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Recent Legislation

JUVENILE COURTS — PROSECUTION OF DELINQUENT UNDER CRIMINAL STATUTES.—A Missouri statute contains the following provisions: In the discretion of the judge of any court having jurisdiction of delinquent children under the provisions of Art. 6, Ch. 21, or Art. 5, Ch. 11, R. S. 1919, any petition alleging a child to be delinquent may be dismissed and such child prosecuted under the general law, and any motion, petition, or application made to any court or judge having general jurisdiction of criminal causes to transfer the charge against any delinquent child to a court having jurisdiction of delinquent children may be denied in the discretion of the judge, when in the judgment of the judge such child is not a proper subject to be dealt with under the reformatory provisions. Laws 1927, p. 129.

Prior to the passage of the above statute, a jury trial as found in criminal proceedings was only as a result of the demand of the delinquent child or of his parents or guardian. The present act creates a further possibility of jury trial by virtue of the discretionary power vested in a judge. Where such power is exercised, the child is treated as any other citizen who has committed a similar offense.

The right to demand a trial by jury may be traced to Laws 1911, p. 177, now to be found in R. S. 1919, sec. 2592. Circuit courts in counties of over 50,000 population were given original jurisdiction of all proceedings involving neglected or delinquent children. The practice and procedure prescribed by law for the conduct of criminal cases were prescribed in cases in which children are charged with conduct which constitutes a violation of the criminal statutes, provided a jury trial were demanded. In all other cases the proceedings were to be informal.

Laws 1913, pp. 148-154, conferred similar jurisdiction upon probate courts in counties of less than 50,000. The proceedings under this act were similar to those authorizing the appointment of guardians for minors. No provision was made for a jury trial even in the event that it should be demanded. This act was declared unconstitutional in *State ex rel. Cave v. Tincher* (1914), 258 Mo. 1, 166 S. W. 1028. The decision was based partly upon constitutional provisions, fixing the jurisdiction of probate courts and partly upon the ground that the failure to provide for optional criminal proceedings was in violation of the guaranty of jury trial contained in Const. Mo., Art. 2, secs. 22, 28.

The act was therefore repealed by Laws 1917, p. 197, now to be found in R. S. 1919, sec. 1136, which is similar to sec. 2592, *supra*, with the further provision, however, that the judge might,

in his discretion, order a delinquent child prosecuted under the general law.

An amendment raising the maximum age of children subject to the juvenile court's jurisdiction, was made to R. S. 1919, sec. 1136, by Laws 1923, p. 131. Under the new law, as under the old, a discretionary power was allowed to the judge in remanding a delinquent child for criminal prosecution in counties of less than 50,000 population, but a similar power could not be exercised in counties of more than 50,000 population. The result was a declaration of the unconstitutionality of this feature of the law in the case of *State v. Gregori* (1928), 2 S. W. (2d) 747, reaffirmed in *State v. Damico* (1928), 4 S. W. (2d) 425.

To relieve this situation the act of 1927, as quoted above, was passed. Thus discretionary power is allotted to the judges in both types of counties.

R. S. 1919, sec. 2596, provides that a child shall be taken directly before a juvenile court or the case transferred to such court. Sec. 2598 further provides that no court is deprived of the power to file complaints and issue warrants for the arrest of delinquents, but all subsequent proceedings shall be in a juvenile court. Similar provisions may be found in sec. 1136.

Juvenile court statutes are upheld upon the theory that the delinquent child is not on trial for the commission of a crime, and the reformatory to which he is committed is a place where reformation and not punishment is the end sought to be obtained. provision for jury trial is usually held to be unnecessary. *Cmw. v. Fisher*, 213 Pa. St. 48, 62 A. 198, 5 Ann. Cas. 192. The contrary holding in *State v. Tincher*, *supra*, is greatly weakened by subsequent decisions. *State ex rel. Matacia v. Buckner* (1923), 300 Mo. 359, 254 S. W. 179; *State v. Porterfield* (1924), 264 S. W. 386.

A perusal of state laws will indicate their wide variance. Under the Juvenile Court law of California, Leering's Gen. Laws 1923, Act 3966, sec. 6, original jurisdiction over delinquents under eighteen lies with the juvenile court and discretionary power is given to the judge to either try the case or submit it to a regular court for criminal prosecution. *People v. Wolff* (1920), 182 Cal. 728, 190 P. 22. It will be seen that this act is very similar to the one in force in Missouri. The statutes of Kansas give exclusive jurisdiction of juvenile delinquents to the probate courts and prosecutions in any other court are absolutely void. *Ex parte Swehla* (1923), 114 Kan. 712, 220 P. 299. Under a proper construction of the conflicting provisions of Iowa Code 1927, secs. 3617, 3618, 3619, 3632, 3634, 3636, the juvenile court does not have exclusive jurisdiction of a child under eighteen charged with offenses punishable other than by life imprisonment or death, but where the indictment is returned or information

filed in district court, it need not submit the matter to the juvenile court before proceeding under the indictment. *State v. Reed* (1928), 218 N. W. 609. Under the Laws Wis. 1927, sec. 48.01, C. 4, jury trial may be demanded or ordered by the judge. Discretionary power is vested in the judge to transfer a case to a criminal court under the provisions of Ala. Crim. Code 1923, sec. 3540; Carroll's Ky. Stat., 6th Ed., 1922, sec. 3315; and N. C. Code 1927, secs. 5039, 5040.

Lou, *JUVENILE COURTS IN THE UNITED STATES*, p. 37, gives a brief summary of present day American law. The author concludes: "Although the validity of this discretionary power conferred upon a judge has been upheld, the author feels that such practice is objectionable and subject to abuse."

Such discretionary power, however, should not be objectionable. Doubtless cases are presented where moral decadence has reached such an advanced stage that efforts at reformation would be fruitless.

C. R. S., '30.