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FLORIDA'S NEW JUVENILE COURT ACT

ROGER J. WAYBRIGHT*

On October 1st Florida's new juvenile court act¹ became effective, governing the jurisdiction, procedure, personnel, and to a large extent the financing, of the juvenile courts in each of the 67 counties of the state.

This comprehensive new law supersedes almost all of the statutory law applying to juvenile courts which formerly was in effect, and represents a rather complete overhaul of our forty year old system of handling delinquent and neglected children.

Lawyers can perform a function useful to their clients, the courts and the community under this new system, and consequently should become familiar with its basic concepts and mechanics.²

THE COURTS TO WHICH THE LAW APPLIES

The new juvenile court law governs the operation of every juvenile court in Florida.³ Separate juvenile or juvenile and domestic relations courts have been established by special acts in the counties of Broward, Dade, Duval, Hillsborough, Monroe, Orange, Pinellas and Polk. The law applies to these, and to the juvenile courts presided over by the county judges in each of the other 59 counties. It will apply to any separate juvenile courts which may be created in the future by special acts of the legislature, and is so constructed as to be equally workable whether such new separate courts are established for a single county or for a district composed of several counties.

Special acts establishing new separate juvenile courts, either for one

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1. Fla. Laws 1951, c. 26880; to be incorporated into FLA. STAT. (1951) as c. 39, when the new compilation is published. References in this article to sections of the new juvenile court law are to sections as they will be numbered in FLA. STAT. (1951).

2. For an exposition of the historical and legal basis of juvenile courts, the concepts underlying the law, and a comparison of the new law with the juvenile court laws of other states, see Waybright, *A Proposed Juvenile Court Act for Florida*, 4 U. OF FLA. L. REV. 16 (1951).

3. FLA. STAT. § 39.01(1) (1951).

county or for a district of several adjoining counties, can be very short. All that is necessary in such an act is a section establishing the court in a certain named county or in a district of certain named counties, in the case of a district court specifying in which county it will be principally held, with possibly a second section setting the salary of the judge and counselor, although, as will be mentioned later in this article, setting those salaries in a special act may be unconstitutional. Nothing else would be needed in such a special act, and almost anything else which one might put in would be unconstitutional as well as superfluous, as will be discussed further on in this article.

The main criterion for the establishment of any new separate juvenile court should be: Is the volume of work which is or should be handled by the juvenile court in the county too large to be effectively handled by the county judge in addition to his other work?

If consideration is given to the establishment of a district juvenile court, careful thought should be given to such problems as whether the children will be brought from all over the district to the judge, or whether the judge will visit each county on a specified day each week or as necessary. The problems of extra travel expense, quick action in all counties, and how thin a judge and his staff can be spread should be well mulled over, not for the purpose of writing inelastic clauses into an act, but for the purpose of determining whether a district court will operate effectively.

JURISDICTION OF THE JUVENILE COURT

As authorized by the juvenile court amendment to the Florida Constitution,⁴ the juvenile court has exclusive original jurisdiction of dependent and delinquent children under the age of 17 years, married or unmarried, who are domiciled, living or found within the county in which the court is established.⁵

A "dependent" child is really a neglected child. All children are dependent to some degree, but to come under the legal definition⁶ of a dependent child, the child must be destitute, homeless, abandoned or dependent upon the public for support, or lack proper parental care or guardianship, or be neglected as to support, education, or medical or other care, or be in a condition or environment which injures or endangers his or others' welfare, or have a home which is unfit by reason of neglect or of cruelty or depravity of the parents.

4. FLA. CONST. Art. V, § 48, adopted Nov. 7, 1950. This is one of three new sections, each numbered 48, which were added to the judiciary article at the general elections in 1948 and 1950. The writer pleads guilty to misnumbering the one relating to juvenile courts, saying in mitigation only that the juvenile court amendment was originally drafted in January of 1947, before the other two sections had been proposed.

5. FLA. STAT. §§ 39.01(6), 39.02(1) (1951). One of the few changes made by the 1951 legislature in the bill presented to it by the state-wide drafting committee was to lower the maximum age limit of children who come before juvenile courts from the 18th to the 17th birthday.

6. FLA. STAT. § 39.01(10) (1951).

A "delinquent" child⁷ is one who violates a law or municipal ordinance, is incorrigible, is persistently truant from school, is beyond his parents' control, associates with criminals or reputed criminals or vicious or immoral persons, is growing up in idleness or crime, is found in a place predominantly used for selling intoxicating drinks for consumption on the premises, or whose occupation, behavior, or associations are such as to injure or endanger his or others' welfare.

The juvenile court has the discretionary power to transfer to a criminal court a child over 13 years old who is charged with the commission of what would be a felony if committed by an adult. A child over 15 years old who commits a capital offense must be transferred, as must a child charged with law violation who requests transfer.⁸

A child charged with violation of federal law also comes under the juvenile court's jurisdiction, if federal authorities waive federal jurisdiction.⁹

If considered necessary, the juvenile court can retain jurisdiction until the child becomes 21.¹⁰

The judge also has the jurisdiction of a committing magistrate.¹¹

DOES ANY JUVENILE COURT HAVE ANY "ADDITIONAL" JURISDICTION?

The law contains a provision that it shall not "be deemed to take away from the separate juvenile courts heretofore established in the counties of Broward, Dade, Pinellas, and Polk any additional juvenile court or domestic relations jurisdiction which may be conferred upon them by" certain special acts.¹²

These special acts apparently purport to confer on the juvenile courts of these four counties the power to order parents to support their children, and a few other rather vague odds and ends of jurisdiction. The special act applying to the Dade County court goes further than the others, and purports also to confer jurisdiction over a wide range of matters, including school attendance, child labor, cruelty to children, offenses against the person and against decency and morality, bastardy, various physical and mental disabilities, adoption, and annulment, as well as whatever else relating to children might be within the jurisdiction of any other court temporal or spiritual.

No extensive analysis of the Dade County act was made for the purpose

7. FLA. STAT. § 39.01(11) (1951).

8. FLA. STAT. § 39.02(6) (1951).

9. FLA. STAT. § 39.02(3) (1951).

10. FLA. STAT. § 39.02(5) (1951).

11. FLA. STAT. § 39.02(4) (1951).

12. FLA. STAT. § 39.02(7) (1951). The special acts are: *For Broward County*: Fla. Laws 1945, c. 22709 (jurisdiction unaffected by Fla. Laws 1947, c. 24223, and Fla. Laws 1949, c. 25428); *For Dade County*: Fla. Laws 1939, c. 19597 (Fla. Laws 1941, c. 21094, merely changes population figure in § 3 from 180,000 to 267,000) and Fla. Laws 1951, c. 27000 (effective October 1, 1951, the day after the effective date of Fla. Laws 1951, c. 26880); *For Pinellas County*: Fla. Laws 1927, c. 11972, as amended by Fla. Laws 1943, c. 21849 (jurisdiction unaffected by Fla. Laws 1929, c. 13679, and Fla. Laws 1933, c. 16060); *For Polk County*: Fla. Laws 1951, c. 27318.

of pointing out the numerous instances in which other state and federal constitutional provisions are blithely ignored,¹³ but it seemed rather obvious that whatever additional jurisdiction was purportedly conferred on these courts by these special acts is unconstitutional, for the practice of courts of justice cannot be regulated by special or local laws in Florida.¹⁴ In the only case which has ever been taken to the Supreme Court of Florida construing any of these special acts,¹⁵ it was held that the provision of the Dade County act purporting to give jurisdiction over bastardy proceedings was unconstitutional, and there is no apparent reason why this ruling would be inapplicable to the balance of the so-called additional jurisdictional features of that special act and the others preserved from repeal by the new general law.

Also, the repeal section of the new general law specifically preserves from repeal any special act clauses which provide for referees or disposition of articles of evidence (as in Dade County), or collection of costs from parents. Undoubtedly these would come under the same ruling of unconstitutionality.

For all practical purposes, therefore, proceedings under any law other than the new general law, in any juvenile court, would be of doubtful legality, subject to attack by way of prohibition, habeas corpus, or appeal.

Many of the matters purportedly placed under the jurisdiction of a particular juvenile court by these special acts should be handled by juvenile courts, as will be contended later on in this article, but the grant of power must be by general rather than special act.

HOW A CHILD IS TAKEN INTO CUSTODY

A child of juvenile court age cannot be taken into custody without an order of the juvenile court judge, unless the child's condition or surroundings are such that his own welfare requires it, or he is alleged to have violated a law or ordinance. In either of those two instances any law enforcement officer can take the child into custody, as can a juvenile court counselor or assistant counselor.¹⁶

The person taking the child into custody must take him immediately to the juvenile court, or to some place of detention specified by the juvenile court judge. The child cannot be taken to a police station or jail, or transported with adult prisoners, or finger-printed or photographed without an

13. Such as the provision in the Dade County special act empowering the court to conduct criminal trials in cases of adults who waive jury trials, without the necessity of filing those quaint indictments or informations; and the general lack of due process throughout.

14. FLA. CONST. Art. 3, §§ 20, 21.

15. *State ex. rel. York v. Beckham*, 160 Fla. 811, 36 So.2d 769 (1948). See, also, *Skinner v. City of Eustis*, 147 Fla. 22, 2 So.2d 116, 135 A.L.R. 359 (1941); *Mack v. Carter*, 133 Fla. 313, 183 So. 478 (1938). Cf. *State ex rel. Murphy-McDonald Builders' Supply Co. v. Parks*, 43 So.2d 347 (Fla. 1949); *State ex rel. Richardson v. Ferrell*, 130 Fla. 26, 177 So. 181 (1937).

16. FLA. STAT. § 39.03(1) (1951).

order from the judge, and no police record can be made in which he is identified other than by his initials and juvenile court case number.¹⁷

This procedure should go far toward preventing circumvention of tested juvenile court methods by rookie policemen who have become experts on juvenile delinquency by donning a uniform, while at the same time leaving law enforcement officers unhampered in their duty of apprehending violators of the law of all ages.

The judge cannot order a child taken to jail if there is a detention home for children or a licensed child caring institution in the county, unless those places cannot receive the child or the judge thinks they are not proper places for him.¹⁸ There are children of 16, and sometimes younger, who are more than a match physically for the kindly people in charge of children's institutions, and who go berserk from rage or frustration, so that the secure detention of a jail must be used for them. And in some of the smaller counties jail is as yet the only place of detention for anyone, whether adult, child, insane person or otherwise.

If a child is jailed he must be segregated from adult inmates, of course,¹⁹ and the judge must advise the county commissioners and the county children's committee of the reasons for the jailing.²⁰ Eventually these public bodies in the smaller counties may be stirred by repeated incidents to see that children's detention quarters are provided elsewhere than in jail.

The child cannot be held in custody longer than two days without a special order of the judge, unless he has already been adjudged to be a delinquent or a dependent child,²¹ which provides a safeguard against "forgetting" a child in custody.

As a matter of practice, of course, most children are released to their parents instead of taken into custody, and the parents bring them to the juvenile court when notified. The law recognizes this practice,²² and provides for prompt notification to the parents if the child is kept in custody instead of being released to them.²³

INVESTIGATION

Most juvenile court cases begin with some sort of oral complaint being made to the counselor, who investigates and files a petition if that course seems indicated by the facts.²⁴ In the past, with counselors appointed by the Governor, much and often most of the activity of some juvenile courts was carried on in the guise of "unofficial" cases, with the counselor doing as he pleased unless a court order was required, in which case he graciously let the judge share in the case long enough to sign the order.

17. FLA. STAT. § 39.03(3), (6) (1951).

18. FLA. STAT. § 39.03(4) (1951).

19. FLA. STAT. § 39.03(5) (1951).

20. FLA. STAT. § 39.03(4) (1951).

21. FLA. STAT. § 39.03(7) (1951).

22. FLA. STAT. § 39.03(2) (1951).

23. FLA. STAT. § 39.03(3) (1951).

24. FLA. STAT. § 39.04 (1951).

Any virtue of such procedure lay in the fact that the child would have no "record." The vice inherent in such free-wheeling is obvious, and whatever reason may once have existed for that practice has now disappeared, for under the new law juvenile court records are not open to public inspection.²⁵

It is expected, therefore, that from now on, in any case which requires action by any juvenile court personnel, a petition will be filed as soon as the counselor's investigation reveals the necessity for action, and that the judge, who is responsible to the people, will supervise that action. As a matter of fact, one of the main accomplishments of the new law is to make the judge the captain of the juvenile court team, instead of an honorary co-captain.

PROCEDURE

The counselor, an assistant counselor, or any other person can file in the juvenile court a written and verified petition stating the facts which are alleged to constitute a child a delinquent or dependent child.²⁶

Often the parents bring the child to court at the time set for the hearing, so that no process is necessary.²⁷

Otherwise, a summons is served upon the parents and legal custodians, and witness subpoenas upon witnesses.²⁸ If no parent or legal custodian can be found, some relative of the child is summoned, and if no relative can be found the judge can appoint a guardian ad litem for the child.²⁹ The judge can order the child taken into custody, by endorsement on the summons, under the same circumstances which have been referred to previously as justifying the taking of a child into custody without court order.³⁰ Juvenile court process runs throughout the state.³¹

The child or his parent or legal custodian can file an answer if desired, but none is required, and anything which might be incorporated in a written pleading may be pleaded orally before the court.³²

After a petition is filed, the judge may order the child to be examined physically or mentally. After a child is adjudicated to be a delinquent or dependent child, and before adjudication with the parents' consent, the judge may require the child to be treated.³³ Obviously, unless the county commission has included funds for the purpose in the juvenile court budget, or the parents are able and willing to pay the bill, such examination and treatment will be on a charity basis.

The counselor investigates all cases where petitions are filed, so that witnesses may be subpoenaed, for facts must be proved in juvenile court

25. FLA. STAT. § 39.12 (1951).

26. FLA. STAT. § 39.05 (1951).

27. FLA. STAT. § 39.06(1) (1951).

28. FLA. STAT. § 39.06(2), (4) (1951).

29. FLA. STAT. § 39.06(2), (5) (1951).

30. FLA. STAT. §§ 39.06(3), 39.03(1) (1951).

31. FLA. STAT. § 39.06(7) (1951).

32. FLA. STAT. § 39.07 (1951).

33. FLA. STAT. § 39.08 (1951).

cases just as in any other case, under the rules of evidence in use in equity cases. Hearings are conducted in an informal manner, by the judge without a jury. The general public is excluded, but in addition to the child and his parents and their attorneys, anyone else they request or the judge directs may be present.³⁴

If the facts proved in court are sufficient, the judge enters an order adjudicating the child to be a delinquent or dependent child. An adjudication that a child is a delinquent child is, of course, not a conviction of crime, and imposes no civil disabilities.³⁵

WHAT THE COURT DOES WITH DELINQUENT AND DEPENDENT CHILDREN

Once an adjudication has been made that a child is a delinquent or dependent child, the court may make any of several dispositions of the child, and may change these dispositions from time to time, retaining jurisdiction until the child becomes twenty-one, if necessary, or ending jurisdiction at any time.³⁶

The child may be placed, under the continuous, skilled supervision of the counselor, in his own home or the home of a willing relative, or in some other suitable place, under such reasonable conditions as the judge may direct. This is what is done in most cases, for the conditions the judge may impose are virtually unlimited except by the standard of reasonableness, and permit the use of all of the many techniques which experience has shown are most effective in remolding children. If the home conditions of the child are so wholly unsuitable as to be a detriment instead of a help, the child may be committed for a time to a local detention home for children, supported by public tax funds, or to a private licensed child caring institution willing to receive him. And, if really intensive re-molding, away from all past connections, is required, the child may be sent to one of the state industrial schools, from which he is released when the officials in charge of the school deem that he is ready to return home, but in no event later than his twenty-first birthday. If there is no possibility that the child's home can ever be made a fit place for him, he can be permanently committed to a licensed child placing agency for adoption into a better home.³⁷

This sketchy outline will not convey to those of limited experience with juvenile court methods an adequate conception of the techniques of treatment used. If the writer were competent to discourse upon them, a set of books would be required in order properly to do so. Those who have closely observed the operation of juvenile courts during the past half century generally concede or assert that the methods used result in redeeming 85% of juvenile delinquents for useful lives of good citizenship, while two-thirds of the prison population is composed of habitual criminals. Juvenile court

34. FLA. STAT. § 39.09 (1951).

35. FLA. STAT. § 39.10 (1951).

36. FLA. STAT. §§ 39.02(5), 39.11(6) (1951).

37. FLA. STAT. § 39.11 (1951).

personnel have their limitations, including an occupational allergy to constitutional inhibitions which exasperates the orthodox priesthood of the law, but in their actual operations they accomplish results which seem almost miraculous to those familiar only with the retributive theory of the criminal law.

RECORDS

Juvenile court records are not public records, and are not open to public inspection. The social records of investigation and treatment and other confidential information are closed to all but juvenile court personnel, just as a psychiatrist's records are closed even to his patient. The official records, consisting of all petitions, orders, pleadings, etc., are open only to the child and his parents and their attorneys. These records must be kept for ten years, and may then be destroyed.³⁸

APPEALS

A very simple, inexpensive, speedy method of appeal to the circuit court is provided by the new law to counter-balance any possibility of arbitrary action in the course of the rather summary juvenile court procedure.

A child, parent, or legal custodian affected by any juvenile court order can file a written notice of appeal in the juvenile court within ten days. Within ten days thereafter, the original juvenile court file is sent over to the circuit court. The state attorney represents the juvenile court. No briefs need be filed unless the circuit court so directs, but they may be filed if desired. On application, the circuit court sets the case down for argument within fifteen days, and renders a decision within thirty days after the argument if possible. Appeal does not operate as a supersedeas, except that a permanent order of commitment of a child to a licensed child placing agency for subsequent adoption is suspended while the appeal is pending. The circuit court decides only whether the juvenile court entered a lawful order, and does not substitute its judgment for that of the juvenile court in discretionary matters. Writ of certiorari from the supreme to the circuit court may be sought.³⁹

JUDGE'S QUALIFICATIONS AND ELECTION

The county judge is the juvenile court judge in fifty-nine of Florida's sixty-seven counties, and his qualifications are prescribed in the Constitution, not by the new general law.

In the eight counties where separate juvenile courts are established, the judge must be a qualified voter in the county, at least twenty-five years old, and either have served as judge of a separate juvenile court in Florida or be a lawyer. He is elected by the people for a four year term. The Gover-

38. FLA. STAT. § 39.12 (1951). The legislature struck out the section which would have prohibited publication of a child's name, picture, or address in connection with juvenile court cases, but as a matter of practice newspapers rarely publish such information.

39. FLA. STAT. § 39.14 (1951).

nor fills any vacancy by appointment until the next general election. If the judge is absent from the county or temporarily unable to act, the county judge or a circuit judge fills in.⁴⁰

It is to be hoped that many of the younger lawyers, and students in law schools, will fit themselves for positions as judges of juvenile courts by study and experience in the "socio" aspects of these socio-legal courts. There is no question that the judge should be trained in the law, and there is also no question that a person who is trained only in the law will be as ineffective a judge as one who has other qualifications without legal training will be dangerous. A very satisfying career of useful service is open to lawyers who are genuinely interested in and qualified for work with children.

QUALIFICATIONS AND SELECTION OF COUNSELORS

No juvenile court, even in the smallest county, can be very effective without a counselor to do the investigating and supervising of children. It is facetious to speak of having a juvenile court, if it consists only of a county judge to whom a child is brought by a law enforcement officer, and who is limited to looking into his crystal ball to try to find out what caused the child's trouble, then giving out with a few well-chosen cliches about how he must be a good boy and hoping that will do the trick. A skilled counselor, even on a part-time basis, can go out and find what is the basic cause of the child's misbehavior or neglect, make dependable recommendations to the judge, and see that the judge's orders are carried out. Law enforcement officers are trained to find out who violated a law, not *why* that person committed the violation. For this reason, it was particularly unfortunate that the legislature saw fit to change the financing plan of the new juvenile court law from a mandatory requirement that counties finance these courts adequately to a permissive plan. Under the law as enacted, it is imperative that the lawyers and other enlightened citizens of each community bring home to the county commissioners in each county the truism that no one can work effectively without the proper tools, and that no juvenile court judge can do what is expected of him unless funds are provided for the employment of an adequate staff of counselors.

In most of Florida's counties, only one counselor will be available, and in many of them that one will be on only a part-time basis. In the larger counties, staffs of fifteen or twenty or more will be required in order to handle the thousands of cases which come before the courts each year, and the counselor determines the number of assistants required, with the approval of the judge, within the limitations imposed by funds available.⁴¹

In the eight counties where separate juvenile courts are established, each counselor and assistant counselor must either have served as counselor or assistant counselor of a juvenile court in Florida, or have a college degree,

40. FLA. STAT. § 39.15 (1951).

41. FLA. STAT. § 39.16(9) (1951).

or have four years of experience in some sort of work with children. In the other 59 counties, qualifications must be as nearly as possible equivalent.⁴²

A list of not less than three qualified applicants is made up for each vacant position by a juvenile court merit board, and from this list the judge selects the counselor, and the counselor selects the assistants with the approval of the judge.⁴³ In the very largest counties, where a secretary or some such employce works primarily for the judge rather than under the counselor's supervision, the judge alone selects that employee, but otherwise the counselor, with the approval of the judge, selects employees other than assistant counselors.⁴⁴

The juvenile court merit board is unpaid, but its expenses are paid.⁴⁵ The board consists of a county commissioner, the county school superintendent or a member of the school board, a member of the district welfare board, the director of the county health unit where one exists, and those citizens who are appointed as members of the county board of visitors to oversee county detention homes for children.⁴⁶

The merit board requires written applications from applicants for positions, and may require written examinations and oral interviews.⁴⁷ The board, with the approval of the judge, adopts civil service rules requiring discharge only for cause of juvenile court personnel other than the judge.⁴⁸

In Duval County, and in any other county where a county civil service law for county employees may subsequently be put into effect, the counselor, assistants, and employees come under that law, and the juvenile court merit board does not function.⁴⁹

The present counselors, and some of the present assistants, are serving definite terms by gubernatorial appointment. At the end of those terms, the places they hold will be filled in accordance with the new law.⁵⁰

FINANCING

Each fiscal year, the county commission can set aside in the county budget, as a fund for the expense of the operation of the juvenile court, a sum not to exceed twenty-five cents for each inhabitant of the county.⁵¹

Out of this fund, the salaries of the judge and counselor are paid, the county commission being authorized to set these salaries at not exceeding certain figures based on the county's population, but not less than may be provided by any special act.⁵² The salaries of other juvenile court personnel

42. FLA. STAT. § 39.16(1) (1951).

43. FLA. STAT. § 39.16(2) (1951).

44. FLA. STAT. § 39.16(5) (1951).

45. FLA. STAT. § 39.16(3) (1951).

46. FLA. STAT. § 39.01(15), (16) (1951).

47. FLA. STAT. § 39.16(3) (1951).

48. FLA. STAT. § 39.16(4) (1951).

49. FLA. STAT. § 39.16(6) (1951).

50. FLA. STAT. § 39.16(8) (1951).

51. FLA. STAT. § 39.18(1) (1951).

52. FLA. STAT. § 39.18(2), (10) (1951). Inasmuch as FLA. CONST. Art. 3, §§ 20, 21, prohibit the passage of special or local laws "regulating the fees of officers of the

as set by the counselor with the approval of the judge within the limits of the budget, and travel and office expense, are also paid out of this juvenile court fund.⁵³ Payment is made out of other county funds for office rent if quarters outside county buildings are necessary, sheriff's fees for service of process not served by juvenile court personnel, operation of parental homes or detention quarters, and expense of transporting children to the industrial schools at Ocala and Marianna.⁵⁴

No fees are ever charged by the juvenile court, and juvenile court personnel are not paid on a fee basis. A person appealing to the circuit court pays the fee of the circuit court clerk for filing the appeal, but that is the only time any fee payment enters the picture, except that witnesses who are not parents or legal custodians of the child are paid witness fees.⁵⁵

PHILOSOPHY UNDERLYING THE NEW LAW

The new juvenile court law is a demonstration that our judicial process can be adapted to changing conditions and new concepts while retaining the safeguards proved essential to justice by millenia of experience.

The standard judicial process is simplified and made to operate informally, so as to be effective in dealing with immature children, and greater use is made of such developments in human knowledge as modern psychology and sociology. But the process used is judicial, not administrative, and the fundamental right of personal, individual liberty is as carefully preserved as in orthodox procedure.

The emphasis, in cases of delinquent children, is more on ascertaining the cause of the misbehavior, determination that the child did misbehave being only the first step. The concept of reformation is substituted for that of retribution, punishment as a deterrent to crime being recognized as too ineffective and treatment to fit the individual being substituted for punishment to fit the crime.

LOOKING TOWARD THE FUTURE

After forty years of experience with juvenile courts in Florida, and fifty-two years of observing their operation in some other states, we bought no pig in a poke when we put the new law into effect.

Juvenile courts in Florida have handled some cases of delinquent children since they were first established. They will now handle most of these cases, for now their jurisdiction over child law violators is exclusive, with

State and county," the question arises whether these special acts fixing salaries are constitutional, in view of several cases holding special salary acts invalid where the officer concerned was to be paid a straight salary instead of fees. *State ex rel. Juvenal v. Neville*, 123 Fla. 745, 167 So. 650 (1936) (county commissioner); *Barrow v. Smith*, 119 Fla. 468, 158 So. 818 (1935) (school board); *State ex rel. Cohen v. O'Neal*, 99 Fla. 1053, 128 So. 489 (1930), *rehearing denied* 100 Fla. 1277, 131 So. 165 (1930) (clerk of criminal court of record).

53. FLA. STAT. §§ 39.16(9), 39.18(3) (1951).

54. FLA. STAT. §§ 39.06(9), 39.18(8) (1951).

55. FLA. STAT. §§ 39.14(2), 39.18(4), 39.19 (1951).

some qualifications. But the manner of handling them is already well worked out, and will cause no undue stress and strain.

Because the procedure is now standardized and spelled out clearly in the new law, the operation of these courts should be even more efficient from now on.

With the assurance that the minimum qualifications for judges and counselors, prescribed by the new law, will cause the present high caliber of juvenile court personnel to be maintained or even exceeded in the future, we can, with confidence, urge that certain additional features be added to this basic juvenile court law by future legislatures.

COMPELLING PARENTAL SUPPORT OF CHILDREN

Almost four thousand years ago, in the prologue to the oldest law code yet discovered, King Lipit-Ishtar bragged that he had established justice in Sumer and Akkad, and had re-established equitable family practices for the welfare of his subjects. "I made the father support his children and I made the children support their father; I made the father stand by his children and I made the children stand by their father," he crowed.⁵⁶

Possibly the most pronounced lack in the new juvenile court law is that it makes no change in our obsolete methods of compelling parents to support their own children.

The prevailing view now in all the states is that parents are, regardless of any statute, under a legal as well as a moral duty to support, maintain and care for their minor children. This obligation is sometimes spoken of as one under the common law and sometimes as a matter of natural right and justice, and is often accepted as a matter of course without the assignment of any reason. It may be, of course, and now frequently is, a duty specifically imposed by statute.⁵⁷

But, while the legal duty of a parent to support his child in accordance with the child's needs and the parent's ability is recognized, the practical difficulty is in the method of enforcing this duty, which is usually limited to criminal proceedings for contributing to the dependency of a child, suits against the parent by a third person who furnished necessaries to the child, or, in some states, direct proceedings in equity under specific statutes against the parent by the child, or someone in the child's behalf, to compel support.⁵⁸

In Florida, the criminal proceeding against the parent is available,⁵⁹ and is the method exclusively used by juvenile court judges, in their capacities as committing magistrates, if we ignore the special acts applying to the

56. PRITCHARD, *ANCIENT NEAR EASTERN TEXTS RELATING TO THE OLD TESTAMENT* 159 (1950); Speiser, *Ancient Mesopotamia: A Light That Did Not Fail*, 99 *THE NATIONAL GEOGRAPHIC MAGAZINE* 1, p. 41, 78 (Jan. 1951).

57. 39 *AM. JUR.*, *Parent and Child* § 35 (1942).

58. 39 *AM. JUR.*, *Parent and Child* § 45 (1942).

59. *FLA. STAT.* §§ 828.19, 828.21 (1951), formerly *FLA. STAT.* §§ 415.02, 415.31 (1949).

counties of Broward, Dade, Pinellas, and Polk, which purport to give to the juvenile courts of those counties a more effective civil procedure.

Also available in Florida is the suit by a third person furnishing necessities to the child, but there is no general statute allowing a direct proceeding in equity by the child against his parent, and there has been no evidence that the circuit courts conceive that they have jurisdiction to compel support of a child except as an incident to a suit for divorce or separate maintenance filed by the mother against the father.

The National Probation and Parole Association strongly recommends that juvenile courts be given jurisdiction to try adults on criminal charges,⁶⁰ and 31 of the 48 states had such laws by 1939,⁶¹ but it is conceived that such criminal trials can be much better handled in the regular criminal courts, where juries are customarily empaneled and judges are experienced in presiding over criminal trials, and that holding criminal trials in a juvenile court would have an unfortunate tendency to permeate the juvenile court with the much-different atmosphere of the criminal court.

Criminal proceedings are of very little effectiveness, anyway. A man in jail is not supporting his child.

What is needed is a statutory procedure which can be initiated by a person other than the mother if she declines to act, which will reach any property or wages of either the father or mother, and subject them to contempt proceedings for failure to obey court orders to support their children, just as is done with the father in separate maintenance and divorce cases.

Such additional jurisdiction could easily be conferred upon juvenile courts by simply adding to the jurisdiction section of the new law another subsection, giving these courts the power to require each parent of an unmarried dependent child to furnish to the child adequate and proper care, support, maintenance, and education, or to pay such sums of money for those purposes as may be in keeping with the needs of the child and the abilities of the parent, and in the exercise of that jurisdiction to enforce its orders by contempt proceedings, entry of judgment for unpaid monies and issuance of execution thereon, writs of garnishment, sequestration, and ne exeat, and such other methods as may be available to circuit courts to enforce similar orders against the father entered incident to decrees of separate maintenance or divorce.

There would still be parents who skip the state, or who fail to work, and who for one reason or another would escape the obligation of supporting their children, but the juvenile court procedure to compel support for

60. A STANDARD JUVENILE COURT ACT 29 *et seq.* (Rev. ed. (1949).

61. COSULICH, JUVENILE COURT LAWS OF THE UNITED STATES 69-72: Alabama, California, Colorado, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, Washington, West Virginia and Wisconsin. Also District of Columbia, Hawaii, and Puerto Rico.

children would at least be as effective as now obtains in the circuit court when separate maintenance or divorce suits are brought.

COMPELLING SUPPORT OF ILLEGITIMATE CHILDREN

Each individual's attitude toward illegitimacy as a moral and social problem will probably range somewhere between the approach of the Jewish law of the seventh century B.C., which said:⁶²

A bastard shall not enter into the congregation of the Lord;
even to his tenth generation shall he not enter into the con-
gregation of the Lord.

and the sentiment of the more modern, nauseating little couplet:⁶³

Should a father's carnal sins
Blight the life of babykins?

When the matter of illegitimacy is approached as a legal and economic problem, however, probably all of us will agree that, whether we would be willing to support our own woods colts or not, we certainly do not wish to support the bastards of anyone else if we can make him do it.⁶⁴

At common law, the father of an illegitimate child was under no obligation to contribute to the child's support.⁶⁵ In 1575-1576 England enacted a bastardy law⁶⁶ placing responsibility on both parents. In this country, bastardy laws were early enacted in most of the states, as early as 1673 in Connecticut.⁶⁷

Florida's original bastardy proceeding⁶⁸ was enacted into law by the Territorial Governor and Territorial Council in 1828, just seven years after Florida was ceded by Spain to the United States, and 17 years before the Territory became a state. It provided for a quasi-criminal, quasi-civil proceeding⁶⁹ by which a single woman who was pregnant or delivered of an illegitimate child could make complaint to the county judge or justice of the

62. *Deuteronomy* 23:2, KING JAMES VERSION OF THE BIBLE (1611). Although *Deuteronomy* is called the Fifth Book of Moses, and gaily back-dated to 1451 B. C. to conform to this courteous ascription of authorship, it contains an account of the death of Moses, and was actually a re-codification of Jewish law probably secretly prepared 693-639 B. C.: BATES, *THE BIBLE DESIGNED TO BE READ AS LIVING LITERATURE* 147 (1936).

63. Lardner and Kaufman, *June Moon*, in MANTLE, *THE BEST PLAYS OF 1929-30* 262 (1930).

64. We might be tempted to emulate Grover Cleveland, who is reported to have said to a heckler at a political meeting, "I have cared for and educated my bastards. What have you done for yours?" DEFORD, *LOVE-CHILDREN* 19 (1931). Somewhere in between the two views will be found the 1658 law of Plymouth Colony, immortalized in Nathaniel Hawthorne's book, *THE SCARLET LETTER*, which required the lifelong wearing by the mother of an illegitimate child of the letter "A" for "adulteress." Morlock and Campbell, *Maternity Homes For Unmarried Mothers* 2 (1946), U. S. CHILDREN'S BUREAU PUBLICATION 309.

65. 7 AM. JUR., *Bastards* §§ 69, 79 (1937).

66. 18 Eliz., c. 3 (1575-1576) Cf. 1 BL. COMM. § 458.

67. U. S. CHILDREN'S BUREAU CHART NO. 16, *PATERNITY LAWS* 5 (1938).

68. Act of January 5, 1828, carried forward with only slight change as FLA. STAT. c. 742 (1949).

69. The supreme court called it a civil action, and said "The statute was not designed to punish the accused, but to make him contribute to the support of the child . . . a civil procedure to enforce a police regulation designed to secure immunity of the public from the child's support." *Flores v. State*, 72 Fla. 302, 310, 73 So. 234, 236 (1916).

peace; if, upon a jury trial in the circuit court, the reputed father was determined to be the real father, the circuit court could order the father to pay to the mother all necessary incidental expenses attending the birth, and \$50.00 yearly for ten years toward the support, maintenance and education of the child; if the father failed to pay as ordered, he could be imprisoned for a term up to a year.

This original Florida bastardy proceeding remained virtually unchanged for 123 years, until June 9, 1951. It had long been obvious that, whatever might have been the situation in 1828, a child could no longer be supported for slightly less than a dollar a week, nor did a child become self-supporting at the age of ten. As early as 1938,⁷⁰ only five states had no bastardy law compelling the father to support his illegitimate child, while eight states set the amounts he was to pay at greater than the Florida figure, and thirty-four states set no limit but left the amount to be fixed by the court from time to time. Apart from this rather invidious comparison, the people of Florida were taxing themselves to pay as much as \$27.00 per month for the support of an illegitimate child under the federal-state program of Aid to Dependent Children, and were continuing to pay until the child became eighteen.

This situation was greatly improved by the 1951 legislature, which passed a statute⁷¹ prescribing a completely new bastardy proceeding.

The new law gives the right to any unmarried woman who shall be pregnant or delivered of a bastard child to bring proceedings in the circuit court, in chancery, to determine the paternity of the child. Complaint and answer in usual form are followed by a private hearing in chambers. Apparently special masters are not to be used. Either party may demand that the issue of paternity be tried by a jury, but otherwise the court determines the issue of paternity, and in any event the court determines the ability of each parent to support the child. If the defendant is adjudicated to be the father, the court may order him to pay reasonable attorneys' fees, hospital or medical expenses, cost of confinement and any other expenses incident to the birth, and periodic payments of support money for the child. The jury has no hand in fixing these amounts. The statute provides that the court "shall" order the defendant to pay monthly, for the care and support of the child, between \$40.00 and \$110.00, depending on the age of the child, but goes on to give the court power to increase or decrease these amounts, so that they seem to be only suggestive. While the suggested scale of payments terminates at the eighteenth birthday, there is nothing else in the statute which would prevent payments being ordered for older youths. There is no statutory requirement that the child be unmarried when the adjudication is made, nor that payments cease upon marriage of the child. The court may change the amounts from time to time, retaining jurisdiction to do so.

70. U. S. CHILDREN'S BUREAU CHART NO. 16, PATERNITY LAWS (1938).

71. FLA. LAWS 1951, c. 26949, effective June 9, 1951.

Upon default in payments ordered, judgment can be entered, which is a lien on the defendant's real and personal property, placing of an execution in the sheriff's hands not being required in order to make the judgment a lien on the defendant's personal property. Contempt proceedings may also be resorted to in case of default in payments. The defendant may also be required to post a performance bond. No imprisonment is contemplated, except as for contempt.

No bar is expressed in the statute against proceedings being brought now on behalf of any illegitimate child born within the past eighteen years. There is no saving clause as to pending cases in the section which repeals the old law.

One section of the new statute makes it a misdemeanor, punishable by as much as a year's imprisonment and a \$1000.00 fine, to publish or broadcast the name of any party to a bastardy proceeding. It is interesting to note that a somewhat similar provision, but with violation punishable only as for contempt, was deleted by the same legislature from the new juvenile court act, at the behest of newspaper publishers who were apparently unaware of the new bastardy act.

This new bastardy proceeding is a considerable step forward in the handling of the legal and economic aspects of the problem of illegitimacy. Basically, it employs principles which are sound and workable. There can be no objection to it as being dangerous or unworkable, for such laws have worked as well as can be expected in other states for many years, effecting greater justice for the child and the tax-paying public while protecting the putative father against false, easily-made and hard-to-refute charges as well as can be hoped for under a system of justice which, while guarding individual liberty better than any older system, and better than any other contemporary system, still results in only substantial justice rather than perfect justice.

Such sketchy studies as have been made show that in most cases the defendant in a bastardy proceeding is an unskilled laborer, often unemployed or irregularly employed, with earnings so small as barely to provide a minimum standard of living for himself, and with little resources and no bank account. For the most part, lump-sum payments cannot be made, and the periodic sums ordered are not sufficient to care for the child, even if payments were made as ordered. In prosperous years, 44% of the fathers were in arrears within two years, 73% within seven years. In depression years, 80% of White fathers and 86% of Negro fathers were behind in their payments within two years, nearly half of them owing over 50% of the amounts ordered paid.⁷² As Miss Maud Morlock, Consultant of the U. S. Children's Bureau, concludes after long study, "These figures clearly suggest that we have had false hopes of the efficacy of court orders as a means of actually

72. Morlock, *A Community's Responsibility for the Child Born Out of Wedlock 5* (1949), mimeographed by U. S. Children's Bureau; Morlock, *The Fathers of Children Born Out of Wedlock 1, 4-6* (1939), mimeographed by U. S. Children's Bureau.

providing support for children born out of wedlock. Although support may be obtained for the difficult early years, it is probable that only a small proportion of the children born out of wedlock are supported until they are 16 years of age by the men adjudged to be their fathers."⁷³

It is entirely possible that this is one of the many areas of human conduct where the answer rests not so much in strict legal proceedings as in the accompanying greater use of social casework.⁷⁴ There is encouraging evidence that greater effectiveness is achieved by approaching the father as a decent human being, privately and informally, and urging him to assume the responsibility of supporting his child voluntarily, than in an adversary approach based on the expectation that he will deny paternity, admit nothing, agree to nothing, and evade all responsibility if possible. In some urban communities, where voluntary acknowledgment of paternity before a court is possible, 75% to 90% of the putative fathers follow this course.⁷⁵ In Sweden, where the attitude toward illegitimacy is considerably more relaxed, paternity was established in 93% of the cases brought to court, and of these, in about 90% paternity was established by admission, in only about 10% by adjudication after contest.⁷⁶

It seems evident, therefore, that bastardy proceedings, substantially similar to the type contemplated by the new statute, should be handled by the juvenile court rather than by the circuit court. The new bastardy law imposes a form of juvenile court procedure on the circuit court, by providing for private hearings in chambers, absence of publicity, and equity procedure. But, as with other circuit court cases, the court file is a public record, open to the perusal of the scandal-monger, certainly available to be printed and broadcast in full outside Florida, and to be printed and broadcast within Florida with appropriate hints as to the identity of prominent unnamed parties. Nor does the circuit court have any personnel to investigate, help establish the facts and attempt to work out mutually satisfactory arrangements with the putative father. The mother, who is under twenty years old in over half of 80,000 births registered as illegitimate in the United States each year,⁷⁷ has no one to help her in the circuit court, unless she can induce

73. Morlock, *The Fathers of Children Born Out of Wedlock* 5 (1939), mimeographed by U. S. Children's Bureau.

74. Morlock and Campbell, *Maternity Homes for Unmarried Mothers* 15-17 (1946), U. S. CHILDREN'S BUREAU PUBLICATION 309; Haynam, *Casework Treatment of the Unmarried Mother* 7-8 (1949), mimeographed by U. S. Children's Bureau, paper prepared for Committee on Unmarried Parents, 1947 National Conference of Social Work.

75. Morlock, *supra* note 73, at 2.

76. THE ROYAL SOCIAL BOARD, *SOCIAL WORK AND LEGISLATION IN SWEDEN* 235 (1938); Reider, *The Unmarried Father* 250, 18 *THE AMERICAN JOURNAL OF ORTHOPSYCHIATRY* 2 (April 1948); Morlock, *supra* note 73, at 2.

77. Morlock and Campbell, *supra* note 74, at 13; Morlock, *The Adolescent Unmarried Mother*, PRACTICAL HOME ECONOMICS (May 1946). The State Board of Health advises: that 5134 illegitimate births to Florida residents were registered in 1950; the number has more than doubled in the last decade, although percentage-wise the rate of increase has been less than 6%; in 1949, the latest year for which the figures have been analyzed, there were 4427 registered illegitimate births, of which 101 were to non-residents, 775 to white mothers, 3652 to Negro mothers, 1869 to mothers under 20 years old.

some prosecuting attorney or other attorney to represent her, with his fee remotely squeezable out of an unskilled laborer if he is successful. The putative father, faced by a charge which can easily be made and is hard to disprove—and which the mother is forced to make against some man in order to qualify for Aid to Dependent Children—with little or no knowledge of such things as blood grouping tests,^{77A} and usually with only meager earnings, can also resort only to the help of a reluctant attorney. The circuit judge, eager to discover the truth, but limited in his search to sifting what is offered to him by the parties, is not in an enviable position.

The right to a jury trial, which was given by the 1828 law and hence is required by the state constitutions later adopted to be preserved inviolate, could be protected by provision for empaneling a jury in the juvenile court on demand of either the mother or putative father, or, preferably, by transfer of the case to the circuit court on demand of either for a jury trial.

Consideration should also be given to the advisability of incorporating in the bastardy statute certain features of the laws of other states.⁷⁸ Should the Director of the Department of Public Welfare be authorized to begin the proceeding, where Aid to Dependent Children grants are involved, or should only the mother have that right? Should a compromise settlement between the mother and father, without court approval, be binding? Should some corroboration of the mother's testimony as to paternity be required? If a witness testifies that he had access to the mother about the time the child was conceived, should corroboration be required before that testimony is admissible? Should there be a requirement that the mother and child submit to blood-grouping tests on demand of the putative father, and that the result of such a test can be offered in evidence only by the putative father, since such tests can sometimes disprove but can never prove paternity?⁷⁹

In connection with our consideration of the bastardy statute, it may be well to take into account the effect, or absence of effect, of such a statute upon other Florida laws relating to illegitimate children, to complete the picture. Where a bastardy statute such as the one we have in Florida is in force, that statute is the exclusive basis of the father's liability.⁸⁰ The father

77A. See Casenote, 6 Miami L. Q. 128.

78. See Schatkin, *Paternity Proceedings in New York*, NEW YORK LAW JOURNAL (Jan. 9-12, 1940), for a discussion of the statute applying to the City of New York.

79. A study of 319 blood tests done by order of the Court of Special Sessions in New York City revealed that 29, or nearly 10%, resulted in exclusions of paternity, and in each of those 29 cases the alleged father was adjudged not to be the father. Wisconsin, New Jersey and Ohio have similar statutes, and European courts have used such tests since 1924. Schatkin, *supra* note 78, at 9. See also ANDRESEN, *THE HUMAN BLOOD GROUPS UTILIZED IN DISPUTED PATERNITY CASES AND CRIMINAL PROCEEDINGS* (1950); Waybright and Waybright, *Grouping and Typing of Blood and Other Substances and Stains in Cases of Disputed Parentage and in Rape Cases*, 12 FLA. L. J. 251 (July 1938).

80. *People ex rel Lawton v. Snell*, 216 N. Y. 527, 111 N. E. 50, Ann. Cas. 1917D 222 (1916). See Note, 30 A.L.R. 1069.

is not punishable under the criminal statute⁸¹ for contributing to the dependency of his illegitimate child.⁸² Nor is any duty imposed upon a father to support his illegitimate child by the statute,⁸³ which provides that the child may inherit from him if he acknowledges the child in writing signed in the presence of a competent witness.⁸⁴ A father may be required to abide by a contract he makes to support his illegitimate child, and the contract is not illegal nor against public policy.⁸⁵

The new bastardy proceeding does not have the effect of legitimatizing the child, and does not change the child's status in any way except, if his mother so chooses, to give him a right to be supported by his father to a greater extent than before. Neither would the proposed change of jurisdiction of bastardy proceedings to the juvenile court work any other change in the child's status. The other Florida statutes relating to illegitimate children⁸⁶ would be entirely unaffected. The object of the 1951 bastardy law revision, and the object of the proposed transfer of jurisdiction to the juvenile court, are to place the burden of supporting illegitimate children where the burden belongs, so far as possible, not to alter a social system which is deeply rooted in our cultural memory.⁸⁷

81. FLA. STAT. §§ 828.19, 828.21 (1951), formerly FLA. STAT. §§ 415.02, 415.31 (1949).

82. *Beaver v. State*, 96 Tex. Crim. Rep. 179, 256 S. W. 99, 30 A.L.R. 1073 (1923).

83. FLA. STAT. § 731.29 (1949).

84. *Brisbin v. Huntington*, 128 Iowa 166, 103 N. W. 144, 148, 5 Ann. Cas. 931 (1905).

85. 7 AM. JUR., *Bastards* §§ 73-78 (1937).

86. FLA. STAT. § 65.05 (divorce does not render children born during marriage illegitimate, except where granted on ground that either party had a living spouse at time of marriage); FLA. STAT. §§ 382.18, 382.21, 382.35 (birth registration; contemplates legitimatization by court order, but except in unique circumstances no Florida court has that power, in spite of mention of "legitimizing children" in FLA. CONST. Art. III, § 20); FLA. STAT. § 440.02(13) (workmen's compensation benefits for "acknowledged illegitimate child dependent upon the deceased"); FLA. STAT. § 731.29 (illegitimate child is heir of mother, "and also of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father"); FLA. STAT. § 741.11 (issue of marriage between White and Negro is bastard); FLA. STAT. § 741.20 (children born before 1866 of unsolemnized slave marriages legitimatized); FLA. STAT. § 744.13 (mother of illegitimate child is his natural guardian); FLA. STAT. §§ 782.16, 782.17 (unlawful for mother to conceal death of issue which, if born alive, would be bastard) (1949).

87. The concept underlying FLA. STAT. § 731.29 (1949) is at least about 3678 years old, for about 1727 B. C. the Code of Hammurabi was promulgated, providing in §§ 170 and 171 that "When a seignor's first wife bore him children and his female slave also bore him children, if the father during his lifetime has ever said 'My children!' to the children whom the slave bore him, thus having counted them with the children of the first wife, after the father has gone to (his) fate, the children of the first wife and the children of the slave shall share equally in the goods of the paternal estate, with the first-born, the son of the first wife, receiving a preferential share. However, if the father during his lifetime has never said 'My children!' to the children whom the slave bore him, after the father has gone to (his) fate, the children of the slave may not share in the goods of the paternal estate along with the children of the first wife." PRITCHARD, ANCIENT NEAR EASTERN TEXTS RELATING TO THE OLD TESTAMENT 173 (1950).

FLA. STAT. § 741.11 (1949) has as an antecedent the ancient Germanic law, which recognized as legitimate only those whose parents were of the same social rank, and regarded all others as bastards. 3 ENCYCLOPAEDIA BRITANNICA 191 (1947).

FLA. STAT. §§ 782.16, 782.17 (1949) is similar to the Scottish law mentioned in Sir Walter Scott's novel, THE HEART OF MIDLOTHIAN, based on actual happenings in the

ADOPTION OF CHILDREN

The right of adoption, while known to the ancients of Egypt, Babylonia, Assyria, Germany, Greece and Rome, and probably to other ancient peoples, and while practiced among many of the continental nations under the civil law from the remotest antiquity, was unknown to the common law of England, and exists in this country, in those jurisdictions having that common law as the basis of their jurisprudence, only by virtue of statute.⁸⁸ Adoption proceedings are wholly statutory in Florida.⁸⁹

The most common method for effecting an adoption is by a judicial proceeding. The action of the court is invoked by an application or petition, and the adoption is effected by the decree of the court. While the power of a court or judge under such a statute calls for the exercise of judgment, and is in that sense judicial, and the judge, in the performance of his duties under such a statute, exercises judicial functions, yet the proceeding is not a judicial proceeding in the full sense of that term. The power of the court or judge is no part of the judicial power mentioned in the constitution and by it vested in the courts, as distinguished from an individual judge thereof. It seems, however, that it is within the power of the legislature to make the proceeding a judicial one, and that, in such case, the exercise of the power by the court is an exercise of the judicial power vested in it by the organic law. The power to decree an adoption being purely a creation of statute, the statute is the measure of the court's authority.⁹⁰

Jurisdiction of adoption proceedings is generally conferred upon the court having jurisdiction of probate matters, variously designated in the different states as Probate, Surrogate, Orphans', and sometimes County courts. In other states the right to conduct adoption proceedings is conferred upon courts of general jurisdiction.⁹¹

Since adoption is a creature of the legislature, it is within its province to transfer such jurisdiction from one court to another.⁹²

From 1885 until 1943 the Florida statute gave jurisdiction of adoption proceedings to the circuit judges, not to the circuit courts.⁹³ In 1943 the adoption statute was completely re-written to provide for social investigation and recommendation by either the State Welfare Board (called the Department of Public Welfare now) or a licensed child placing agency, and

Edinburgh of 1736; *Effie Deans* was sentenced to death for the supposed death of her baby boy at birth, although he had actually been stolen and was found as a youth. Morlock and Campbell, *Maternity Homes for Unmarried Mothers* 2 (1946), U. S. CHILDREN'S BUREAU PUBLICATION 309.

88. *In re Palmers Adoption*, 129 Fla. 630, 176 So. 537 (1937); 1 AM. JUR., *Adoption of Children* § 3 (1936); 2 C. J. S., *Adoption of Children* § 2 (1936). Sections 185-193 of the Code of Hammurabi, promulgated about 1727 B. C., regulate adoption: PRITCHARD, *ANCIENT NEAR EASTERN TEXTS RELATING TO THE OLD TESTAMENT* 174-175 (1950).

89. *Sheffield v. Barry*, 153 Fla. 144, 14 So.2d 417 (1943).

90. 1 AM. JUR., *Adoption of Children* § 30 (1936).

91. 1 AM. JUR., *Adoption of Children* § 31 (1936).

92. 2 C. J. S., *Adoption of Children* § 35a (1936).

93. FLA. STAT. c. 72 (1941), and prior laws.

in the process of this re-writing the circuit courts were given jurisdiction of adoption of minors in place of the circuit judges.⁹⁴ In 1947 additional sections were added, providing for adoption of adults, with jurisdiction vested in the circuit judges instead of the circuit courts.⁹⁵

Adoption of children of juvenile court age is clearly a function much better exercised by the juvenile courts than by the circuit courts. The primary consideration is the welfare of the child, a consideration which is the keystone of juvenile court administration.

While a thorough social investigation is usually made by the better licensed child placing agencies when they place children for adoption, that is not often true in the far greater number of cases where children are placed privately and the investigation is made by the Department of Public Welfare. Chronic budgetary shortages have resulted in continuous failure of the Department of Public Welfare to have an adequate staff. Often the staff is not able to make even the customary two visits to the adoptive home within the time allotted by the statute, so that the interlocutory or final hearing must be postponed. While the licensed child placing agencies are pressing for legislation to outlaw the independent placement of children for adoption, which they choose to call a "gray market in babies", they admit that the funds presently available to them would not permit them to do an effective job if such legislation is enacted.

Placing adoption jurisdiction in juvenile courts would assure that, no matter what the staff situation in the Department of Public Welfare and private licensed child placing agencies, the juvenile court staff could step in and help out with social investigations if necessary, and in contested cases the supplementary investigation which could be made by juvenile court personnel would be invaluable to the judge.

Then, too, the experience of a judge who specializes in children's cases would be brought to bear on adoption proceedings.

Children's cases belong in a children's court, and the juvenile court should be given jurisdiction of proceedings for the adoption of children of juvenile court age, either concurrently with circuit courts or exclusively.

ENFORCEMENT AND MODIFICATION OF DECREES FOR SUPPORT OF CHILDREN ENTERED BY CIRCUIT COURTS

Circuit judges in various circuits where separate juvenile courts exist, notably in the counties of Broward, Duval, and Polk, have felt an inadequacy in the circuit court's procedure for supervising and enforcing payment of support money for children under decrees of divorce and separate maintenance. They have sought to improve this situation by including in their decrees a provision that the payment of support money shall be made

94. FLA. STAT. §§ 72.07-72.25 (1949), derived from Fla. Laws 1943, c. 21759; Fla. Laws 1943, c. 21951; as amended by Fla. Laws 1947, c. 23721.

95. FLA. STAT. §§ 72.31-72.39 (1949), derived from Fla. Laws 1947, c. 23891.

through the juvenile court, usually under the authority of some special act purporting to sanction this practice.

In some respects this practice has proved to be beneficial. At least, an accurate record of payments is kept, virtually eliminating the recurring argument between ex-spouses and legally separated spouses as to how they stand financially.

But in the ultimate analysis there is only a limited improvement, for if payments are not made the woman must still go back to the circuit court with her petition for a rule to show cause, and the expensive, time-consuming sparring involved in pleadings, repeated hearings and so forth takes place, with results unsatisfactory to everyone including the attorneys for the parties, who can seldom obtain fees commensurate with the time and effort involved. In effect, the juvenile court merely performs a function which could be as well or better performed by an extra deputy clerk or so in the office of the clerk of the circuit court.

If circuit judges really desire a more effective method of relieving themselves of this onerous follow-up process, it might be well to consider empowering the juvenile court to take over the enforcement and modification of circuit court decrees for the support of children.

In addition to the question of the desirability of such a procedure, consideration would have to be given to its constitutionality. The power of circuit courts to grant divorces is purely statutory,⁹⁶ but there is considerable disparity of view as to whether the power of circuit courts to make orders respecting the custody and support of children is inherent in courts of equity, or merely incidental to the statutory power to grant divorces. In Florida, circuit courts have statutory power to make orders relating to the custody and support of children of the marriage in connection with divorce cases. If this power is also inherent in equity courts, and if circuit courts have "exclusive original jurisdiction in all cases in equity" rather than "exclusive original jurisdiction in all cases in equity not cognizable by inferior courts",⁹⁷ the question arises as to whether such a grant of jurisdiction to juvenile courts would be constitutional.

ODDS AND ENDS

At present, a child aged six to twenty-one who is blind, deaf or dumb

96. 17 AM. JUR., *Divorce and Separation* § 7, 242, 243, 513, 674 and 697 (1938); *McGowin v. McGowin*, 122 Fla. 394, 165 So. 274 (1936); *Minick v. Minick*, 111 Fla. 469, 149 So. 483 (1933); *Duke v. Duke*, 109 Fla. 325, 147 So. 588 (1933); *Meloche v. Meloche*, 101 Fla. 659, 133 So. 339, 140 So. 319 (1931); *Chisholm v. Chisholm*, 98 Fla. 1196, 125 So. 694 (1929); *Chaires v. Chaires*, 10 Fla. 308 (1863). The power to grant divorces is conferred on circuit courts as equity courts by FLA. STAT. § 65.01 (1949), and could similarly be conferred on domestic relations courts concurrently or exclusively.

97. FLA. CONST. Art. V, § 11, gives circuit courts "exclusive original jurisdiction in all cases in equity, also in all cases at law, not cognizable by inferior courts." This language, with the comma after the word "law", appears to contemplate that inferior courts may be given some equity jurisdiction, just as several types of inferior courts have been given jurisdiction in cases at law, but the writer has been unable to find any decision of our supreme court on the point, possibly because the legislature has not yet attempted to give any equity jurisdiction to any inferior court.

is admitted to the Florida School for the Deaf and Blind for education, care and maintenance upon certificate of the board of county commissioners of his home county that he is so handicapped.⁹⁸ Inasmuch as the school is not supported by county tax funds, and the board of county commissioners has no facilities at all for investigating whether a particular child is actually so handicapped, or whether the child's parents are financially able to pay the school for the child's necessary expenses, it would seem more logical to have this certification made by the juvenile court judge. Those who favor this amendment point out that the juvenile court now certifies crippled children to the Florida Crippled Children's Commission for surgical and medical care, certifying to the financial inability of the parents to pay for the care and treatment of the child.⁹⁹

A somewhat similar situation is presented by the procedure for commitment by the county judge of epileptic and feeble-minded children to the Florida Farm Colony for Epileptic and Feeble-Minded.¹⁰⁰ However, admissions to this institution are not limited to children, and the procedure involved is similar to that employed in commitments of insane persons to the Florida State Hospital.¹⁰¹ Because of these considerations, the argument in favor of transferring the commitment power to juvenile courts is not as strong.

CONCLUSION

We now have in operation a sound, conservative, workable, basic juvenile court law, designed to meet more effectively and less expensively the permanent problem of juvenile delinquency, and to continue to meet with dubious effectiveness the permanent problem of neglected children.

In the coming year and a quarter before the 1953 legislative session begins, the lawyers and people of Florida should closely observe the workings of the juvenile courts in each county, insure that they are adequately financed to do the job assigned to them, and be on the look-out for any "bugs" in the new law which may become apparent, so that it may be perfected by amendments if necessary.

At the same time, consideration should be given to the desirability of extending juvenile court jurisdiction beyond the scope of the present basic law, so that these socio-legal courts can fulfill more completely the function of children's courts in twentieth century society.

98. FLA. STAT. §§ 242.34, 242.35 (1949).

99. FLA. STAT. § 391.07 (1949).

100. FLA. STAT. § 393.11 (1949).

101. FLA. STAT. § 394.21 (1949).