Court Judges Association of the State of Washington will assume the leadership in such a study.

In response to this, Honorable Ralph E. Foley, President Judge of the Washington Superior Court Judges Association, has stated:

> The Superior Court Judges Association, recognizing the vital role played by the Courts of Washington in administering a Juvenile Court statute, is willing to assume the role indicated by the Governor as one of leadership in spearheading a study of such a measure.

It would appear that channels are open for a high-level conference that may well produce more effective statutory tools than now exist for handling a sizeable and important segment of our society.