Chapter 2

Creating Missouri's Juvenile Court

As the nineteenth century passed to the twentieth, thousands of delinquent and dependent children still found themselves confined in America's prisons, almshouses, asylums and reformatories. All but the youngest juvenile offenders were subject to criminal court trial and sentencing. The nation had no tradition of public foster care, and adoption-by-deed was effectively unavailable to many Missouri children needing new permanent family relationships. Non-institutional care of delinquent and dependent children often depended on private charity, but few private organizations outside larger cities could satisfy the need.

By the 1880s, the nation's child savers began campaigning for a specialized court to hear and decide cases central to the lives of delinquent and dependent children. The campaign climaxed on April 21, 1899, when Illinois created the nation's first juvenile court. The Illinois legislature had rejected a juvenile court bill in 1891, but the 1899 bill passed unanimously after brisk advocacy. The leading advocates included the Illinois State Board of Public Charities, the Illinois Federation of Women's Clubs, the Chicago Women's Club and the Chicago Board of Education.

On July 1, 1899, the juvenile court convened in Chicago's Cook County Building before moving eight years later to a new building the city constructed diagonally across from Jane Addams' Hull House settlement. The juvenile court was as much a social welfare provider as a court, treating wayward children and their distressed families with judicial enforcement authority. The court's overt social welfare role won wide support because the state had begun creating child protective programs, but without a network of

executive agencies to administer them.

The Chicago Bar Association, another strong juvenile court supporter, acknowledged the *parens patriae* doctrine as the new court's foundation. The Association extended the doctrine to delinquents, a group historically outside its protective scope: "[T]he State must step in and exercise guardianship over a child found under such adverse social or individual conditions as develop crime," the association declared. "[H]e may be treated, not as a criminal or one legally charged with crime, but as a ward of the State, to receive practically the care, custody and discipline that are accorded the neglected and dependent child."[1]

By making delinquent and dependent children wards of the court entitled to state protection, the 1899 Illinois juvenile court legislation began a bold experiment. The act applied only in counties with populations over 500,000, a threshold met only by Cook County (Chicago and its suburban and outlying rural areas). Statewide juvenile courts would await later legislation once the experiment's results were in.[2]

The child savers did not have long to wait. Twenty-three states created juvenile courts by 1911, and forty-six by 1925. Never before had so many states created entirely new court systems so swiftly, in such unison and with such general enthusiasm. Even other nations quickly copied the American experiment. Years later, the U.S. Children's Bureau called the nation's embrace of juvenile courts "probably the most remarkable fact in the history of American jurisprudence." A group of leading juvenile justice experts has called the juvenile court "the most widely and immediately popular legal reform in American history." At about the time of the Illinois court's golden anniversary, former Harvard Law School Dean Roscoe Pound went even further, calling juvenile courts "the greatest forward step in Anglo-American jurisprudence since Magna Charta."[3]

The new specialized courts were grounded in the core premise that children are different from adults, with distinct physical, emotional and cognitive needs and capacities. The child savers' battles were not yet won, but the juvenile courts' very existence strengthened voices who argued that routine confinement in prisons and impersonal congregate institutions disserved children and the greater community.

Missouri's Legislative Framework

Governor Alexander M. Dockery strongly endorsed juvenile court legislation in his January 8, 1903 message to the General Assembly. On March 23, barely four years after the seminal Illinois legislation, the Governor signed

legislation creating Missouri's first juvenile courts. The legislature had passed the bill unanimously after energetic advocacy led by the St. Louis Humanity Club, the Missouri Conference of Charities and Corrections, the State Board of Charities and Corrections, and police court and circuit judges. Missouri law enforcement officers also supported the juvenile court bill in committee testimony, arguing that imprisonment taught children the ways of adult convicts. The bill closely tracked the Illinois act and created juvenile courts modeled on that state's prototype. Indeed, Missouri's bill was what we call today a "cut and paste" adaptation of the Illinois legislation.[4]

The General Assembly took the same tentative approach as Illinois, enacting a high population threshold met only by the largest metropolitan areas, before inching toward a statewide juvenile court with further legislation spanning more than a decade. The bill Governor Dockery signed applied only to the City of St. Louis and counties with populations of 150,000 or more. Jackson County (Kansas City and its rural and urban outlying areas) was the only county that qualified. Rather than create an entirely new trial court system, the bill created the juvenile court as a division of the existing circuit court.[5]

The juvenile court immediately won lavish praise from Missouri Bar Association president William Muir Williams, who had been a state Supreme Court judge from 1898 to 1899. The juvenile court, he told the Association's annual meeting in early June, was a "radical, and . . . most commendable departure from ancient methods in dealing with dependent and delinquent children." "Herding children in jails and public prisons with adult criminals can not tend to improve their morals, or correct their habits," he said. "A boy committed to jail with thieves, burglars, murderers and other criminals as his daily companions, will not require any great term of service to become highly accomplished and fully educated in all the arts to be learned at such a place and from such associates." Williams praised the General Assembly for both economy and altruism:

> It is better *business policy* to spend money in attempting to reclaim [a child] *before* he has gone too far in a [career of crime], than to devote a larger amount to restrain and punish him *after* he has become an habitual criminal. . . . It is bad policy, in the city or country, to arrest and commit to jail a child ten, twelve or fifteen years of age, and, after two or three months confinement, take him to the bar of the court for trial as a criminal. . . . [A]n opportunity should be given for reformation and to this end, each case should be disposed of according to the condition of the child and not by any fixed and unchangeable rule.[6]

The juvenile court act was quickly implemented at each end of the state.

Missouri's first juvenile court session was held in the Four Courts Building on Twelfth Street between Clark and Spruce in St. Louis City on May 4, less than two months after the Governor signed the bill. Circuit Judge Robert M. Foster presided, expressing hope that the new court would produce "better understanding of the forces of evil at work upon the younger members of the community."[7]

Jackson County also wasted little time creating its juvenile court. On June 17, Circuit Judge James Gibson, acting as the county's juvenile court judge, found eight-year-old James Loving guilty of petit larceny, determined that neither the delinquent nor his indigent parents could afford payment for detention, and committed the boy for two years to the Boonville reformatory, whose conditions had already marked it as no place for an eight-year-old.

On December 9, 1903, the state Supreme Court unanimously rejected young Loving's constitutional challenge to the nine-month-old juvenile court act. Evidently serving by court appointment to bring the test case, the boy's counsel first argued that by regulating both delinquent and neglected children, the act unconstitutionally treated two subjects. The court rejected the argument on the ground that children were but one subject.[8]

Loving also rejected the boy's contention that because only St. Louis City and Jackson County met the 1903 act's population threshold, the legislation was an unconstitutional local and special law. The court upheld the act's limited application on the ground that unusual "danger of moral infection" lurked in the cities. "[T]here would be practically no necessity for [a juvenile court] in purely agricultural communities, where families live miles apart, and where parental authority is ever present," Judge James D. Fox wrote for the Court, quoting counsel for the respondent Jackson County sheriff. Rural areas have "little or no corruption or contamination to affect the delinquent or neglected ones. . . . The threatening evil and imminent danger to society due to the congregation of dense populations, and the resulting vice and lawlessness in the large centers of population throughout this country, are only too well known to all who are in any way conversant with the trend of modern sociological development."[9]

Loving's portrait of legislative purpose reflected the agrarian ideal that still dominated popular thought during the Progressive era, even while massive population shifts from farms to the cities were changing America. Dominance was particularly strong in states such as Missouri with large rural populations. Outside St. Louis, Kansas City and St. Joseph, only about 7% of Missourians lived in towns with populations greater than 4000.[10]

In his 1913 Inaugural Address, Governor Elliott W. Major praised farmers as "the bone and sinew of the State." Physician Thomas Travis reflected contemporary American stereotypes when he asserted that 98% of the nation's

delinquents came from cities, towns, and villages, and only 2% from "the open country." Not only did Travis provide no support for his perhaps exaggerated numbers; he and his readers may not even have realized that the rural percentage, whatever it was, might have been artificially low because most early juvenile courts were in or near the nation's urban centers.[11]

Loving did not dispel the provocative question Missouri Bar Association president Williams had posed to the General Assembly six months earlier: "[I]f it is well to have in the two largest cities of the State a [juvenile] court," he said, "why should not the provisions of the law be extended to smaller places, and even to every county in Missouri?" The president instructed the lawmakers that "children in the country districts, and in the less populous cities should have every protection and privilege, under the law, accorded to children of the large cities."[12]

Two years later, the General Assembly began extending the juvenile court beyond its 1903 urban boundaries. Legislation in 1905 created a juvenile court in counties with populations between 150,000 and 500,000, and repealed the 1903 act insofar as it applied to counties with less than 500,000 population. In 1907, Governor Joseph W. Folk (the former reform-minded St. Louis Circuit Attorney) strongly urged the General Assembly to extend the juvenile court to smaller counties in light of the positive experiences other states reported with their juvenile courts. The lawmakers responded by creating juvenile courts in counties with populations between 100,000 and 150,000.[13]

At the end of this four-year flurry, juvenile courts still reached only a small percentage of the state's children. Even St. Louis County, with a population of only 50,000 at the time, was left on the outside. Again Governor Folk urged the legislature to extend the juvenile courts to other areas of the state because "[y]outhful violators of law deserve different treatment from hardened criminals."[14]

In 1909, the General Assembly expanded the 1903 and 1905 acts with legislation that reached counties with populations of 50,000 or more. In St. Louis County a month later, Gustafus A. Wuderman took his seat as the County's first juvenile court judge.[15]

In 1911, the legislature amended the 1909 act to bring the juvenile court to Buchanan, Jasper and Greene counties. The new act reached delinquent and dependent children under seventeen, rather than the earlier acts' sixteen. Despite this growing inclusiveness, the juvenile court had yet to come to rural and small town Missouri.[16]

In 1912, the juvenile court movement lost the stout voice of the St. Louis Humanity Club, which disbanded after achieving improved conditions in the St. Louis House of Refuge, removal of virtually all children from the city's jail and creation of Missouri's first juvenile court. Child advocacy nonethe-

less continued to beckon many Club members, including Mrs. Henry W. Elliot, the daughter-in-law of Dr. William Greenleaf Elliot, a founder of the St. Louis public school system and of Washington University. Mrs. Elliot was called "the real founder of the St. Louis juvenile court."[17]

By that time, the Missouri Conference of Charities and Corrections (later renamed the Missouri Conference of Social Welfare) had become a strong voice in children's affairs. The private organization of professional social workers sent a full-time lobbyist to Jefferson City to press for social reforms, including statewide extension of the juvenile court system.[18]

In 1913, the legislature responded to the Conference's efforts by conferring dependency and delinquency jurisdiction on the probate court in counties with populations under 50,000. Probate jurisdiction seemed wise because circuit courts exercising juvenile jurisdiction were not a comfortable fit in some smaller counties. Many rural and small town circuit courts held sessions only two or three times a year, frequently for less than a week each time. Children could not wait that long for their hearings and treatment, particularly if they languished in detention or dependency.[19]

The probate experiment was short-lived. In 1914, the state Supreme Court held that by conferring juvenile jurisdiction on some but not all probate courts, the prior year's legislation violated the state constitution's command that probate courts maintain uniform organization, jurisdiction, duties and practices. This decision led to the 1917 legislation that created juvenile courts in the state's smaller counties, which would need to adapt their calendars accordingly. Like the 1911 juvenile court act, the 1917 act reached children under seventeen.[20]

Years of incremental legislation had crafted a dual system, with the 1911 act codified in one article of the state code and applying to the larger counties and St. Louis city, and the 1917 act codified in another article for the smaller counties. The two acts were identical in many respects and quite similar in others, but the dual system prevailed until the General Assembly finally enacted a unified juvenile court act in 1957. Finding that "conditions which surround a boy or girl in large counties are quite different from those in small counties," the state Supreme Court held in 1930 that the differences between the two acts did not deny equal protection to children sanctioned under one of them.[21]

By 1921, Missouri's juvenile courts reached all major populated counties. Equally important, the state Supreme Court praised the juvenile courts as progressive, humanitarian tribunals marked by "wise and beneficent purposes." In *State ex rel. Cave v. Tincher*, the Court recognized the state's *parens patriae* obligation to protect delinquent and dependent children. Children were "no longer regarded as criminals to be punished without effort at ref-

ormation and after their detention to continue as menaces to society; but as wards to be aided, encouraged and educated, that they may . . . become assets instead of liabilities."[22]

Tincher acknowledged that the juvenile court may "provide for the comfort and promote the well-being" of children, even when state authority restricted personal liberty or interfered with parental rights. *Tincher* thus recognized the court's authority to impose reasonable restrictions on parental control of children needing treatment, including children who had committed no criminal act triggering a need for community response.[23]

Secure in the unconditional support of the state's highest tribunal and with the statutory framework in place, juvenile courts in Missouri's two largest cities quickly became among the nation's busiest. In 1920, for example, the St. Louis City juvenile court formally disposed of 2,064 cases (1708 delinquency cases, and 356 dependency and neglect cases), more than the number heard that year by juvenile courts in most other major cities, including Boston, Minneapolis, Seattle, Los Angeles and San Francisco. In its first twenty-six years (that is, before January 1, 1930), the St. Louis court entertained 38,520 cases. In 1936, the Jackson County juvenile court heard 2288 cases (1387 delinquency cases, and 901 dependency and neglect cases).[24]

The St. Louis and Jackson County juvenile courts were not the only ones with heavy dockets. In 1919, the General Assembly increased the salaries of juvenile court judges in counties with less than 50,000 population, a sure barometer of the growing caseloads in these small jurisdictions, which might have only one circuit judge and one magistrate judge to manage the entire trial docket. In addition to their salaries as circuit judges, these juvenile court judges would now receive $1500 annually for their juvenile court service. A similar barometer of growth was the 1921 legislation that authorized circuit judges in these small counties, and only in these counties, to call special terms of the court to dispose of pending cases.[25]

The Juvenile Court's Expansive Jurisdiction

Missouri's juvenile courts were meant to be busy places. In nearly identical language, the 1911 and 1917 juvenile court acts conferred "neglect" and "delinquency" jurisdiction over a broad range of conduct, including much conduct that today might lie beyond the reach of any court. The juvenile courts also exercised adoption jurisdiction after 1917.

By defining neglect and delinquency jurisdiction broadly, the General Assembly sought to avoid legal technicalities that might have cast many children back into the criminal court system or left them and their families with-

out juvenile court treatment. While the lawmakers were creating the statewide juvenile court system, narrower definitions in some other states had already proved porous.

The reach of neglect and delinquency was so broad that their definitions deserve full quotation. The 1911 act defined a "neglected child" as a child under seventeen "who is destitute or homeless, or abandoned, or dependent upon the public for support, or who habitually begs or receives alms, is found in any house of ill-fame, or with any vicious or disreputable person, or who is suffering from the cruelty or depravity of its parents, or other person in whose care it may be; and any child who while under the age of ten (10) years is found peddling or selling any articles or singing or playing any musical instrument for gain upon the street or giving any public entertainments or accompanies, or is used in any aid of any person so doing."[26]

Delinquency jurisdiction combined what today would be delinquency and status offense jurisdiction.[27] The combination would continue until the 1957 unified juvenile court act separated the two. The 1911 act provided that a "delinquent child" included a child under seventeen:

> who violates any law of this state, or any city or village ordinance, or who is incorrigible; or who knowingly associates with thieves, vicious or immoral persons, or who is growing up in idleness or crime; or who knowingly visits or enters a house of ill-repute; or who knowingly patronizes or visits any policy shop or place where any gaming device is or shall be operated; or who patronizes or visits any saloon or dramhouse where intoxicating liquors are sold; or who patronizes or visits any public pool room or bucket shop; or who habitually wanders about the street in the night time without being on lawful business or occupation; or who habitually wanders about the streets or roads or public places during school hours without being on any lawful business or occupation; or who habitually wanders about any railroad yards or tracks, or jumps or who habitually hooks on to any trains, or enters any car or engine without lawful authority; or who is either habitually truant from any day school, or who, while in attendance at any school, is incorrigible, vicious or immoral; or who habitually uses vile, obscene, vulgar, profane or indecent language; or who is guilty of immoral conduct in any public place or about any school house; or who habitually and wilfully, and without the consent of its parents, guardian, or other person having legal custody and control of such child, absents itself from home and remains away at night, or loiters and sleeps in alleys, cellars, wagons, buildings, lots or other exposed places.[28]

Delinquency jurisdiction fundamentally changed the common law, which permitted children over seven to be convicted of crimes. Now children under

seventeen would be processed in juvenile court as delinquents, but most could not be convicted in criminal court. The General Assembly did leave the door slightly ajar by permitting criminal prosecution of juveniles charged with particularly serious crimes. The 1911 act permitted the juvenile court to impose a sentence extending beyond the age of twenty-one on a delinquent who committed acts that, if committed by an adult, would be punishable by death or imprisonment in the state penitentiary for ten years or more. The 1917 act went further, permitting the juvenile court to dismiss a delinquency petition outright and transfer the case to the criminal court on a finding that the child was "not a proper subject to be dealt with" in juvenile court. Legislation in 1927 permitted all the state's juvenile courts to transfer children to criminal court on this finding. The state Supreme Court upheld the 1927 legislation, and transfer has been a part of juvenile court practice ever since.[29]

Missouri's broad neglect and delinquency definitions reached youthful conduct that troubled the citizenry of the day. By proscribing peddling or singing on the street, for example, the legislature sought to strengthen the state's new child labor law. References to pool halls, betting establishments and bars sought to shield children from harmful influences outside the home. Jurisdiction over habitual nighttime wandering enabled the juvenile court to enforce the increasingly popular local juvenile curfew ordinances, and even to sanction juveniles for keeping late hours in communities without an ordinance. "Train jumping" referred to the growing population of hoboes, including some children, who rode the rails. Truancy and school violence troubled educators and police, who saw schooling as a key to social advancement and crime prevention. Unskilled adult workers also preferred to have children in school rather than as competitors depressing wages.

In the 1920s, the General Assembly made one abortive attempt to extend the juvenile court's jurisdiction over children. Apparently pleased with the court's operation during its first two decades, the lawmakers in 1923 increased the maximum jurisdictional age from seventeen to eighteen, but only in counties with populations of 50,000 or more. In 1928, the state Supreme Court held that the legislation violated equal protection by treating some children differently from others, and the juvenile court's maximum age returned to seventeen statewide.[30]

The Juvenile Court as a Division of the Circuit Court

Like most other states, Missouri created juvenile courts without establishing an entirely new trial court system and without authorizing new judgeships. Except for the short-lived 1913 probate legislation, Missouri conferred juvenile

jurisdiction on the existing circuit courts. The circuit courts would create a division called the "juvenile court," which (as the state Supreme Court later described) would remain as separate from the other divisions as one circuit was from another. The circuit court would designate one of its circuit judges to sit as the juvenile court judge for a specified period, designate a deputy clerk to act as juvenile court clerk, and maintain separate "juvenile records."[31]

Separation of circuit court divisions meant more than mere labeling. In *Ex parte Bass* in 1931, for example, the Greene County juvenile court determined that the 16-year-old robbery suspect should be tried under the general criminal law rather than processed as a delinquent. The juvenile court judge then took the boy's guilty plea and sentenced him to twenty-five years in the state penitentiary. The state Supreme Court held that the juvenile court had no authority to impose a sentence in the penitentiary, even though the judge might have imposed the same sentence while sitting in another division.[32]

Adapting Missouri's existing circuit courts made sense. The circuit court's aura lent dignity to the juvenile court and its enforcement authority, and likely spared the new tribunal derision as a "kindergarten court" or a social services provider masquerading in judicial robes. The position of juvenile court judge also carried the prestigious title of circuit judge. Minor functionaries such as police judges or justices of the peace sat as juvenile court judges in a few other states, ordinarily with unsatisfactory results because these appointees generally lacked credibility, training and temperament to decide children's cases.[33]

Missouri juvenile court caseloads would be heavy, yet too small to justify funding an entirely new trial court system and support staff in smaller counties and even in St. Louis and Kansas City. Adapting the existing circuit courts also assured flexibility because juvenile court judges would devote only part of their time to the court's work, even in the busy St. Louis City court. The St. Louis juvenile court judge heard juvenile cases for most of the morning four days a week and tended to juvenile court matters, but he also heard cases in other divisions because he was a circuit judge. As late as the 1950s, St. Louis County juvenile court judges still heard juvenile cases on a part-time basis on Fridays while hearing other cases the rest of the week.[34]

On the other hand, assigning circuit court judges to sit in the juvenile division may have deprived some Missouri counties of the specialist judges envisioned as essential to the juvenile court's rehabilitative mission. The U.S. Children's Bureau sensibly called for juvenile court judges who combined legal training with an understanding of child psychology and contemporary social problems. This was a tall order not guaranteed to be filled by judges who were ordinarily elected without special reference to the juve-