

other Indian families. In the absence of good cause for a contrary foster placement, preference must be given to placement of an Indian child with (1) a member of the child's extended family, (2) a foster home licensed, approved or specified by the child's tribe, (3) an Indian foster home licensed or approved by a non-Indian licensing authority, or (4) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child's needs. The Indian Child Welfare Act has figured in a number of reported Missouri decisions.⁶⁸

Permanency Planning

In response to criticism that minority and poor children were overrepresented in the nation's foster care system, the Adoption Assistance and Child Welfare Act of 1980 made eligibility for specified federal funding contingent on a state's agreement, before placing a child in foster care, to make reasonable efforts "to prevent or eliminate the need for removal of the child from his home, and . . . to make it possible for the child to return to his home." The Act sought to require states to keep abused and neglected children in their own homes whenever possible, and to move more aggressively to reunite families after removal became necessary. If reunification was impossible within a reasonable time, the juvenile court would generally terminate parental rights and place the child for adoption because long-term foster care or guardianship were less desirable placements.⁶⁹

The 1980 Act also required periodic juvenile court review of a foster child's status. The court would consider whether to continue the child in foster care, return the child home, or move to terminate parental rights as a prelude to adoption. The requirement produced some fine-tuning of Missouri law, which since 1973 had required courts to review the status of foster children within six months after placement and at least once every six months thereafter while the placement continued. State legislation in 1982 continued the six-month reviews and required dispositional review hearings within eighteen months of initial placement and annually thereafter.⁷⁰

Adoption Subsidies

Psychologists recognize that children freed for adoption thrive better in permanent adoptive homes than in prolonged foster or institutional care. "Special needs" children nonetheless often suffer multiple foster placements, deprived of permanent homes for lack of available adoptive parents. This category includes children difficult to place because of mental, physical or emotional disability; age; membership in a racial or ethnic minority group; or member-

ship in a sibling group who should be placed together if possible.⁷¹

Missouri became one of the first states to abandon the old rule that prohibited foster parents, as a matter of law, from adopting their foster children. In an effort to encourage family reunification by discouraging development of emotional bonds between foster parents and the child, the rule doomed many emotionally scarred children to perpetual foster care by shutting the door on the only adults willing to adopt them. In 1973, the General Assembly granted a preference in adoption proceedings to foster parents who wished to adopt a child they had cared for continuously for at least eighteen months. The foster parents would have first consideration, but the court would make the final determination whether adoption by the foster parents was in the best interests of the child.⁷²

Throughout the 1970s, Missouri assisted adults who wished to adopt special needs children in Division of Family Services custody. Adoption remained difficult because parents of special needs children often faced imposing obstacles, including financial ones, not faced by other adoptive parents. To facilitate adoption of special needs children, Missouri in 1973 authorized juvenile courts, on a case by case basis, to grant adoptive parents short- and long-term subsidies up to the amount the state paid for the care and medical treatment of foster children.⁷³

Seven years after Missouri acted, the federal Adoption Assistance and Child Welfare Act of 1980 created an adoption assistance program for special needs children under the Title IV-E of the Social Security Act. Missouri quickly enacted implementing legislation to qualify for federal funds. From 1983 to 1984, the state's special needs adoption program found permanent homes for 552 of the nearly 900 special needs children awaiting adoption, and the number of Missouri children receiving adoption subsidies increased 63%. The percentage of adopted children with a handicap rose from 5% to 39% between 1978 and 1989, and the proportion of subsidized adoptive placements rose from 40% in 1982 to 77% in 1989.⁷⁴

By 2002, the federal adoption assistance program provided subsidies for persons adopting children who have one or more special needs according to the state's definition, and who are SSI (Supplemental Security Income) eligible, or who come from a family that meets the eligibility requirements of the former Aid to Families With Dependent Children program as of July 16, 1996. (A child is "SSI eligible" usually because he or she has a disability.) Eligibility for federal adoption assistance does not depend on the adoptive parents' financial circumstances.

The federal Adoption and Safe Families Act of 1997 further encouraged adoption of special needs children by (1) providing incentive payments to states whose adoptions of foster children exceed the previous year's number,

(2) requiring states to provide health insurance coverage for any special needs child with an adoption assistance agreement who the state determines would not be adopted without medical assistance, (3) guaranteeing that special needs children will not lose eligibility for federal adoption assistance if their adoption is dissolved or their adoptive parents die, and (4) prohibiting states from postponing or denying a suitable out-of-state adoptive placement while seeking in-state placement.⁷⁵

Missouri's Adoption Subsidy Program provides payments for the child's maintenance (for example, allowances for room, board, clothing and personal needs), medical expenses not otherwise covered, and integration (for example, if the adoptive home must be remodeled to accommodate the child's special needs). Adoptive parents may also receive subsidies for legal fees and one-time special expenses. Since 1988, Missouri has also allowed a tax credit of up to \$10,000 for reasonable and necessary adoption fees, attorneys' fees and other expenses directly related to adoption of a special needs child. The credit is available to parents who adopt a special needs child, and to business entities that provide funds to enable an employee to adopt the child.⁷⁶

Missouri's adoption subsidy program has not placed all special needs children, but St. Louis City circuit judge Evelyn M. Baker calls the program "an absolute plus, . . . an excellent program" that has made a positive difference.⁷⁷

Transracial Adoption

The federal Small Business Jobs Protection Act of 1996 contained provisions seeking to end the practice of matching adoptive parents with children of the same race. The relative silence that accompanied passage of the act contrasted sharply with the passion that has marked the transracial-adoption debate for several years. The term "transracial adoption" would describe any adoption in which the parents and child are of different races, but nearly all transracial adoptions have involved white parents and black or biracial children.

The 1996 Act prohibits private and public child placement agencies from denying any person the opportunity to become an adoptive or foster parent, or from delaying or denying the placement of a child for adoption or into foster care, "on the basis of the race, color, or national origin of the adoptive or foster parent, or the child." Violations are actionable under Title VI of the Civil Rights Act of 1964. The act has affected juvenile court decisionmaking without muting the debate about whether transracial adoption is in the best interests of black children.⁷⁸

In 1997, the General Assembly required the Division of Family Services and others involved in adoptive placement to diligently recruit potential adoptive parents who "reflect the ethnic and racial diversity of children . . . for whom

adoptive homes are needed.” In determining the best interests of the child, juvenile courts must consider a child’s “cultural, racial and ethnic background” and the adoptive parents’ capacity to “meet the needs of a child of a specific background.” The Foster Parents’ Bill of Rights, enacted by the legislature in 2002, requires foster parents to “provide care that is respectful of the child’s cultural identity and needs.”⁷⁹

Permanency Planning Revisited

After more than a decade of experience with the Adoption Assistance and Child Welfare Act of 1980, Congress became concerned that states were making too much, rather than too little, effort to reunite families of abused and neglected children. Many children were held in foster care for months or years while authorities tried to rehabilitate parents, often with little prospect of success because of drug addiction, alcohol abuse or other serious affliction.

The Adoption and Safe Families Act of 1997 requires states to meet stringent time requirements for terminating parental rights when children cannot be returned home. Within twelve months after the child “is considered to have entered foster care,” the court must hold a permanency hearing to determine placement for the child, which may be family reunification, adoptive placement or some other goal. The Act also specifies that states need not make reasonable reunification efforts when the child’s safety is at stake, such as when the parent had subjected the child to aggravated circumstances such as abandonment, torture, chronic abuse or sexual abuse; when parental rights to a sibling have been terminated; or when the parent has murdered or committed felony assault on another of his or her children.

The Act also permits “concurrent planning,” which allows state agencies to work toward family reunification while simultaneously planning for adoption if reunification fails. To further insure permanency, the act requires states to initiate termination of parental rights proceedings for a child who has been in foster care for fifteen of the most recent twenty-two months, with some exceptions such as when the child is in kinship care (that is, in the care of a relative).⁸⁰

Developments in Delinquency

Concern About Juvenile Crime

Public concern about juvenile crime is considerably older than the juvenile courts. In the 1830s and 1840s, some Missouri localities built houses of refuge and other congregate institutions because judges and juries often released

child offenders when incarceration in harsh adult prisons was the only sentence available. Beginning in the 1850s, fear of juvenile crime helped win support for the orphan trains in eastern cities anxious to rid themselves of homeless and abandoned children whose petty offenses might ripen into full-fledged criminality.

Toward the end of the nineteenth century, states and localities began enacting curfew statutes requiring juveniles to be off the streets during late-night hours. Juvenile curfews received their first substantial boost when Colonel Alexander Hogeland, "the Father of the curfew law," touted their crime prevention potential at the 1884 National Convention of the Boys and Girls Home Employment Association.⁸¹

In the early twentieth century, nearly all states enacted mothers' allowance legislation because they feared delinquency from thousands of poor children left home alone unsupervised by their working single mothers. With the nation at war in December of 1917, the U.S. Children's Bureau warned that delinquency plagued not only cities with their "foreign populations," but also rural areas with their "country villages" and "solitary farms far up in the hill country." The Bureau solemnly instructed Americans that "degeneracy is not wholly a product of cities" because many country children also had "a sorry ancestry and around them a thriftless family group, often weak in body and mind."⁸²

Delinquency rates rose during the Depression, when many children supporting their families went to work and became truants, and others resorted to petty thefts. In 1933, the Children's Bureau noted a "rapidly growing concern about crime and lawlessness in general," and warned that "crime often has its beginnings in the delinquencies of children." "The problem of delinquency is not a superficial blemish which can be removed with ease," Bureau chief Grace Abbott counseled. "It is an indicator of weakness and maladjustment in the whole social organism."⁸³

The Children's Bureau sounded the alarm again in 1943, calling rising wartime juvenile crime rates a significant social problem requiring "high priority, . . . special consideration and prompt action." Growing numbers of unsupervised children were taking the wrong path, the Bureau explained, while their fathers served overseas in the armed forces and their mothers worked in war industries away from home all day. Eleanor Roosevelt campaigned hard to create wartime day care centers, but little was done when Congress, war plants and shipyards resisted her efforts.⁸⁴

Delinquency rates continued rising in the immediate post-war years. The 1950s witnessed what historian Lawrence M. Friedman has called "an uproar over juvenile delinquency." In 1953, the U.S. Senate created the Committee to Investigate Juvenile Delinquency, which dominated the headlines when Sen.

Estes Kefauver of Tennessee held nationally televised hearings in 1955. The Children's Bureau warned of even darker days ahead because the nation would have 40% more adolescents by 1960 when the earliest "baby boomers" (a term the Bureau did not yet use) reached that age cohort.⁸⁵

Congress became deeply involved in the delinquency dialogue by 1960, when it convened a national delinquency task force. The Children's Bureau lamented that "[t]he dream of a discovery which might make oncoming generations of children virtually immune to delinquency as they may be to polio may never come true." Congress passed the Juvenile Delinquency and Youth Offenses Control Act of 1961, and President Lyndon B. Johnson called crime "a corrupter of our youth" five years later. In 1967, the Katzenbach Commission warned that "[y]outh is apparently responsible for a substantial and disproportionate part of the national crime problem." The 1968 Presidential campaigns emphasized anti-crime platforms and delinquency prevention, and Congress passed the Juvenile Delinquency Prevention and Control Act that year.⁸⁶

Missourians shared the national concern. In 1957, the General Assembly's Joint Committee on Juvenile Delinquency called delinquency "a problem of serious proportions" that "beg[ged] for immediate and serious attention." In 1966, Governor Warren E. Hearnes created the Governor's Citizens Committee on Delinquency and Crime, which was chaired by Lieutenant Governor Thomas F. Eagleton and included Mickey Owen, the Greene County sheriff and former Brooklyn Dodgers catcher. After holding hearings throughout the state, the Committee found that Missouri had a "serious and increasing problem" with delinquency, that city and county jails were "worn out and overcrowded," and that most jails still confined children.⁸⁷

In 1968, Governor Hearnes established a new state agency, the Missouri Law Enforcement Assistance Council (MLEAC), and designated it to administer state obligations and allocate funding under congressional legislation. The federal funding helped enable juvenile courts to create training and innovative treatment programs the state could not otherwise have afforded. At the First Governor's Conference on Prevention of Juvenile Delinquency in 1972, Governor Hearnes warned that the nation and state were "experiencing an alarming increase of juvenile delinquency and youth crime," causing "great human suffering and financial loss" and "loss of unrealized potential of the youth involved." Later that year, the MLEAC warned that the state faced a "critical period" in the effort to control delinquency and called the outlook bleak.⁸⁸

When Governor Christopher S. Bond convened the Second Governor's Conference on the Prevention of Juvenile Delinquency in 1973, the theme was the state's role in delinquency prevention. The conference's major findings were that the state had not assumed a leadership role in prevention, and that

existing statutes were silent about the state's responsibility and authority to provide needed services. The conference characterized the state's few prevention programs as "under funded and poorly coordinated."⁸⁹

Decades of concern about delinquency shaped public policy throughout the nation. Charging that juvenile courts were "kiddie courts" that frequently administered only a slap on delinquents' wrists, critics demanded that rehabilitation be tempered with punishment and greater emphasis on personal accountability. Perhaps ironically, *Gault* provided the critics potent ammunition because most Americans perceive rights and responsibilities as related. Once the Supreme Court conferred adult due process rights on children, segments of the public found it natural to demand greater adult responsibility from children. The crescendo grew even louder when Missouri and most other states lowered the general age of majority from twenty-one to eighteen in the early 1970s.

In 1989, the juvenile violent crime arrest rate reached its highest level since the 1960s, the earliest period for which comparable data were available. The rate continued to climb each year until it peaked in 1994. The rate rose 62% between 1988 and 1994, a period when the violent crime arrest rate increased for all age groups, including adults. The national juvenile crime rate then fell steadily for the rest of the decade. Missouri's juvenile crime trends generally followed the nation's.⁹⁰

Community Initiatives

Ever since the sustained efforts of the nineteenth century child savers, community initiatives have played an important role in helping Missouri families and children overcome conditions that might lead to delinquency or dependency. Today Missouri has hundreds of private service providers and not-for-profit youth service organizations. These private sources provide such services as residential care, mental health programming, counseling and evaluation. Courts often contract for these services, which may offer treatment alternatives to formal court involvement.⁹¹

Throughout the twentieth century, communities have worked side by side with juvenile courts and state administrative agencies. An early successful effort at community coordination was the St. Louis Central Council of Social Agencies, created in 1911. A more recent successful example is the Community Caring Council created in Cape Girardeau County in 1988. The Council helps foster cooperation among, and coordinate the efforts of, nearly one hundred local agencies committed to serving families and children. The Council now operates regionally in the various counties comprising the Bootheel. The Council's model has spread to other areas of Missouri. It has also spread to other states, such as Oregon and South Carolina, with localities that seek to empow-

er families and meet needs that might otherwise land children in the juvenile court.

In a number of circuits, juvenile courts and their staffs have created a vast array of preventive and protective programs designed to serve children. In the 37th Circuit (Carter, Howell, Shannon and Oregon counties), Judge R. Jack Garrett and his chief juvenile officer Stan Smith maintain more than two dozen innovative programs. Theatre-in-Education, for example, is a drug education and dispute resolution program offered to the circuit's seventh graders by theater students at Southwest Missouri State University-West Plains. An annual two-day summer camp at the university teaches mediation skills to students entering the sixth, seventh and eighth grades. During the school year, a university professor and other professionals teach these students, and their teachers and administrators, how to develop peer mediation programs in their schools. The juvenile court stresses visible community service by youths to resolve delinquency cases. Prevention also takes a front seat through another program that stresses early intervention with at-risk children and their parents. An ounce of prevention, the proverb goes, is worth a pound of cure.

The 1995 Juvenile Justice Act

In the late 1980s and early 1990s, the General Assembly enacted a number of delinquency bills advanced by the Missouri Juvenile Justice Association. In 1987, for example, the legislature authorized juvenile courts to order delinquents to perform community service, an authority previously exercised informally by juvenile officers and juvenile courts. Two years later, the lawmakers granted victims the right to make written or oral statements to the court concerning personal injuries or financial loss suffered. Unless the juvenile court found that the victim's presence would not serve justice, the victim could appear personally or through counsel.

The 1989 act also authorized juvenile courts to order restitution by a parent who had "failed to exercise reasonable parental discipline or authority" to prevent damages or loss caused by the juvenile. The juvenile court act already authorized entry of restitution orders against juveniles themselves because restitution imposes punishment at less cost than commitment or extended probation, provides some compensation to the victim, and may effectively encourage rehabilitation and discourage recidivism.⁹²

By the early 1990s, delinquency held a prominent place on the national agenda. In 1992 and 1993, Missouri legislators filed more than sixty bills each session calling for automatic transfer of some juveniles to criminal court, sometimes for a first offense. Automatic transfer would send juveniles charged with specified crimes to criminal court as a matter of law, without juvenile

court hearing. The Missouri Juvenile Justice Association asked Governor Mel Carnahan for a moratorium on juvenile justice legislation pending thorough review of the state's juvenile justice system. The Speaker of the House appointed an Interim Committee on Juvenile Justice that held hearings throughout the state. At the MJJA's urging, the interim committee also reviewed youth violence prevention and the administration of the juvenile and family courts. The lawmakers learned, for example, that the number of children referred to the juvenile courts had increased 60% in the prior ten years, with no increase in resources or staff to meet the growth.⁹³

In 1995, Governor Carnahan signed comprehensive juvenile justice legislation that one professional called "very well balanced" in approach and application. At the threshold, the act created a juvenile and family court division within the Office of State Courts Administrator, mandated that OSCA establish training and educational standards for juvenile court personnel, and paved the way for juvenile court automation. The act also created new rehabilitation and violence prevention programs for troubled youths and enhanced several existing Division of Youth Services programs. The lawmakers repealed the juvenile court act's preference for providing treatment in the child's own home, but otherwise reaffirmed the state's commitment to the least restrictive alternative:

The purpose of [the juvenile court act] is to facilitate the care, protection and discipline of children who come within the jurisdiction of the juvenile court. This [act] shall be liberally construed, therefore, to the end that each child coming within the jurisdiction of the juvenile court shall receive such care, guidance and control as will conduce to the child's welfare and the best interests of the state, and that when such child is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which should have been given him by them. The child welfare policy of this state is what is in the best interests of the child.⁹⁴

Key provisions of the 1995 legislation, including these, tempered the juvenile court's traditional rehabilitative model with provisions stressing community safety and personal accountability:

Transfer

The nation's juvenile court acts have never entirely excluded criminal courts from trying and sentencing juvenile offenders as adults. The 1899 Illinois act granted juvenile courts discretion to transfer to criminal court older juvenile offenders charged with serious crimes. Missouri's juvenile courts have long

held this discretion to protect the public where rehabilitation appears unlikely. Today every state has transfer statutes authorizing criminal trial and sentencing of some juveniles.⁹⁵

As juvenile crime rates rose in the early 1990s, most states lowered their minimum transfer ages, expanded the range of crimes for which transfer is available, or reduced the factors juvenile courts must consider before ordering transfer. Missouri's 1995 juvenile justice act assumed a middle-ground position. The bill lowered from fourteen to twelve the minimum age for transferring juveniles charged with felonies. For the first time, the legislature also removed the minimum transfer age for juveniles charged with any of the seven most serious felonies (first degree murder, second degree murder, first degree assault, forcible rape, forcible sodomy, first degree robbery or distribution of drugs). The bill also removed the minimum age for juveniles who committed two or more prior unrelated felonies.⁹⁶

The General Assembly, however, declined to go as far as many other states had recently gone. For one thing, many states authorize prosecutors to make some transfer decisions without resort to the juvenile court. Many states have also opted for automatic transfer in some circumstances. In Missouri, juvenile courts have always made all transfer decisions by balancing the need for public safety against the juvenile's amenability to treatment available in the juvenile justice system. After sustained advocacy led by the Missouri Juvenile Justice Association, the 1995 bill left this practice undisturbed by rejecting both prosecutorial transfer and automatic transfer. Where a juvenile is charged with a felony other than one of the seven most serious, the 1995 bill gives Missouri's juvenile courts discretion whether to hold a hearing and whether to transfer the juvenile. When the juvenile is charged with one or more of the seven most serious felonies, the court must hold a hearing but retains discretion whether to order transfer.⁹⁷

Like transfer statutes in most other states, Missouri's statute recites factors the juvenile court must consider in determining whether to order transfer. These factors relate generally to the nature and seriousness of the offense; the juvenile's maturity, sophistication, prior record and amenability to treatment; and the public's need for protection. The 1995 juvenile justice act also requires Missouri's juvenile courts to consider "racial disparity in certification."⁹⁸

A 1999 study found that after enactment of the juvenile justice act, transfer remained rare in Missouri and racial disparities diminished but did not disappear. Transferred cases represented less than one percent of all juvenile cases and only about three percent of juvenile cases in which felonies were at issue. In cases involving one or more of the seven most serious felonies, transfer rates remained unchanged. Before implementation of the new act, black youths were involved in two-thirds of serious cases in general, and two-thirds of cer-