JUVENILE COURTS

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COMPARATIVE LEGISLATION BULLETIN—NO 15—AUGUST, 1908
Prepared with the co-operation of the Political Science Department of the University of Wisconsin

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PRINCIPLES[1]

A number of fundamental principles underlie juvenile court legislation and the decisions of the courts upon which juvenile court and probation systems now rest: (1) Children should not be considered as criminals but as victims of circumstance. Distinction must be made between neglected, dependent, and wayward children and delinquents and incorrigibles. (2) Children should not be thrown into association before, during, or after trial, with criminals or adults under accusation. (3) All the resources of the community should be used by the court to promote the welfare of the child and to protect him. (4) Children should be tried by special courts in special rooms with the least possible publicity or display of legal machinery, and the whole process dissociated from criminal procedure. The judges should, as far as possible, be "child experts." (5) Probation officers, competent, in adequate number, and paid, should be at the disposal of the court. (6) Parents, guardians, etc., are in many cases to be held responsible for the offense of the child.

[1] See Lindsey: Juvenile Court Laws of Colorado.
Berenger: *op. cit.*, p. 1–60.
Hahn: *op. cit.*
Barrows; In International Prison Commission Report, 1904, p. XI ff.

HISTORY

Evolution of Juvenile Court Principles in Legislation

The juvenile court, under that name, is of recent growth, but the principles which underlie it are to be found far back in English Law in the right and duty of the state as *parens patriae*—.[1] Turning to modern legislation we find in the law of 1840 (3 and 4 Vic. c. 90), "For the Care and Education of Infants who may be convicted of Felony," provision that the High Court of Chancery may, upon application, place any persons under 21 years of age who may be convicted of felony in care of persons or associations that agree to teach and train them during minority. Laws, 1866 (29 and 30 Vic. c. 118) and 1894 (57 and 58 Vic. c. 33 provide that morally imperiled children may be sent by the court to certified industrial schools, or lodged at home or with a respectable person and there be trained, clothed, and fed. The Law of 1847 (10 and 11 Vic. c. 82) provides for summary conviction of children not over fourteen, and allows the justices to excuse convicted offenders from punishment at their discretion.

New South Wales in 1857 (20 Vic. no. 19) and 1864

[1] Compare Blackstone III, §426-428.

(27 Vic. no. 16) passed laws for state protection of destitute children up to the age of nineteen, with contribution by the parents. The English "Industrial Schools Act," of 1866, (29 and 30 Vic. c. 118), contains several of the principles, especially the definition of neglected and dependent children (sec. 14), and provisions for the relation between parent and court, which are prominent in almost every modern Juvenile Court Act. The English "Summary Jurisdiction Act" of 1879 (42 and 43 Vic. c. 49), and its amending Act, 1899 (62 and 63 Vic. c. 22), provide for summary jurisdiction when the right of trial by jury is waived by the parent or the juvenile offender (age 12 to 16).[1]

The principle of probation is recognized in the "Probation Act" of Queensland, 1886 (50 Vic. no. 14). The English "Probation of First Offender's Act" of 1887 (50 and 51 Vic. c. 25) gives the court the power to release upon probation instead of sentencing to punishment.

In 1890 New Zealand adopted a "Children's Protection Act" (1890 no. 21), whereby punishment is prescribed for ill treatment, neglect, abandonment, or exposure of children; and restrictions are placed on employment of children, the court in both cases being given discretionary powers and being allowed to place the child in a suitable home or institution, and to compel the parents to contribute to the support; while provision is also made for appeal from decisions of the court. In 1896 Queensland passed a "Children's Pro-

[1] Compare also New Zealand Act, 1882, no. 15.

tection Act" (60 Vic. 26) similar to the New Zealand Act. In 1899 an English Act (62 and 63 Vic. c. 22) gave summary jurisdiction over "all offenses of young persons other than homicide."

In 1901 the English "Youthful Offender's Act" (64 Vic.—I Ed. VII, c. 20) removed disqualifications attaching to conviction of felony of a child or young person; emphasized parent liability; and gave the court the power to remand or commit, pending trial, to some place other than a prison. In 1902 New South Wales passed an act (1902, no. 47) for "Protection of Children." In 1906 Victoria passed a "Children's Court Act" (1906, no. 2058) which is a model of completeness. New legislation is at present pending in England. (Cf. infra. p. 14).

Development in the United States

The most rapid, tangible, and systematic development of the principles has been in the United States. In 1863 Massachusetts passed a law separating children in court from adults charged with offense. In 1877 New York passed a similar and more concise law, which provides that no child under sixteen "shall be placed in any prison or place of confinement . . . or in any vehicle in company with adults charged or convicted with crime, except in the presence of proper officers." Michigan, in 1873, established a State Agency for the Care of Juvenile Offenders, which has performed functions similar to those of probation officers. Massachusetts passed Probation Laws in 1878 and 1880. In 1891 Massachusetts summarized a number

of statutory provisions concerning the treatment of children, which had been enacted in her previous legislation, (May 28, 1891, c. 356). New York, in 1892, added a new section to the Penal Code allowing separate trial, special docket, and separate record for cases of children under sixteen. It has been affirmed that the basis of the Juvenile Court Law is the Board of Guardians Law, passed by the Indiana Legislature, March 9, 1891, (c. 151) and amend. March 3, 1893, (c. 122.)

The Colorado School Law, April 12, 1899, c. 136, provided special treatment for "juvenile disorderly persons," and contained many of the principles which have been embodied in subsequent juvenile court laws. The law which really created the juvenile court was that passed by the Illinois Legislature,[1] April 21, 1899, p. 131. Its provisions have constituted the frame work of many of the laws passed in other states.

Since 1899, the growth and development of the juvenile court system has been rapid and extensive. Many states had previously passed probation laws, and it is noticeable that the probation system has usually preceded the juvenile court.[2] In 1899, Michigan and Rhode Island passed "Juvenile Probation" laws. In 1901, Illinois, Kansas, Michigan, Missouri, and Wisconsin passed juvenile court or juvenile probation laws, or both. In 1902, Ohio and New York passed laws concerning children's courts. In 1903,

[1] Cf.: History of the Illinois Juvenile Court Law, T. D. Hurley, Juvenile Court Record, May, 1907, p. 6 ff.

[2] Cf.: Statutes, compiled by New Century Club, Philadelphia, 1900.

no less than nine states legislated on these subjects. In that year Colorado passed the original "Adult Delinquency" Law. In 1904, five states; and in 1905, no less than twenty, legislated on these three subjects, —in most cases on all three. In 1906, four states enacted new, or revised old, statutes affecting juvenile courts. In 1907, no less than eighteen states, enacted new statutes or added to or revised old statutes. By the end of 1907, thirty-two states and the District of Columbia had probation laws, and twenty-seven and the District of Columbia had juvenile court laws. Few states have been satisfied with their original laws. Some changes have been necessary on account of decisions of the courts; some have been made for the purpose of simplicity; but most of them represent extensions which have been found practicable as the work of the court has expanded and its value has been appreciated. The Alabama, Colorado, District of Columbia, Illinois, Iowa, Michigan, Massachusetts, Oregon, and Utah laws furnish an especially interesting field for study. The Michigan law of 1907 is very carefully drawn. The Colorado law of 1907 is representative of the most advanced juvenile court legislation. The latest, and a very complete, law is that passed in Ohio in April, 1908.

After the legislative development, and largely influencing it, the detailed study of the juvenile court system is to be sought in the development of city courts under the provisions of the state statutes. Especially interesting are those of Boston, Buffalo, Chi-

cago, Denver, Indianapolis, Milwaukee, Minneapolis, New York, Rochester, and San Francisco.

The scientific development of the system in the United States has caused wide study, both interstate and by commissions from abroad, especially from England, France, Germany, and Sweden. The Howard Association of London, M. Ed. Julhiet from France, Dr. J. M. Baernreither from Germany, and Judge Harald Salomon from Sweden have within the last four years made special studies of the American System with a view to bettering Juvenile Legislation. Their countries and others are passing laws which embody in concrete form many of the features which characterize the American Juvenile Court.

LEGISLATION

Foreign Countries

England.[1] The English tribunals are well prepared to deal with children under twelve, and with youthful offenders under sixteen, because of the wide discretionary powers which the English criminal law, as reformed during the nineteenth century, confers upon judges and magistrates.[2] Control of the court over persons as juveniles ceases at the age of sixteen.[3] The English statutes provide for summary judgment where jury is not especially demanded by parent or guardian or by the "child or the youthful offender."[4] Justices may excuse convicted offender from punishment where expedient.[5] Dependent or neglected children, under fourteen, found begging, wandering, homeless, without proper guardian or visible means of support, associating with criminals, etc., may be brought by any one before two justices or a magistrate and may be sent to a certified industrial school or to a home with responsible parents, due regard being given to the re-

[1] For account of English Juvenile Court, see Seeking and Saving, Oct., 1906. Cf. Bérenger, *op. cit.* and Russell and Rigby, *op. cit.*

[2] W. D. Morrison, *op. cit.*, p. 187.

[3] Statutes 1866 (29 and 30 Vic. 118) and 1901 (64 Vic. and I Ed. VII, c. 20).

[4] 1879 (42 and 43 Vic. c. 49, sec. 10-11).

[5] 1847 (10 and 11 Vic. c. 82).

ligious persuasion of the child, and to the requests and rights of the parents.[1] Parents may be forced to contribute to the child's maintenance.[2]

Parents or guardian may be summoned as contributing to the offense of the child, or for neglect, and may be tried with the child and may be fined and ordered to pay security for its good behavior and may be made to pay toward its support if committed to a state institution or home. The court may release the offender on probation or for good conduct.[3] A separate register for convicted youthful offenders shall be kept.[4] Appeal may be made to the High Court of Justice.[5] The child committed may be discharged by the Secretary of State.[6] Most of these principles apply to Ireland and Scotland as well.

England is establishing short Detention Schools on the model of Truant Schools. The English system especially emphasises the co-operation of the courts with the educational authorities and insists upon parental responsibility.

The juvenile court idea has progressed rapidly in the English cities.[7] One of the most successful has been that instituted at Birmingham, April 13, 1905. The working of this court resulted in the issuing of a government circular which pointed out the necessity

[1] 1866 (29 and 30 Vic. c. 118).
[2] 1901 (64 Vic. and I Ed. VII, c. 20, sec. 4).
[3] 1887 (50 and 51 Vic. c. 25).
[4] 1901 (64 Vic. and I Ed. VII, c. 20, sec. 13).
[5] 1879 (42 and 43 Vic. c. 49, sec. 33).
[6] 1866 (29 and 30 Vic. c. 118, sec. 14).
[7] It is claimed that Dublin first adopted the American idea.

of creating such courts generally; and many cities have followed the example of Birmingham.[1]

The London County Council prepared a reform based upon the principles of (1) special magistrates for children, (2) special courts, (3) special detention homes, (4) nomination of probation officers.[2] Especially noticeable among the courts of the United Kingdom are those of Bury, Bolton, Manchester, Birmingham, Liverpool, Nottingham, Tunbridge-Wells, Swansea, Stockton, Hull, Coventry, York, Southport, Beverly, Scarborough, Greenock, Glasgow, Dundee, Dublin, and Cork.

In Scotland, special arrangements have been introduced for the treatment of juvenile offenders at Glasgow and Greenock: (1) Trial does not take place at ordinary sittings of the courts; (2) children under sixteen may not be confined in ordinary police cells; (3) probation officers are in daily attendance.

At present (July 1908) a "Bill to Consolidate and Amend Laws Relating to Children and Young Persons" is pending in the British Parliament. This bill, introduced Feb. 10, 1908, provides for separation of juvenile offenders from adult criminals; special treatment; separate courts; separate detention; parent responsibility; entire abolishing of imprisonment for children, and of penal servitude for young persons.

The bill has been favorably received by the country.

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[1] See London Times, May 31, 1906.

[2] Compare Bérenger, *op. cit.* p. 9, note 2.

Canada. The Canadian Statute, R. S. 1906, c. 146, sec. 644, (57–58 Vic. c. 29) provides for trial of persons under sixteen without publicity, apart, and at suitable times, and for separation from other offenders.

Manitoba. Children's Probation Act, R. S., 1902, c. 22, (61 Vic. 1899, c. 651) provides for the care of neglected children by a salaried superintendent; for their examination by a judge; for placing them in industrial schools and schools of refuge under state authority until the age of twenty-one; for payment by municipalities for the maintenance of certain neglected children; for separate detention; for attempt to secure foster homes; and for penalty for ill treatment.

Ontario. The Ontario Children's Protection Act (R. S. Ontario 1897, c. 259) contains extensive provisions, which, although not as complete, are very suggestive of the Victoria act of 1906; cited *infra.*

New Zealand. The Justices of the Peace Act, 1882, no. 15 (sec. 176), provides for summary trial unless objected to by parent or guardian, of children under twelve, and (sec. 177), with consent, of young persons (between ages of twelve and sixteen). The Children's Protection Act, 1890, no. 21, provides especially for jurisdiction over all ill-treated, neglected, dependent, or exposed children.

Victoria. Children's Court Act, 1906, no. 2058, provides a "children's court," to have jurisdiction over children under seventeen; gives wide definition of "parents" and "juvenile offenders;" specifies that children's court shall be held at every place within

the state, where a court of petty sessions is appointed to be held; that the governor may appoint, for any locality, any person or police magistrate, or any one or more justices of the peace within the place, to exercise jurisdiction of the children's court; and that the governor may appoint probation officers of either sex who shall be subject to orders of the court; specifies the duties of probation officer; gives the juvenile court exclusive jurisdiction over all charges against children for felonies and misdemeanors, and allows it to hear and determine all information for offenses against any act punishable on summary conviction; provides for exclusion of persons unnecessary to trial, for an independent register, trial within twenty-four hours of apprehension, detention where possible in one of the "special receiving depots;" and provides for giving bail. The parent may be convicted of delinquency and may be compelled to contribute toward support. This law leaves a very wide discretion with the judge. "The court shall be guided by the real justice of the case without regard to legal forms and solemnities, and shall direct itself by the best evidence it can procure." The Governor in Council is also given wide powers for arranging for detention homes, forms of procedure, appointment of probation officer, and "prescribing in all matters necessary for carrying out this act."[1]

France. The law of June 5, 1850, provides for a separation of adults from juveniles in both prison

[1] For other British Colonies see *supra* under "History."

and court,[1] and for education (industrial) of all minors imprisoned. Paris police stations have separate waiting rooms and there is a separate "remand house" for temporary detention after judgment. Children may not ride in patrol wagons nor be escorted by "gardes" in uniform.[2]

The Committee of the Patronage de l'Enfance provides for legal defense of children brought before criminal courts.[3]

Laws, April 19, 1898, and April 12, 1906, leave considerable discretionary power with the judges in dealing with juvenile cases. The probation system is being tried under the care of the Patronage de l' Enfance. An active committee is working for the perfecting of a juvenile court system.

Germany. The Law of July 2, 1900, for the Fürsorgeerziehung Minderjähriger (Guardianship of Minors)—an extension of the Law of March 13, 1878,—includes a court of guardianship and provides elaborately for probation.[4] Any one may bring a neglected or offending child under eighteen to this court and such child may be removed entirely from parental care and into a state institution, or into a family, under care of a probation officer. Even offenders over eighteen may be sent to reformatories. The relation of the probation officer to his charge is more intimate than under the American system, for

[1] Russell and Rigby, *op. cit.* p. 239.
[2] Russell and Rigby, *op. cit.* p. 171-2.
[3] Morrison, *op. cit.* p. 183.
[4] Russell and Rigby, *op. cit.* p. 250-64.

the Fürsorger has, as a rule, but one protegé. Such protection may continue until the child reaches the age of twenty-one. Detailed reports and records are required.[1]

Holland. Holland has special statutes providing for substituting state guardianship and maintenance for parental control; providing for reprimand and conditional condemnation before sentencing delinquents to reformatory; and private court proceedings. The age of juvenile jurisdiction has been raised to eighteen.[2]

Hungary. Children between twelve and sixteen cannot be punished. They may be confined in houses of correction to which also may be admitted minors and destitue children not over eighteen. Special care ceases at the age of twenty. Hungary has especially developed its system of homes for dependent and neglected children.[3]

Sweden. Children under fifteen are not brought before the ordinary courts, but before a commission whose chairman is a clergyman, the other members being school teachers, legal men, etc. Certain men do work approximating that of the probation officer, being paid for each special case.

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[1] Russell and Rigby, *op. cit.* p. 141-142.
[2] Ib., 279-286.
[3] Ib., 30.

United States

ANALYSIS OF STATUTES

Purpose. An excellent enunciation of the principles underlying juvenile court legislation appears in the following, the preamble to the Louisiana Law of 1906 (c. 82, p. 134): "Whereas the welfare of the State demands that children should be guarded from association and contact with crime and criminals and the ordinary process of the criminal law does not provide such treatment and care and moral encouragement as are essential to all children in the formative period of life, but endangers the whole future of the child; and,

"Whereas, experience has shown that children lacking proper parental care or guardianship, are led into courses of life which may render them liable to the pains and penalties of the criminal law of the State, although the real interests of such child or children require that they be not incarcerated in penitentiaries and jails as members of the criminal class, but be subjected to a wise care, treatment, and control, that their evil tendencies may be checked and their better instincts may be strengthened; and,

"Whereas, to that end it is important that the powers of the courts, in respect to the care, treatment and control over dependent, neglected, delinquent, and incorrigible children should be clearly distinguished from the powers exercised in the administration of the criminal law:

"Be it enacted ...."

Title. Certain statutes have been declared by the courts to have insufficient and inadequate titles.

For good examples of Titles, see California, 1905, c. 610; Colorado, 1907, c. 149; Michigan, 1907, no. 325; Oregon, 1907, c. 34; and Utah, 1907, c. 139.

Definitions. Most statutes provide for three classes of children—dependent, neglected, and delinquent.

Especially good definitions of these are found in Colorado, 1903, c. 85 and 1907, c. 168; Illinois, 1905, May 16, p. 152; Ohio, 1908, Apr. 24, secs. 5, 6; Oregon, 1907, c. 34, sec. 1; Utah, 1903, c. 124, sec. 2, and 1907, c. 139, sec. 13: Arizona, 1907, c. 78, sec. 1. Louisiana, 1906, c. 82, sec. 1, mentions also "incorrigibles". Massachusetts, 1906, c. 413, sec. 1. includes "wayward children."[1].

Courts. Statutes provide that jurisdiction in juvenile cases shall lie as follows: Arizona, Iowa, Minnesota, Montana, Nebraska—District Courts; Illinois—Circuit and County Courts; Missouri—Circuit Court; Louisiana and Texas—District and County Courts; Michigan—Circuit and Probate Courts; Kansas and Oregon—County Court; New Jersey—Court of Common Pleas; Idaho and Kansas—Probate Court; Wisconsin—Courts of Record in the several Counties; Washington—Superior Courts in Special Session; New York—Court of Special Sessions; Pennsylvania—Quarter Sessions of the Peace; California—Superior Court or Justices Court or Police Court in Special Sessions; Ohio—Courts of Common Pleas, Probate Courts, Insolvency Courts and Superior Courts; New Hampshire—Police Court and Justices Courts; Alabama—Chancery Court or any Court having equal powers and jurisdiction; Colorado, District

[1] Cf. Report of the Probation Commission of New York, p. 225.

of Columbia, Indiana, Maryland, Utah—special Juvenile Courts.

Age limits. The tendency in recent legislation has been to raise the limit of age under which cases shall be subject, in the first instance, to juvenile jurisdiction. Present statutes set the limit as follows: Alabama—fourteen; Arizona, California, Colorado, Idaho, Kansas, Louisiana, Maryland, Missouri, Montana, New Jersey, New York, Pennsylvania, Rhode Island, Tennessee, Texas, Wisconsin—sixteen; District of Columbia, Michigan, New Hampshire, Ohio, Washington—seventeen; Indiana—males sixteen, females seventeen; Illinois and Kentucky—males seventeen, females eighteen; Nebraska (1907), Oregon (1907), and Utah (1907)—eighteen. In many cases the jurisdiction of the court continues to twenty-one.[1]

Trial. Most of the statutes allow summary jurisdiction except where the plea "not guilty" or demand for trial by jury is made.[2] In general the effort is made to have a juvenile court room separate from any other court room. In several cities the court has a separate building with both court and detention facilities. Where a special room is impossible most statutes provide that the juvenile court shall not be held within two hours of the holding of any other court in the same room. Sessions shall be made as private as possible, only persons necessary to the trial or to the interests of the child being admitted. Some courts

[1] See e. g., Statutes of Colorado, Illinois, Ohio, Kansas and Tennessee.

[2] See e. g., statutes of Arizona, 1907, c. 78, sec. 3; Michigan, 1907, c. 314, sec. 3; Texas, 1907, c. 44, sec. 2.

are in session daily; others, one, two, or more, days per week.

Appeal.[1] The right of appeal is as a rule expressly provided for. Some statutes however omit this provision.

Probation officers. The principle of probation has been even more widely accepted than that of juvenile courts. Probation officers are appointed as follows: By the Court—in Alabama, Arizona, District of Columbia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah, Vermont, Washington, Wisconsin; by the Court, subject to the approval of the State Board of Charities—in Colorado; by a probation Commission, on approval of the court—in California. The Governor in Michigan appoints "County Agents" who act under the supervision of the State Board of Corrections and Charities. The State Board of Corrections and Charities appoints in Rhode Island. Wisconsin has a special procedure.[2]

Provision for the compensation of probation officers is made in the statutes of Alabama, Colorado, District of Columbia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Mis-

[1] Compare Colorado, 1907, c. 149, sec. 15; Indiana, 1907, c. 136, sec. 1; Utah, 1907, c. 139, sec. 7; Wisconsin Sess. Laws, 1907, sec. 573-6, sub. sec. 3. Kansas, 1905, c. 190, sec. 12. For judicial decisions, see p. 30ff.

[2] See Sess. Laws, 1907, Sec. 573-2, sub-sec. 4.

souri, New Hampshire, New Jersey, New York, Ohio, Utah, Wisconsin.[1]

Procedure. The rules laid down in different statutes vary widely.[2] Generally, however, they follow somewhat the line indicated in the Colorado Statutes. In some cases a complaint and information by the prosecuting attorney is required for cases of delinquency.[3] In most States emphasis is laid on the fact that the procedure is not a trial.[4]

Disposition of Children. In cases of dependent and neglected children, the laws allow the judge to use wide discretion in leaving children with parents or guardians—one or the other, or both, being on probation—or placing them with families or in private or public institutions.[5]

Parent Contribution. Most states allow the judge when placing the child in an institution or home, to assess the parent of the child a reasonable sum (usually with a maximum prescribed) monthly, for its support.[6]

Adult Delinquency or Responsibility. Parents, etc. whom the judge considers responsible for the condition or action of the child may be fined in sums ranging from $100 to $1,000, or imprisonment from six

[1] Also compare Tables in Helen Page Bates' Digest, Charities, 1904–5. vol. 13, p. 329–39.

[2] Compare Michigan, 1907, no. 125, secs. 5–8; and Texas, 1907, no. 45, secs. 4, 5, 9.

[3] Compare U. S. Statutes (D. C.) 1907, c. 960, secs. 12–23.

[4] Compare Michigan, 1907, c. 325, sec. 2.

[5] Compare Michigan, 1907, c. 325, sec. 7; Texas, 1907, c. 45, sec. 7; Ohio, 1908, Apr. 24, secs. 12–13.

[6] Compare Arizona, 1907, c. 78, sec. 5; Kentucky, 1906, c. 64, sec. 9; Michigan, 1907, no. 325, sec. 9; Washington, 1907, c. 110, sec. 15.

months to one year, or both. The following states have special provisions: Alabama, Colorado, District of Columbia, Idaho, Illinois, Kansas, Kentucky, Massachusetts, Michigan, Nevada, Montana, Nebraska, New Jersey, New York, Ohio and Oregon.[1]

Detention Homes. Many states have authorized or ordered the building of special detention homes where children may be kept both while awaiting and after trial, also for short periods of confinement.

Religious Faith and Family Care. As a rule there is added to the provisions for disposing of cases of neglected and dependent children where placed in private homes or institutions, that attention be given to the religion of the parents, or of the child.[2]

Educational Clauses. Some states especially include in juvenile court law provisions for the education of the child.[3]

LAWS BY STATES

Fourteen States have no juvenile court or probation laws. Of these, several have institutions which approximate juvenile court work. Many of the statutes of others have been cited above. It will be sufficient here, avoiding repetition, to mention certain features of various statutes and to quote extensively from the statutes of one or two states.

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[1] Compare Colorado. 1903, c. 94, sec. 1; and 1905, c. 81; District of Columbia, U. S. Stat. 1906, c. 960, sec. 24; Illinois, 1905, May 13, p. 189; Indiana, 1905, c. 145, and 1907, c. 169; Minnesota, 1907, c. 92; Michigan, 1907, no. 314; Ohio, 1908, April 24, secs. 11, 14-19.

[2] Compare Arizona, 1907, c. 78, sec. 10; California, 1905, c. 610, sec. 20; Colorado, 1907, c. 168, sec. 8; Iowa, 1904, c. 11, sec. 15.

[3] Compare Idaho, 1905, Mar. 2, p. 106, sec. 9; Illinois, 1907, Apr. 19, p. 69, sec. 8.

Alabama. 1907, no. 340, Mar. 12. "Trial shall be so conducted as to disarm the child's fears and win its respect and confidence, (sec. 15). A penalty is provided for interfering with or opposing the work of the probation officer or making false statement concerning that which he has the right to know.

Arizona. 1907, c. 78, is a brief, clearly written statute, without cumbersome phraseology, and establishing a simple system.

California. Good laws, as amended, 1905, c. 579 and c. 610.

Colorado. 1907, c. 149,[1] contains a complete title—"An act establishing juvenile court in each county, and in each municipality known and designated as a city or county, within this state, in which there are one hundred thousand or more inhabitants, and to prescribe the jurisdiction, powers, rights, proceedings and practice of such courts, and to define the rights, powers, duties, and qualifications of the judges and other officers connected therewith, and to provide for the maintenance thereof. . . ."

The Colorado statutes, collectively, provide that the juvenile court shall have original jurisdiction in all criminal cases in which the disposition of any child or minor or other person under the acts concerning dependent, neglected, or delinquent children is in question; it shall be a court of record with the powers and manner of procedure of other courts of record;

[1] "Judge Lindsey's ambition to create a juvenile court in this city [Denver], which will be the model for the world, has long been known, and it is believed that his opportunity has arrived." Juvenile Court Record, May, 1907, p. 4.

shall sit for three terms per year; the judge shall be elected and shall have a salary of $4,000 per annum, and shall receive no other salary, neither shall he act as attorney or counsellor at law; the judge shall appoint all officers of the court and fix their salaries; there shall be probation officers in counties of more than 100,000, not more than three of whom shall be under the public pay; and there shall be as many assistants as the judge and county commissioners shall think necessary; the chief probation officers to receive $1,500 per annum, and two others $1,200; appointments made by the judge shall be approved by the State Board of Charities and Corrections; in all counties with a population exceeding 15,000 there shall be not less than one probation officer, who shall receive a salary fixed by the board of county commissioners; paid probation officers are vested with the powers of sheriff; the county commissioner shall provide the sum necessary for the maintenance of the court officers and the detention home, and shall provide court room and supplies; trial by jury may be demanded by the parties entitled to it; the right of appeal shall be the same as in civil cases; the child may have the right of bond; no child under fourteen shall be placed in jail; and counties of the first class shall provide, at the public expense, a detention room or house, separate from the jail.[1]

Connecticut has Probation Officers (1905, c. 142).

[1] For the Colorado Laws (except 1907 Law) see Lindsey: Juvenile Court Law of Colorado, p. 18-59. On the 1907 law, see Charities, 1907, April 13, p. 71-72.

District of Columbia. U. S. Stat. 1885, c. 58, Act for the Protection of Children; U. S. Stat. 1892, c. 250, Act to Provide for the Care of Dependent Children in the District of Columbia and to Create a Board of Guardians; and U. S. Stat. 1901, c. 847, provide for probation officers, adult delinquency, contribution by the parent, and suspended sentence and bond. U. S. Stat. 1906, c. 960, creates a Juvenile Court in and for the District of Columbia; provides for probation officers, prosecution on information by the corporation counsel or his assistant; and is especially good on procedure (secs. 17–23).

Idaho. A feature common in the working of the system in several states, but especially provided for by statute appears in Idaho, 1907, Mar. 12, p. 231, sec. 3, providing that the probate judge and the school superintendent shall work in conjunction.

Illinois. The Illinois statutes contain a full statement of the powers of the judge, procedure, disposal of the child, and the duties of the probation officers. (See especially 1905, p. 152, p. 189, and 1907, p. 69, p. 70.)

Indiana. A complete adult delinquency law, 1905, c. 145, and 1907, c. 169.

Iowa. The Law of 1907, c. 7, sec. 3, provides for the levying of a special tax for the support of a detention home and probation officers.

Kentucky and *Louisiana* passed comprehensive and well worded Juvenile Court Laws in 1906.

Kansas. The Law of 1901, c. 106, combines the action of the Humane Society with the work of probation officers.

Maine has a Probation Law.

Maryland has Juvenile Court Laws for the city of Baltimore.

Massachusetts. Massachusetts' legislation forms an epitome of the development of juvenile courts.

Michigan. The law of 1907, no. 325, is especially well worth study. It was carefully drawn, avoiding the features which caused the 1905 law to be declared unconstitutional.[1]

Minnesota and *Missouri* have good laws on both Juvenile Courts and Probation.

Montana. 1907, c. 92, a complete law, well stated, contemplates placing children in state homes.

Nebraska. The 1907 legislation (c. 45 & 46) is especially good.

New Hamshire. 1907, c. 125, sec. 3: "It shall be unlawful for any newspaper to publish any of the proceedings of any juvenile court."

New Jersey has both Probation and Juvenile Court Laws.

New York. Has good laws on both Probation and Juvenile Courts.

See legislation recommended by the New York Probation Commission Report, 1905 (not passed).

Ohio. 1908, Apr. 24, contains an especially wide and complete definition of delinquent, and of dependent and neglected children. A carefully drawn law.

Oklahoma has special legislation concerning juvenile offenders.

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[1] "This statute is already being found fault with, however, as providing no method for caring for any child between the age of seven and twelve having pronounced criminal tendencies." Judge Ronhert, quoted in Charities, November 16, 1907, p. 1071.

Oregon. 1907, c. 34. Complete, concise, well arranged.

Pennsylvania has both Juvenile Court and Probation Laws.

Rhode Island has a Juvenile Probation System.

Tennessee has Juvenile Courts and Juvenile Probation.

Texas. 1907, c. 44–45, good on hearing, procedure, and disposal of the child.

Utah. 1907, c. 139, a comprehensive title; good on compensation, power and extent of jurisdiction of the court and selection of the judge; provides for a Juvenile Court Commission consisting of the Governor, Attorney General and State Superintendent of Public Instruction. Contains (sec. 5) a statement of alternative decrees and judgments, and (sec. 11) the duties of the probation officers. Adds to the Ohio definitions. May be read profitably in connection with the decision of the Utah Supreme Court in 1907, Mill v. Brown, 31 Utah 473 (see *infra.* p. 32).

Vermont has county Probation Officers.

Washington. Washington legislation provides also for the jurisdiction of the judge of the Juvenile Court over the employment of child labor (1907, c. 128).

Wisconsin. Wisconsin Juvenile Court Laws provide a special method for the appointment and employment of probation officers. (Sess. Laws, 1907. Sec. 573–2, Sub-sec. 4.)[1]

[1] Compare methods suggested by the New York Probation Commission Report, 1905, Appendix A, p. 101–106.

JUDICIAL DECISIONS

Constitutionality of Statutes

The constitutionality of statutes establishing juvenile courts as such, has been brought into question in the following cases:

Mansfield's Case. In Mansfield's Case, 22 Pa. Superior Court 224, (1903) the Pennsylvania Law of 1901, c. 185, (P. L. 279) establishing juvenile courts and the probation system, was declared unconstitutional. It was held that the legislature could not legislate the judge of an old court onto the bench of a new court which it was creating; that the title of the act was insufficient to allow the wide interpretation given it, that the act was special legislation inasmuch as it classified children and discriminated between classes; that requiring a child to make a formal affidavit in order to secure trial by jury violates the constitutional guarantee of that right. The legislature of Pennsylvania subsequently reenacted the statute as five separate Acts, changing some parts and leaving to the Juvenile Court and Probation Act, 1903, c. 205, (P. L. 274), such provisions only as have reference to the care, treatment, and control of dependent, neglected, incorrigible, and delinquent chil-

dren under the age of sixteen years, and providing for the means by which special power may be exercised.[1]

Ex parte Loving. In ex parte Loving, 178 Missouri 194, (Dec. 9, 1903) the Missouri Law, Mar. 23, 1903, p. 213, was held constitutional. It was held that the terms "neglected" and "delinquent" children do not refer to different subjects, but only to different classes, the title being "children"; that the limitation of the application of the law to counties having 150,000 or more population does not make it a special or local law; that it is within the competence of the legislature to make certain provisions for densely populated districts which it cannot for rural districts, and to make special provisions for children whose surroundings are disadvantageous, which it does not make for those under other conditions; that failure to provide for separation of neglected and delinquent children does not render the statute unconstitutional; that the provisions of such a statute render void such provisions of a city charter as conflict with them.

Commonwealth v. Fisher.[2] In Commonwealth v. Fisher, 213 Pa. State 48, 5 A. & E. Ann. Cas. 92, (Oct. 9, 1905), an appeal from the decisions of the Superior Court of Pa., the Pennsylvania Statute, 1903, c. 205, (P. L. 274), was declared valid. It was held that the title of the act is sufficient (not containing more than one subject); that the act does not create a new court; that the act does not deprive juveniles

[1] See Commonwealth v. Fisher, *infra.*
[2] See Mansfield's Case, *supra.*

charged with crime, of their constitutional right of trial by jury as the proceeding of the juvenile court is not a trial for offense such as requires a jury; that it is not class legislation, all children under sixteen being included in its operation; that the purpose of the act is not trial nor punishment, but to prevent trial and to prevent the necessity for punishment.[1]

Hunt v. Wayne Circuit Judges. In Hunt v. Wayne Circuit Judges, 142 Michigan 93, 7 A. & E. Ann. Cas. 821, (Dec. 4, 1905), the Michigan Statute, 1905, no. 312, was declared unconstitutional. It was held that the act conferred powers on the circuit court commissioners of certain counties beyond their constitutional rights; that it failed in those counties, and consequently throughout the whole State, because it failed to establish a uniform method.[2]

Mill v. Brown.[3] In Mill v. Brown, 31 Utah 473, 88 Pac. Rep. 609, (Jan. 17, 1907), the Utah Supreme Court declared the Utah Statute, 1905, c. 117, establishing the juvenile court and probation system, valid, with the exception of sec. 7. It was held that sec. 7, providing that the parent of a child adjudged a delinquent may be brought before the court, and, if found guilty of contributing to the delinquency, be condemned to certain penalties, was unconstitutional

[1] The opinion in this case contains an excellent review of opinions and cases bearing upon the principles involved in the juvenile court system. Compare 5 A. & E. Ann. Cas. 92 ff. and especially note on p. 96.

[2] The opinions of five judges of the circuit court quoted in this case are interesting. On pages 155 of 142 Mich., and 829 of 7 A. & E. Ann. Cas. appears a bibliography of cases. See also 7 A. & E. Ann. Cas. p. 830, note.

[3] "The clearest and most lucid announcement of the law which has ever been written on that subject." Juvenile Court Record, May, 1907, p. 16.

as denying such parent the right of trial by jury as for any other crime; but that the statute is not otherwise affected by the invalidity of sec. 7, which was not connected with its principal provisions; that the question of the right of the judge to hold office cannot be considered, although the constitutionality of the statute on which his acts depend may be; that it is within the power of the legislature to create juvenile courts, conferring upon them jurisdiction and powers previously exercised by the District Court, (Utah Const., art. 8, sec. 1); that creating juvenile courts in cities of the first and second class is not special legislation; that the statute in question is not an amending act though it incidentally affects some older laws; that the creating of juvenile courts having for object the surrounding of the children with proper environment is not criminal law and violates no constitutional provisions because not providing for trial by jury, for arraignment and plea, for notice to parents, or because of the manner of the trial, or because of the child's being required to be a witness; that even though the express provisions of the statute do not require the court in removing the child from the custody of parents and placing it under other custody, to find in addition to delinquency of the child, parental incompetency or neglect, yet, there being no provisions to the contrary, the act will be constructed to require it in view of Utah R. S. 1898, sec. 82, which provides that the parent cannot be deprived of the custody of the child unless he is adjudged incompetent to have such custody.

Decisions which affect various principles embodied in juvenile court legislation or administration

The power of the legislature. As to the state guardianship of children generally, see Whalen v. Ohmstead, (Conn.) 15 L. R. A. 593, note, "State Guardianship of Children."

The State has the power to detain and educate minor offenders. Ex parte Nichols, 110 Cal. 651; Jarrard v. State, 116 Ind. 98.

On the duty of the state to protect dependent and unfortunate infants: McLean Co. v. Humphreys, 104 Ill. 378. "The duty of the legislature to determine by rules and definitions the class or classes requiring it and to impose state supervision, is no longer open to question." Hunt v. Wayne Circuit Judges. For bibliography of cases on this point, see 7 A. & E. Ann. Cas. 829.

On the constitutionality of the statutes providing for commitment of wayward children to institutions or to proper guardianship without jury trial, see 5 A. & E. Ann. Cas. 96, note.

The employment of private institutions for the care of the child is an appropriate means to performing the duties of the state, and is, therefore, constitutional. See Wis. Industrial School v. Clark County, 103 Wis. 651.

The statute authorizing the commitment to the State Industrial School of children who for want of proper parental care are growing up in mendicancy and crime, under sixteen, is valid, but is not valid as to children

over that age who have not been duly convicted of crime. Scott v. Flowers, 61 Neb. 620, and 85 N. W. 857.

The court: character and extent of its jurisdiction. Chancery-power. The power conferred on the county court by this act is of the same character as the jurisdiction exercised by the court of chancery over infants, having its foundation in the jurisdiction of the crown as *parens patriae* to protect that which has no lawful protector. In re Ferrier, 103 Ill. 367; Dinson v. Drosta, Appellate Court of Indiana, Div. no. 2, Jan. 1907; 80 N. E. Rep. 32. Cf Cent. Dig., vol. 31, § 138.

The power conferred by statute on Circuit Courts to appoint guardians is merely declaratory of the chancery powers which they already possessed. See Board of Guardians v. Shutter, 139 Ind. 268; also People v. Mercein, 25 Wendell 64, 35 Am. Dec. 653; Richards v. Collins, 45 N. J. Eq. 283, 14 Am. Rep. 726; Industrial School v. Clark County, 103 Wis. 651.

All courts having power to issue writs of *habeas corpus* to hear and determine cases arising under them may control under certain circumstances the custody, education and management of minor children. Commonwealth v. Barney, 29 Leg. Int. 317. See also ex parte Nicholl, 110 Cal. 651; Roth v. House of Refuge, 31 Md. 329; ex parte Crouse, 4 Wharton (Pa.) 9.

Decrees of the juvenile court are not for punishment, but for reformation. Ex parte Nicholl; in re Ferrier; and Mill v. Brown.

Jury Trial. "In by far the greater number of cases which have passed upon this question it has been held that a statute which authorizes the commitment, without jury trial to a reformatory, house of correction, or refuge, of children who are incorrigible or lack proper parental care, is constitutional." See 5 A. & E. Ann. Cas. 92, p. 96.

Appeal. It has in several instances been decided that in the absence of statutory provisions, there is no appeal from the judgment of the judge of the juvenile court. Dinson v. Drosta, Appellate Court Ind., Div. no. 2, Jan. 1907; 80 N. E. Rep. 32. See Elliot: Appellate Procedure, § 75.

Legal rights of the parent. In some cases it has been held that the parent has a right to notice of proceedings, and in others that the parent has no such right. See Cincinnati House of Refuge v. Ryan, 37 Ohio State 197; in re Kelly, 152 Mass. 432; In re Wares, 161 Mass. 70.

The child cannot be taken from the parent or guardian unless the parent or guardian is shown to be an unfit person to have the custody of the child, or has been convicted of neglect. Cf. Milwaukee Industrial School v. Supervisors, 40 Wis. 328; People ex rel McEntee v. Lynch, 223 Ill. 346; Mill v. Brown, 31 Utah 473.

Custody of the parents or guardian will not prevail if it imperils the personal safety, morals, or health of the child, and the court will scrutinize the conditions and circumstances in determining the dis-

position of the child. Cf. Richards v. Collins, 45 N. J. Eq. 283.

Custody and Disposition of the Child. See Cincinnati House of Refuge v. Ryan, 37 Ohio State, 197; Farnham v. Pierce, 141 Mass. 203; In re Wares, 161 Mass. 70; In re Kelley, 152 Mass. 433; In re Ferrier, 103 Ill. 367; 27 Cent. Dig. "Infants," secs. 13, 18, 19. *Cf. supra;* "Powers of the Legislature and the Court."

Reformatories etc.: Legal status of, and character of commitment to. The view taken in the majority of cases is that the institutions and reformatories to which children are committed are not prisons or penitentiaries, but schools—"where children who may be exposed by conditions of misfortune, or who may perversely expose themselves to immoral surroundings and influences, may be kept under reasonable restraint during their minority, not as punishment for crime, but for their moral and physical well being." 5 A. & E. Ann. Cas. 96, note. Cf. Olson v. Brown, 50 Minn. 353; McLean County v. Humphreys, 104 Ill. 378; In re Ferrier, 103 Ill. 367; Scott v. Flowers, 61 Neb. 620.

Habeas Corpus: Children taken from the custody of the parents, etc. See ex parte Crouse, 4 Wharton 9; Farnham v. Pierce, 141 Mass. 203, 55 Am. Rep. 452, note p. 456; ex parte Nicholl, 110 Cal. 651; People ex rel McEntee v. Lynch, 223 Ill. 346.

ESSENTIALS OF A GOOD JUVENILE COURT LAW[1]

From the preceding pages it will be seen that two-thirds of the states have already passed special juvenile court or probation laws, or both, and with few exceptions, laws concerning adult delinquincy. There exist in many of the other states statutes embodying some of the underlying principles of juvenile court legislation. Juvenile court laws as they exist to-day are the result of experiment, and, in those states which lead in juvenile court legislation, represent constant effort to profit by and embody the results of experience in new and improved legislation. It has apparently been found possible in some states to approximate the work of the juvenile court without special legislation, but as a rule separate laws uniting the features essential to the effective application of those principles, have greatly facilitated the work. Experience, both of the actual working and of the legality of juvenile court legislation has now been

[1] See Lindsey: The Juvenile Court Laws of Colorado, especially p. 8 ff. What is Necessary; and p. 59 ff, A Word as to the Preparation of Juvenile Laws for Other States.
See H. B. Hurd: Minimum Principles Which Should be Stood for, Charities, 1905, p. 325.
See recommendation of the New York Probation Commission. Report, p. 93 ff., App. A.

sufficient to make it possible to suggest certain features upon which emphasis is to be laid.

In general, it may be said that the code should not be hard and fast. It should be elastic. "Where juvenile court law covers a whole state, a uniform system should be adopted for practicability." "Due regard should be had for the statutes already on the books." "The institutions and methods in vogue within the state in dealing with children and the relations of parent and child, parent and state, and state and child, should be carefully studied and new legislation adapted to local conditions and resources."

The title should be clear, comprehensive, and sufficient. It has been held advisable in several cases to enact laws in several different acts in order to avoid difficulties with title.

The definition of neglected, dependent, and especially of delinquent, children should be made broad, and the age limit for juvenile jurisdiction should be made as high as consistent with the general laws.

Jurisdiction should be given to courts with chancery power.[1] It is not necessary that new courts be established, though it has been found in some places the most satisfactory method. It is generally agreed that there should be one judge—rather than several

[1] "We consider it a step backward to provide for a special court limited to children's cases only, unless it is given general unlimited criminal and chancery court jurisdiction in order that it may successfully handle all cases against or concerning adults where a child is involved." Lindsey, in International Prison Committee report, 1904, p. 64.

in rotation—who shall be (exclusively, if possible) a juvenile court judge.[1]

Provision should be made for separate room, if possible, in a special building devoted to the needs of the juvenile court. There should be a waiting room so that cases may be dealt with one at a time.

The trial should be private, informal, and conducted on the principle of "the saving, not the punishment or restraint of the child." Proceedings etc. must be left largely to be determined by local needs and conditions.[2].

To avoid constitutional difficulties, the statutes should provide for jury and counsel where demanded, and should provide for prosecution by the state's attorney where demanded.[3]

Judge Williams, Justice Olmstead, Miss Julia Lathrop, Judge Lindsey, and many other writers upon juvenile courts insist upon the detention home as one of the most important aids in the work of dealing with delinquent children.

The statutes should provide for paid probation officers having the power of sheriffs. It is generally agreed that probation officers should receive public compensation and that the paid probation system is more effective than the unpaid.[4] The choice of pro-

[1] "—not one who merely takes his turn after adult cases." "The constant rotation is destructive of real success." The judge should be "intimately acquainted with child nature and with various institutions and methods that may be employed to help the child."

[2] Cf. Lindsey, in International Prison Report, 1904, p. 64.

[3] Cf. Lindsey, Juvenile Court Law of Colorado, p. 26.

[4] S. J. Barrows, in International Prison Report, 1904, p. XII. cf. Mrs. D. Sheffield, in Legislation in Regard to Children, p. 35-6.

bation officers should be left to the Court,[1] or the Court subject to the approval of special Commissions, Boards of Charities, Probation Commissions etc. Juvenile Court Commissions are gaining in favor.[2] Examinations of the nature of civil service examinations for preliminary qualifications, have been tried in some states.[3]

The principle of adult ("contributory") delinquency is recognized in nearly all recent legislation.[4]

The judge should be given power to suspend sentences, that is, to put the responsible party upon probation.

A feature new to legislation, though not to practice, is that of forbidding all newspaper and other publicity to cases which come before the juvenile court.

Juvenile court workers are emphasizing the necessity for wise child labor laws, compulsory school laws, and general provision for the co-operation of the home, the school, and the employer, both preliminary and supplementary to juvenile court legislation.[5]

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[1] Charities, 1905-6, vol. 15, p. 758.

[2] "The most notable recommendation of this [the New York Probation] Commission—is that of unpaid municipal probation commissions for cities of the first and second class. These commissions are proposed to be under the supervision of the State Board of Charities. . . ."
Mrs. D. Sheffield, in Legislation in Regard to Children, p. 35-36.

[3] S. J. Barrows, in International Prison Report, 1904, p. XII. Lindsey. Juvenile Court Law of Colorado, 1905, p. 8.

[4] "The most practicable and important new feature [of juvenile court legislation] is the enforcement of the legal responsibility upon the parents and the home for the moral and physical welfare of the child and the establishment of a practical and effectual system of probation in order to carry out these principles generally recognized in every state." Lindsey, Juvenile Court Law of Colorado, p. 159.

[5] See also Lindsey, in International Prison Report, 1904, p. 122-5, and Charities, 1904-5, vol. 13, p. 357.
For blank forms etc., in use by juvenile courts, see Juvenile Court Laws of Colorado, p. 65-80 and Bérenger, *op. cit.* p. 145-227.