

dren's advocate, urged juvenile courts to hold delinquency hearings within forty-eight hours. Swiftmess might aid rehabilitation by imposing discipline while the offense was still fresh in the child's mind, but it certainly did not leave children or parents much time to secure or prepare counsel. The view of juvenile court as territory alien to lawyers continued until the United States Supreme Court decided *In re Gault* in 1967. In fact, just a few months before that landmark decision, the Katzenbach Commission reported that "[l]awyers were unnecessary—adversary tactics were out of place" in the essentially informal juvenile courts.⁷⁵

When the General Assembly enacted Missouri's unified juvenile code in 1957, the lawmakers included a provision intended to mirror decades-old practice without plowing new ground. "The procedure to be followed at the hearing shall be determined by the juvenile court judge and may be as formal or informal as he considers desirable."⁷⁶

Confidentiality

To enhance prospects for rehabilitation, juvenile court proceedings and records nationwide were closed to the public except in rare circumstances. Whether mandated by statute or, as in Missouri, by court policies and traditions, closure delicately balanced competing interests. In delinquency and dependency proceedings alike, the aims were to spare children and families stigma and the glare of publicity. These were weighty aims, but closure also left children and families without the constitutional rights to a public trial enjoyed by other civil and criminal parties. Exclusion of the press and public may have diminished public understanding of the court's decisionmaking. Dean John H. Wigmore, author of the classic multivolume evidence treatise that bears his name, argued in 1927 that closing delinquency cases to the public was "a long step toward undermining the whole criminal law" by diminishing the general deterrent effect of delinquency adjudications.⁷⁷

Dean Wigmore was a lonely voice as criticism of juvenile court confidentiality remained muted in the early years. Confidentiality assumed several forms in Missouri. The right to attend juvenile court proceedings extended only to witnesses, the child, the parents and court officers (and, at least in St. Louis city, representatives of the St. Vincent de Paul Society, the Federation of Protestant Churches and the Jewish Educational Alliance, organizations that often assisted the parties and the court). Missouri delinquency dispositions could not be used against the child in any other proceedings, except ones in the juvenile court itself. Juvenile court records and dispositions were sealed or expunged to protect the juvenile's privacy, and delinquency adjudications did not leave the juvenile with a criminal record.⁷⁸

Confidentiality meant keeping cases and reports out of the press, a sometimes difficult chore in communities with rival newspapers vying for circulation and other competitive advantage. In the early twentieth century, papers were accustomed to covering crime but unaccustomed to the new juvenile court's rehabilitative mission. After a few years, the St. Louis City juvenile court secured an agreement with the local press to cease publicizing the court's cases, which previously had often been sources of local notoriety. In other places, confidentiality often depended on self-restraint by the press.⁷⁹

Separate incapacitation

Throughout the nineteenth century, the child savers fought to remove the nation's delinquent and dependent children from the austere, and sometimes only marginally humane, prisons that housed hardened adult criminals. The almshouses, asylums, houses of refuge and reformatories that held children were frequently little better than prisons, but the reformers believed that rehabilitation depended on separating delinquent children from imprisoned adults.

Missouri's juvenile courts might commit delinquents to an institution that housed adult convicts, but the juvenile court acts prohibited authorities from confining children in the same building as adult convicts, bringing children into any yard or building where adult convicts may be present, or permitting any contact or interchange between children and adult convicts. No delinquent could be sent to the state penitentiary. Children fourteen and under could not be incarcerated in any common jails or lockups under any circumstances.⁸⁰

By the early twentieth century, most dependent and delinquent Missouri children had been removed from the prisons, almshouses and asylums that housed adults. But investigations by the State Board of Charities and Corrections revealed that removal remained incomplete, even after the juvenile courts began sitting.

The Children's Code Commissions

By the eve of the First World War, the nation's laws affecting children had been enacted piecemeal for decades, codified in scattered sections of the state codes without careful reexamination in light of national trends. With the juvenile courts finally in place, advocates began calling for greater national uniformity, more coherent codification, periodic review of outdated nineteenth century laws, and enactment of new progressive legislation.

In 1915, Missouri became the fourth state to appoint a children's code

commission to study existing laws and recommend revisions and new legislation. Between 1915 and 1919, Governors Elliott W. Major and Frederick D. Gardner appointed three such commissions. Each relied on private funding, and each was chaired by Judge Rhodes E. Cave of St. Louis. The commissioners included state and local officials, legislators, social workers, officers of state women's associations, judges and lawyers.⁸¹

The first commission, appointed by Governor Major in 1915 at the urging of the Missouri Association For Social Welfare, replaced a committee of three senators which the state Senate appointed early that year, but which did not assemble because its appropriation was found invalid. The 23-member commission achieved mixed results when the legislature enacted only ten of the forty-two bills recommended in its December 1916 report. The lawmakers rejected several central recommendations, including ones to mandate parental support for out-of-wedlock children, enact a single statewide mothers' allowance law, provide free medical examinations of all school children, create professional boards of public welfare in every county, and strengthen the 1905 compulsory education act.⁸²

On the other hand, the Major commission could point to important successes because the General Assembly in 1917 extended juvenile courts to the state's smaller counties, repealed the apprenticeship statute, and replaced adoption-by-deed with judicial adoption. The scorecard might have been even better, but the state faced an economic crisis in the immediate prewar years. Commission members also made little effort to marshal public support for their recommendations, and the alcohol prohibition issue created legislative gridlock.⁸³

Missouri's second children's code commission, appointed by Governor Gardner in 1917, learned from its predecessor's mistakes and campaigned hard for public support. The twenty-eight commissioners held public hearings, wrote editorials, secured general press backing and enlisted the help of church groups and women's organizations. The most supportive organizations were the Women's Christian Temperance Union, the Missouri Federation of Women's Clubs, the Missouri Women's Committee of the National Defense Council, and the Equal Suffrage Club.⁸⁴

The Gardner Commission's public outreach paid off. Prodded by the Governor's statement that the legislature "did not go far enough" in response to the earlier commission's recommendations, the lawmakers enacted twenty-five of the fifty-one bills the commission recommended in its 1918 report, including several of the most important ones. The lawmakers strengthened the state's compulsory education act, created the state Division of Child Hygiene, and strengthened the child labor act by prohibiting children under sixteen from using dangerous machinery or working underground.⁸⁵

The third Children's Code Commission, appointed by Governor Gardner in 1919, resulted in important legislation concerning state services for children and other protective measures, including pure food and drug laws and a milk inspection act. Legislation in 1921 to authorize appointment of county welfare superintendents to improve delivery of social and educational services to rural children, however, had little effect because only a few counties made the appointments. Other counties either did not want new officers intruding on existing county agencies or did not have welfare agencies and did not want to assume the cost of public welfare.⁸⁶

By the early 1920s, most other states had appointed children's code commissions of their own. The executive secretary of Missouri's first commission reported that its recommended children's code attracted nationwide attention, prompting requests for copies "[f]rom Maine to California to Florida and across the waters from England." The work of Missouri's three gubernatorial commissions must be judged by the recommendations the General Assembly enacted as well as by those it did not. A national authority on children's legislation said that enactments recommended by three commissions gave Missouri the best child welfare laws in the nation. The commissions were positive forces that produced progressive legislation and created a foundation for future action.⁸⁷