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CHILD WELFARE LEGISLATION

By GLADYS M. KAMMERER*

Through two different sessions of the General Assembly the Kentucky Welfare Association tried to obtain passage of a measure creating a children's code commission to study and codify all child welfare laws of the state. In 1950 both houses passed a resolution to create such a commission, but the failure of one of the presiding officers to sign the measure invalidated it. At the request of the then Lieutenant Governor, Lawrence W. Wetherby, the Legislative Research Commission exercised its statutory power to study and investigate by authorizing the creation of an advisory committee to perform the task of codification and modernization set forth in the resolution.

Lieutenant Governor Wetherby appointed seven persons to this committee: a juvenile court judge as chairman, a professional social worker, a woman active as a lay leader for child welfare legislation, a pediatrician, a professor of political science, and two legislators. The committee began its work in September, 1950, and continued throughout 1951, holding informal hearings, sending questionnaires to county judges, inviting the help of federal agencies, visiting the Greendale Houses of Reform, studying all available data about child welfare programs in other states, and preparing its bills for presentation early in the 1952 session of the General Assembly. Its proposals received strong support from Governor Wetherby and became a part of his legislative program.

Four bills emerged from this committee, three of which became law. The only bill to fail was one which was designed to insure greater secrecy for adoption records by changing the inheritance rights of adoptive children. The bills passed by the legislature created a Youth Authority in the Welfare Department, modernized juvenile court procedure, transferred the Child Welfare Division from the Department of Economic Security to the Welfare Department under a new Children's Bureau, and relaxed

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in minor degree the provisions governing issuance of work certificates under the child labor law.

The creation of the Youth Authority and modernization of juvenile court procedures constitute the major reforms in the field of child welfare legislation and are contained in one bill. The Youth Authority is a new division of state government responsible for direction of all children's institutions operated by the state at present or in the future and for the development of a program of diagnosis and assignment of children committed to state care or custody. The Youth Authority is headed by a director appointed by the Commissioner of Welfare with the prior written approval of the Governor. He is to be selected on the basis of "professional training, experience, and demonstrated ability in the field of youth guidance and the treatment and rehabilitation of children committed to public care and custody." A governing board appointed by the Governor consists of five persons possessing "professional qualifications in such fields as the social sciences, psychology, medicine, law, education, and religion." The tenure of board members is four years, in staggered terms, and the board elects its own chairman annually. The director of the Youth Authority serves as the responsible administrator of that agency while the board is a policy-making and reviewing body. The case of each child committed to the Authority must be reviewed at least annually by the board. The Authority is located within the new Children's Bureau as one arm of that branch of the Welfare Department, the other arm of which is the Child Welfare Division. The work of these divisions is to be coordinated through the director of the Children's Bureau.

Commitments of children under twenty-one years of age to the custody of the state shall be to the Youth Authority except that in felony cases the circuit court may in its discretion sentence children under twenty years of age to the penitentiary or in misdemeanor cases to the county jail. Children committed by reason of a public offense must be studied and observed by the Youth Authority at a reception center staffed with psychiatrists, social workers, physicians, and psychologists. An assignment of these children and others committed to the Youth Authority for whom such diagnostic study seems desirable is made on the basis of the findings made through study of the individual child and his case

history. The Youth Authority is given broad discretion to discharge any children except those committed for commission of a felony under a sentence extending beyond their twenty-first birthday. It may also place them on parole at home, in a foster home or boarding home, commit to one of the institutions it operates or to a child-caring institution operated by a local government unit or by a private organization. If it determines that a child committed to it for a felony will not benefit from further treatment, it may return him to the circuit court making the original commitment for appropriate proceedings. Institutions placed under the Youth Authority are the Children's Home at Lyndon, the Houses of Reform at Greendale, and such other facilities as forestry camps or vocational training centers which the state may establish in the future. All children committed to these institutions or to the Division of Child Welfare prior to the effective date of the Youth Authority Act are now considered committed to the Youth Authority. Children under sixteen who were previously committed to the penitentiary under a sentence for a felony may be transferred to the Youth Authority by order of the Commissioner of Welfare.

The new juvenile court procedures established in this statute are designed to render all such proceedings *in the interest of* the child instead of *against* the child. The necessary content of petitions in these cases is clearly set forth, and all juvenile court documents must be so worded. All cases involving children except adoption proceedings; guardianship matters, inquests into sanity, and felonies continue to lie within the jurisdiction of the county court called "the juvenile court" for these cases. Children are defined as all persons who have not reached their eighteenth birthday. Special courtrooms for the hearing of juvenile cases must be provided in counties containing cities of the first two classes. Separate informal hearings must be held for all juvenile court cases, and no jury is permitted because of the rationale that those proceedings shall not be viewed as trials. The general public is excluded from attendance at such cases.

The taking of a child into custody for a public offense shall not be termed an arrest. The law relating to bail is not applicable to children. Children may be taken into immediate custody of the juvenile court and placed in a suitable detention facility if their

condition or surroundings justify such custody in the opinion of the juvenile judge. Counties containing cities of the first two classes are required to provide permanent detention facilities for children, and other counties must provide suitable detention facilities as the need arises. In executing this responsibility, they may call upon the Children's Bureau of the state to help acquire, develop and furnish such detention facilities. All detention facilities are subject to the rules and regulations prescribed by the Kentucky Children's Bureau. Children whose conduct endangers the safety or welfare of others in the place for detention of children may be transferred by order of the juvenile court judge to a jail, but they must be kept in a separate room or ward from that for adult prisoners.

Investigation of each juvenile court case is mandatory before the case may be disposed of, and a written report, which later becomes a part of the record, is to be in the judge's hands prior to the final hearing. Volunteer or salaried probation officers of the juvenile court, suitable public or private agencies, or the Kentucky Children's Bureau are to perform the investigation. The latter agency may enter into contracts with individual juvenile courts to furnish these investigative services.

If juvenile court proceedings indicate that children at least sixteen years of age or older appear to have committed a felony or children under sixteen to have committed murder or rape, these children may be turned over to the circuit court to be tried under regular criminal law procedures, should the juvenile court judge deem this transfer of jurisdiction to be in the best interests of both the child and the public. In case of transfer of jurisdiction, a grand jury may either return an indictment or recommend that the child be committed to the Youth Authority. The circuit court may order such commitment if it deems this the proper step to take. If the child is tried, the child or his parent or guardian may at any stage of proceedings request the circuit judge to halt the trial and commit the child to the Youth Authority. Children under the jurisdiction of the circuit court in criminal cases are subject to bail requirements just as are adult defendants. Any commitment to the Youth Authority by the circuit court in felony cases which have not reached the stage of trial or in which the trial was halted by the judge shall be for an indeterminate period

not to continue beyond the child's twenty-first birthday. No adjudication of the status of any child by the juvenile court, however, shall be deemed a conviction. Civil disabilities shall not be imposed upon any child by reason of an adjudication by a juvenile court, for no such adjudication causes a child to be deemed a criminal.

Neglected and dependent children not involved in the commission of any public offense may be turned over to the Youth Authority by juvenile courts if that agency has indicated that it has facilities available to care for such children and is willing to accept the commitment. Counties are authorized to pay for boarding home care for children and may call upon the Kentucky Children's Bureau for assistance in locating suitable boarding or foster homes. The Children's Bureau may further incur obligations chargeable to the county for such child care to the extent authorized by the fiscal court of the county.

Girls must be transported to any institution, under court order or direction of the Youth Authority, in the company of a female attendant. A court order or written direction of the Youth Authority may, however, allow girls to be brought to institutions in the company of a parent, grandparent, or adult brother or sister. Violations of these provisions must be reported by institutional agents receiving the girls to the Commonwealth's Attorney in the judicial district in which the institution is located.¹

Juvenile court probation officers are covered in the new law. Not only are the old salary restrictions lifted and their compensation left to the fiscal court to fix, but their duties are explicitly outlined. In any county, county judges are allowed to appoint "discreet persons of good moral character" as volunteer probation officers with or without pay. Field workers of the Kentucky Children's Bureau may also be appointed as volunteer probation officers for a county without pay from county funds. The Division of Probation and Parole of the Department of Welfare is stripped of all responsibility and authority over children paroled by the Youth Authority except as to children released from the Houses of Reform before the new statute took effect.

¹ A fine of not less than \$100 nor more than \$500 is the penalty for violation of the section on transportation of girls.

The transferring the Child Welfare Division from the Department of Economic Security to the new Kentucky Children's Bureau of the Welfare Department was based on the rationale that child welfare activities must be tied in closely with those of the Youth Authority. Furthermore, the services of child welfare workers can on certain problems be made available to the Youth Authority more easily within the same bureau under a single administrative head than across departmental barriers. The director of the Children's Bureau has primarily a coordinating function with respect to the two divisions within that Bureau, Child Welfare and Youth Authority. The Child Welfare Division retains its identity and all responsibilities, powers and duties heretofore imposed upon it in addition to such new ones as are delegated to the Children's Bureau by the Youth Authority Act. The transfer, therefore, opens the way to an increased prestige for the division which always flows from greater responsibility, provided that funds can be supplied in the future to develop the child welfare program properly in this state.

The third statute which originated with the advisory committee permits minors at least fourteen years of age but under sixteen and who hold special work certificates to attend school at times other than regular school hours, if school authorities have arranged such special hours. It retains all the restrictions on types of employment for minors enacted in the 1948 law except to permit work under written apprenticeship agreements approved by the State Apprenticeship Council. Employment certificates may be issued to children excused from compulsory school attendance, those excused from school attendance on account of mental condition or recommended for placement with retarded children by a state or other approved child guidance clinic when suitable jobs properly supervised are actually available. Special employment certificates may be issued to those children excused from compulsory school attendance and who are at least fourteen years of age. These special certificates may be issued either by the local board of education under the rules of the State Department of Education or, in cities of the first two classes, by probation officers. This latter provision facilitates placement of mentally retarded children often guilty of repeated truancy and, therefore, of being brought into juvenile court but whom school authorities usually

refuse to release from compulsory attendance requirements despite their inability to provide special instruction for such children.

With these measures Kentucky pulls abreast of the few states with Youth Authority legislation such as Wisconsin, Minnesota, California, and Texas. The problem now facing the state is to recruit personnel competent to carry out these statutes as conceived by their authors and to solve the administrative problems always evoked by the creation of a new organization. It would be a mistake to believe that money alone will give Kentucky a modern program for its children. Intelligence, comprehension of the broad goals envisaged by the advisory committee, and the spirit to forge ahead are essential if these laws are to constitute more than a mere gesture in the direction of eradicating our long-time backwardness in this field.