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THE VIRGINIA JUVENILE COURT LAW OF 1950

PAUL D. BROWN*

A comprehensive new Juvenile and Domestic Relations Court law became effective in Virginia on July 1, 1950. This commentary is primarily concerned with the provisions relating to juveniles; its purpose is merely to introduce some background against which the legislation should be considered, and to point out some of the principal changes the new statute effects in the previous situation.

BACKGROUND

Since the establishment in 1899 in Chicago of the first separate court concerned with juveniles, it has become generally recognized in this country that juvenile courts are not based on the adversary theory with its concomitants of vengeance and punishment taken from the criminal law. The juvenile court rests its sanctions on the inherent right of the sovereign to protect his subjects. The theory is one of governmental support of the family as a unit as distinguished from a governmental "taking-over" of parental functions. If categorizing is required, the juvenile court is a court of chancery following the principles of equity.

The first Virginia juvenile court legislation was passed in 1914.¹ Under this first and remarkably complete statute, courts of record and police and justice courts could hear cases concerning juveniles and adjudge them delinquent, neglected or dependent, if the facts met given definitions. Probation or commitment to the State board of charities and corrections might be ordered by the particular court hearing the case. Juvenile offenders were "deemed not to be criminals" or treated as such, and only aggravated offenses could involve trial as an adult. Councils of cities of over 50,000 population were authorized to appoint a justice of a separate juvenile and domestic relations court. In 1922, the General Assembly provided that there should be established in every city and county a juvenile and domestic relations court.²

Though the philosophy and purposes of these laws were accepted,

*Member of the Arlington, Va., Bar.

¹Va. Acts of Assembly (1914) c. 57 and 350.

²Va. Acts of Assembly (1922) c. 481-3.

they failed to accomplish their purpose, except in a few urban localities which took advantage of the provision for a separate court. In most of the remaining localities the child appeared in the open adult court and experienced the atmosphere of a criminal proceeding. While not sentenced to jail except for aggravated offenses, the only probationary supervision was from the well-meaning, but untrained, county sheriff or city chief of police. In 1936, the trial justices in counties, and the police court justices in cities not having special juvenile and domestic relations courts, were given primary jurisdiction of these cases.³

In 1945 the picture in Virginia was: 10,868 children before 83 courts, which were served by 26 full-time probation officers, 18 of whom were employed in 16 cities, leaving but 8 serving full time in all of the remainder of the twenty-four cities and one hundred counties of the state; and 800 children (then classified as delinquents) being committed annually to the State Board of Public Welfare.⁴ The void as to probation officers was met principally by reliance upon local departments of welfare. A survey of the 1945 situation showed that almost no two courts functioned alike. There were twenty types of replies to the question concerning when warrants were used. Seventeen types of procedure were indicated as to the use of petitions. Seventy-seven per cent of the courts were, commendably enough, using informal hearings without either warrant or petition, but the authority for such hearings were doubtful, to say the least. In 1946 almost 4,000 children of the state were in jail.⁵ Less than half the judges received salaries for juvenile court service; those who were paid received compensation ranging from \$180.00 per year to \$7,900.00.⁶

In the 1948 session of the General Assembly, Senate Bill 175 was introduced. Briefly, it proposed seventeen juvenile and domestic relations courts of record and would have created separate courts with specially qualified judges and the necessary probation officers. Its supporters cited Virginia's high and expensive crime rate, the alarming juvenile problem and the ultimate economy of an effective juvenile

³Va. Acts of Assembly (1936) c. 385.

⁴Baughman, Full-Time Problems and Part-Time Court, 1 Bulletin of the Virginia Conference of Social Work, p. 5, April, 1946.

⁵V. A. L. C. Reports on Senate Bill 175 (1948) p. 11 gives a figure of 2,650 for 1948.

⁶Figures used in this paragraph are taken from two articles in 1 Bulletin of the Virginia Conference of Social Work, April, 1946: Phillips, The Path to the Court, p. 9, and Baughman, Full-Time Problems and Part-Time Court, p. 5.

court system. This bill was referred to the Virginia Advisory Legislative Council for study and report to the 1950 session of the Assembly.⁷

THE VIRGINIA ADVISORY LEGISLATIVE COUNCIL REPORT

On November 30, 1949 the Council reported on Senate Bill 175 (1948) and presented an alternate bill maintaining the earlier aims. The report labeled seventeen courts as "impractical," and did "not recommend that juvenile and domestic courts should at this time be made courts of record . . ." In its report, the V. A. L. C. stated it "recognizes a need for, endorses and recommends the establishment of a State-wide system of juvenile probation and also a State-wide system of juvenile detention as provided for in Senate Bill 175."⁸ It did not, however, feel that it was necessary to establish an independent commission to provide the necessary overall supervision and administration to the courts and their related services. It was felt this could be adequately handled as a subdivision of the existing Department of Welfare and Institutions.

The V. A. L. C. offered its bill as an endeavor: (1) to correct the "inadequacy, or often the complete absence, of the probation, detention and psychiatric services which are indispensable to the proper administration of a juvenile court"; (2) to correct the striking weakness in jurisdiction under which a child could be indicted and tried without, at least, initial hearing in the juvenile and domestic relations court;⁹ (3) to eliminate the statutory inconsistencies resulting from a quarter of a century of piece-meal amending; and (4) to make the law more uniform, more standardized and more comprehensive.¹⁰

MAJOR CHANGES PROPOSED AND ADOPTED

The law as proposed by the V. A. L. C. was changed in some details and adopted by the General Assembly as Chapter 383 of its 1950 Acts. It is found in the Code as Section 16-172.1 through Section 16-172.84. The statute now includes probably 95% of the provisions of the Standard Juvenile Court Act of the National Probation Association. Variations occur as to provisions of the Standard Act which never have been unanimously accepted.

⁷The background of the law as of February, 1950 is detailed in Note (1950) 36 Va. L. Rev. 113.

⁸V. A. L. C. Report on Senate Bill 175 (1948) p. 11.

⁹See *Mickens v. Commonwealth*, 178 Va. 273, 16 S. E. (2d) 641 (1941) cert. denied, 314 U. S. 690, 62 S. Ct. 362, 86 L. ed. 552 (1941).

¹⁰V. A. L. C. Report on Senate Bill 175 (1948) pp. 5-7.

The following major provisions of the new law should be noted:¹¹

1. The requirement of a court for every county and city is retained, but with the right in cities and counties to join in establishing a district court.¹²

2. The law is remedial. The welfare of the child is the paramount concern of the state, and to attain this purpose judges are granted "all necessary and incidental powers and authority, whether legal or equitable in their nature."¹³ Quære: Does this grant of equity powers to a court not of record give the power to issue injunctions, other than as incident to the power to suspend sentences? For example: to enjoin acts which contribute to the delinquency of a child or to enjoin removal of a child from the jurisdiction pending determination of a custody action.

3. City charter provisions conflicting with the new law are repealed.¹⁴ There is now a uniformity in the mode of selection of judges. In the counties and in cities of less than 25,000 population the circuit court appoints for a four-year term¹⁵ after the terms of judges in office July 1, 1950 have expired.¹⁶ In the remaining cities the corporation or hustings court appoints for a six-year term. If there are other courts of record, the selection is by "election" by those judges, any tie being broken by the Governor.

The statute provides that "... all judges elected or appointed under this law shall enter upon the discharge of their duties the first day of January next succeeding their election or appointment, ..."¹⁷ Quære: Is there not a hiatus if an incumbent's term expires (1) in December, and by oversight no appointee is named until after January 1st or (2) if it expires by his death before the end of his term? Section 16-172.9 only fills the gap as to a substitute judge's acting in

¹¹The terminology of this comment follows the definitions of a child or juvenile as a person under 18 and a minor as a person over 17 and under 21 years of age. However, the statutory definition of a minor is *over* eighteen and under twenty one. . . ." [italics supplied]. Va. Code Ann. (Michie, 1950) § 16-172.3. This hiatus is apparently carried over from similar language in the V. A. L. C. Report on Senate Bill 175 (1948). However, the Report also referred to a minor as "between 18-21 years." See pages 8 and 15 of the Report. It appears that the term "over eighteen" should be regarded as meaning "over the eighteenth birthday."

¹²Va. Code Ann. (Michie, 1950) §§ 16-172.4 and 16-172.8. [Section references in the following notes are all to Va. Code Ann. (Michie, 1950)]

¹³Sec. 16-172.1.

¹⁴Sec. 16-172.84.

¹⁵Sec. 16-172.4.

¹⁶Sec. 16-172.7.

¹⁷Sec. 16-172.7.

the event of the resignation, death, removal or permanent disability of the judge or associate judge.

4. In all counties and in cities of less than 25,000 population, the trial justice "shall" be appointed if otherwise qualified.¹⁸ This provision rejects use of the word "may" by the V. A. L. C. which felt a trial justice would then be too busy as judge of two courts and often would have a private law practice on the side. The mandatory "shall" may prove a hindrance in populous counties, though at least one populous county has no trial justice as such.

5. Localities are required to provide a suitable courtroom, offices and equipment.¹⁹

6. The judge is empowered to appoint a clerk, a bailiff, probation officers and, with limitations, such other employees as may be necessary.²⁰

7. The cooperation of public officials and certain institutions is required and the court authorized to seek the cooperation and assistance of public or private societies, agencies or institutions.²¹

8. Jurisdiction is exclusive and original and is set forth in detail in Section 16-172.23.

Offenses involving two members of a "family" are heard by the court. However, "in-laws" still are not included in the definition of: "husband and wife, parent and child, brothers and sisters, grandparent and grandchild." They may be included, as would adopted children, in the court's jurisdiction over "any violation of law the effect or tendency of which is to cause or contribute in any way to the disruption of marital relations or a home." Such broad definitions will require close scrutiny of complaints, else trial justices and police justices will be hearing cases which develop as disrupting a home and which fall within the exclusive original jurisdiction of the juvenile and domestic relations court. If the child's age appears while criminal proceedings are pending then courts of record may, and other courts must, transfer the matter forthwith to the juvenile court.²²

Sub-sections 7 and 8²³ can be mis-read as limiting the court func-

¹⁸Sec. 16-172.4.

¹⁹Sec. 16-172.19.

²⁰Secs. 16-172.11 and 16-172.71.

²¹Sec. 16-172.21.

²²Sec. 16-172.41.

²³Sec. 16-172.23, Subsecs. 7 and 8:

Except as hereinafter limited they shall have within the corporate limits of a city or the boundaries of a county in which they sit exclusive original jurisdiction, and within one mile beyond the corporate limits of said city concurrent jurisdiction

tion to that of an examining magistrate as to felonies committed by a child, as was held under the former law in *Mickens v. Commonwealth*.²⁴ They must be viewed in the full context of the statute for Sub-section 1 (i) recites the court's jurisdiction over children as including violations of any state law; children—those under 18—cannot be “convicted” or designated “criminals” by reason of a juvenile court finding;²⁵ and clearest of all Section 16-172.42 gives the court an option to retain jurisdiction or certify such child “for proper criminal proceedings” if the offense by an adult would be punishable by 20 years or less in the penitentiary. Offenses which would involve greater punishment if committed by an adult may likewise be retained or certified, subject to the right of the Commonwealth's Attorney to present the case to the Grand Jury and remove it from the juvenile court by obtaining an indictment.

Thus the court hears a case with two things in mind: should this offense, a felony if committed by an adult, be certified to a court of record for indictment and criminal trial, or should jurisdiction be retained and the case studied, keeping in view the welfare of the child? The question might be re-phrased to: Is the welfare of this child, who is 14 or over, so beyond repair that he should be certified for treatment as an adult criminal? In the words of the statute, is he beyond adequate control or inducement to lead a correct life? Here is found the tenor of the whole law. Hearings are not criminal in nature though such offenses may be involved. The welfare of the child is the paramount concern of the State. This approach is the justification for considering the evidence under the “preponderance” and not under the “beyond all reasonable doubt” standard.

with the juvenile court or courts of the adjoining county or counties over all cases, matters and proceedings involving: . . .

7. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or neglect of children or with any violation of this law which causes or tends to cause a child to come within the purview of this law, or with any other offense against a child except murder and manslaughter, provided, that, in prosecution for other felonies over which the court shall have jurisdiction, such jurisdiction shall be limited to that of examining magistrate.

8. All offenses except murder and manslaughter committed by one member of the family against another member of the family; and the trial of all criminal warrants in which one member of the family is complainant against another member of the family, provided, that in prosecution for other felonies over which the court shall have jurisdiction, said jurisdiction shall be limited to that of examining magistrate. The word “family” as herein used shall be construed to include husband and wife, parent and child, brothers and sisters, grandparent and grandchild; . . .

²⁴178 Va. 273, 16 S. E. (2d) 641 (1941).

²⁵Sec. 16-172.45.

9. Venue is tied to the actual presence of the child within the court's jurisdictional area "... unless the court for good cause shall otherwise determine."²⁶

10. A new section of particular interest to attorneys in the domestic relations field is quoted in full in the footnotes.²⁷ Other courts are not deprived of concurrent jurisdiction as to the custody of children when that question rises by way of a writ of habeas corpus or where that question or the question of guardianship is "... incidental to the determination of causes pending in such courts, ..."—e. g., divorce. *Quaere*: Can habeas corpus now be brought in the juvenile and domestic relations court, whether the juvenile court has assumed custody of a child or not? To be kept in mind is a ruling of the Attorney General that under the old law, (presumably this one, also), custody of a ward of the court remained solely in the juvenile or domestic relations court.²⁸

11. The initiation of juvenile cases is revised in major ways.²⁹ The court must require an investigation of facts and circumstances surrounding a complaint of a violation of the law before proceeding either informally or by petition. However, "any person" has the right to file a petition. The use of probation officers for all such investigations is presently impossible, for today the average juvenile court in

²⁶Sec. 16-172.25.

²⁷Sec. 16-172.26:

Nothing contained in this law shall deprive any other court of the concurrent jurisdiction to determine the custody of children upon a writ of habeas corpus under the law or to determine the custody or guardianship of children when such custody or guardianship is incidental to the determination of causes pending in such courts, provided that when a court of record shall have taken jurisdiction thereof the juvenile and domestic relations court shall be divested of such jurisdiction. Such courts may certify such matters to the juvenile and domestic relations court for hearing and determination or for recommendation.

²⁸See report of J. H. Montgomery, Jr., Associate Judge, Juvenile and Domestic Relations Court, Richmond, Va., *The Juvenile Court Act*.

²⁹Sec. 16-172.30:

Whenever any person informs the court that any child or minor is within the purview of this law or subject to the jurisdiction of the court hereunder, except for a minor traffic violation or violation of the fish and game law, the court shall require an investigation which may include the physical, mental and social conditions and personality of the child or minor and the facts and circumstances surrounding the violation of the law. The court may then proceed informally and make such adjustment as is practicable without a petition or may authorize a petition to be filed by any person and if any such person does not file a petition a probation officer or a police officer shall file it; but nothing herein shall affect the right of any person to file a petition if he so desires. In case of violation of the traffic laws, or game and fish laws the court may proceed on any summons issued without the filing of a petition.

Virginia has no probation officer or is understaffed. It is submitted that in many instances and until there are sufficient probation officers this may be handled, at least initially, by enlightened non-uniformed police investigation, through specially designated juvenile officers. Then a better result is often obtained, for the child ultimately placed under the guidance and counseling of a probation officer will not carry over that natural resentment against the person who uncovered the facts surrounding his violation. Counseling is more readily accepted.

The court now has stated authority to proceed informally and "make such adjustment as is practicable without a petition." Frequently complaints involve youthful transgressions which, at the time the complaint is made, stand out as those which may be "closed with a warning." A telephoned summons to the parents, a brief hearing and a conclusion that parental disciplines and control are adequate and that a warning is sufficient, are typical of informal hearings. Should the child be exonerated, he may be told so by the court. Should his problem be serious, then receipt of a petition may follow. Generally the result is to head off the development of serious child situations and to save time in the mechanics of handling a petition, summons, and notice to parents living within the state but at times outside of the court's jurisdictional area.

"Minor traffic" and game and fish law violations may be heard on any summons issued, without the filing of a petition.³⁰

In adult cases latitude is granted paralleling juvenile informal hearings. If used, this authority can be most effective in, for example, cases against grown children for non-support of an aged and destitute parent. Ordinarily proof of ability to provide such support, beyond the needs of the adult son's family is hard to obtain. An informal adjustment might often better meet the aim of the law on the basis of a "voluntary" acceptance of the legal duty to support.³¹

12. Previously no warrant of arrest could be issued for any child under 12 years of age without the written permission of a judge of a court of record or a juvenile and domestic relations court justice. Now written permission is not required. The lower age limit for warrants has been raised to 14 "when use of such process is imperative."³²

13. Formerly under Code Section 1918 the court had authority to require restitution and to impose a fine or imprisonment fee of up to

³⁰Sec. 16-172.30.

³¹Sec. 16-172.52.

³²Sec. 16-172.61.

fifty dollars, and if a child over 13 could not be made to lead a correct life under the juvenile law, then the child could be proceeded against as if he were over 18 and in the process be committed to jail. In other words, the case of a thoroughly unruly 17 year old could be transferred to a criminal court not necessarily of record.

Now, reparation as well as restitution may be required, and the fine provision is retained. Unfortunately there is omitted any mention of a probation fee, and this effective power is lost to the court. The General Assembly has apparently retained the availability of possible transfer of a child to a criminal court for trial, with a lower age limit of 14 years and over. This is clearly so as to felonies under Section 16-172.42. The authority as to misdemeanors is found in Section 16-172.43, but is confusingly located after a sentence referring to the preceding section on felonies. The interpretation which ignores the felony-misdemeanor distinction is in line with better juvenile court theory, for the test is not what the child did but rather, in the words of the statute, can he be: "adequately controlled or induced to lead a correct life by use of the various disciplinary and corrective measures available to the court."³³

14. The appeal period has been reduced from 20 to 10 days with the new right in the court to grant a rehearing within 30 days. Juvenile court orders remain in effect during petition for or on the pendency of an appeal or writ of error unless otherwise ordered by the appellate court. The appellate court may enter its order or judgment and, as to both juveniles and adults, remand the matter to the juvenile court.³⁴

15. The court "may" reopen any case and revoke or modify its order after written notice to the complainant and the person or agency having custody of the child or minor. The section³⁵ is labeled "Review of Order of Commitment." However, it is broad enough to cover any case. An indication that the General Assembly wished to rely on the court's discretion is found in the omission of the V. A. L. C. phraseology "The Court of its own motion *or on written complaint of a parent, guardian or next friend of a child . . . may reopen . . .*"³⁶ There is no limitation as to children committed to the State Board of Welfare and Institutions and subsequently placed by it in a foster home, a Virginia or out-of-state industrial school. In effect, then, local judges have been given a veto power if there are grounds for disagree-

³³Secs. 16-172.42-3.

³⁴Secs. 16-172.81-83.

³⁵Sec. 16-172.49.

³⁶V. A. L. C. Report on Senate Bill 175 (1948) p. 23 [italics supplied].

ment with the disposition made of a child committed to the State Board.³⁷

16. Of especial significance is the omission of the terms *delinquent*, *neglected* and *dependent*. A full column of the old code attempted definitions, but it is difficult to say which label was most appropriate. Many delinquencies grew out of dependency and neglect. The new phraseology is "within the purview of the juvenile court law." It comes from the Standard Juvenile Court Act. Juveniles respond better and have no reason to become as angry and uncooperative as many were when told they were "delinquent." The word was opprobrious, to say the least. "It is generally agreed that in dealing with the child as an individual the attempt to classify and label him is unnecessary and often impractical and harmful."³⁸

However, the three terms have been retained in Code Section 18-6 which includes the frequently used charge of "contributing to the delinquency of a child." An appropriate legislative amendment is in order.

17. To a degree, a state-wide juvenile probation system has been established as recommended by the V. A. L. C. Officers are appointed from a state list. In addition to their former court assigned duties, the Director of the Department of Welfare and Institutions (or subordinate administrative officer) may assign duties and may now require records of the officer's work.³⁹ Information obtained by the officers is privileged now, subject, of course, to disclosure to the judge. Such information may not be disclosed to anyone else unless ordered by the judge or the judge of a court of record.⁴⁰ On the state level, the Director is authorized to create a division in his department and to appoint a head thereof to administer the system including the supervision of local juvenile detention homes. Apparently for lack of funds no immediate appointment was made, though temporary assignment of the responsibility was given to Mr. Paul Keve in addition to his former duties with the Child Care Bureau. It has now been announced that Mr. Keve will, commencing July 1, 1951, have the permanent assignment. The Director is empowered to transfer the supervision of a probationer should the probationer move to another locality or state.⁴¹

³⁷Note that Sec. 16-172.81 allows rehearing in any case for good cause shown and after due notice to interested parties.

³⁸V. A. L. C. Report on Senate Bill 175 (1948) p. 8.

³⁹Sec. 16-172.75 (5).

⁴⁰Sec. 16-172.76.

⁴¹Sec. 16-172.79.

If local governing bodies do not provide for a probation officer (by appropriation of one half of a salary determined by them),⁴² the local superintendent of public welfare or one of his assistants "shall serve." Otherwise, with limitations, they *may* serve.⁴³

18. Children and minors going back to their localities following commitment to state custody may now be returned "to the committing court for supervision by juvenile probation officers" or, as before, to the local superintendent of the department of public welfare. This important rehabilitative period can be controlled better in some instances by a man, yet, as the V. A. L. C. pointed out, "all but six of the local welfare departments have only women on their staffs." The problem has been of major proportions for about 2,000 children are "parolees," and that number exceeds the number of adults on parole.⁴⁴

When such children come back to the committing court and the court feels after full investigation that the child should not be replaced in his own home, then under certain conditions the state will pay for boarding him in a foster home or institution. Thus a child need not be returned to his home if the home was so bad as to cause his derelictions in the first instance.⁴⁵

CONCLUSIONS

The new law is a sweeping revision incorporating most features of the Standard Juvenile Court Act. It places greater emphasis on the welfare of the child and moves away still farther from the "criminal" approach. The possibility of continued use of trial justices as juvenile and domestic relations court judges and the local appointment of probation officers mean that the effectiveness of the law in creating separate and adequate courts still remains with the counties and cities of the state, for they may retain the status quo. While the greatest need for development is in the counties and smaller cities, both were left out of the appropriation act which gives certain cities 50% reimbursement of the salaries of probation officers. If any reimbursement is to be made, it should apply to all counties and cities. If district courts are to be created by two or more localities, it will have to be done now while incumbent judges are remaining in office, for most of them are judges of other courts and when new judges

⁴²Sec. 16-172.72.

⁴³Sec. 16-172.73.

⁴⁴V. A. L. C. Report on Senate Bill 175 (1948) p. 9.

⁴⁵Secs. 16-172.77-8.

are named in every area, each area will thereafter want to keep its own court. The overloading of local department of public welfare with probation work will not cease until a sufficient number of local probation officers are appointed so that they may take the initial load as well as be in a position to accept responsibility for "parolees."

The desires of social agencies and interested persons have been heard in preparation of the law. It would appear that the bar and particularly the judges of these courts should meet to discuss the statute to seek out points in conflict or in need of clarification and to recommend appropriate corrections in time for presentation to the 1952 session of the General Assembly.⁴⁶

⁴⁶Since this comment was written a meeting of the Virginia Council of Juvenile Court Judges was held in Richmond, January 22-23, 1951, at which this matter was discussed and placed on the agenda of the spring meeting of the Council to be held at the same time as the meeting of the Virginia Council of Social Work. Opinions of the Attorney General, some eighteen in number, relative to the Juvenile Court Law of 1950, were discussed. Their forthcoming publication in the opinions of the Attorney General will be of interest to those who work frequently with this law.