June 1957

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"Exclusive" Jurisdiction of the Juvenile Courts

The Attorney General of West Virginia, in a recently released opinion, takes the position that the child welfare provisions of the West Virginia Code, as amended, do not preclude criminal prosecution of juveniles in the circuit courts or other courts having criminal jurisdiction.1 The importance of the opinion and its possible effect on the future handling of criminal charges against juveniles require a close examination of the juvenile court provisions of the Code and the cases interpreting them.

Judicial Perplexity

West Virginia Code c. 49, art. 5, § 3, as amended, relating to criminal jurisdiction of the juvenile courts, provides:

"Except as to a violation of law which if committed by an adult would be a capital offense, the juvenile court shall have exclusive jurisdiction to hear and determine criminal charges . . . , against a person who is under eighteen years of age at the time of the alleged offense."

In State ex rel. Hinkle v. Skeen2, a case involving a charge of murder against a fifteen year old defendant, the court wanted to make it clear that the above provision does not confer criminal jurisdiction on the juvenile courts. Unfortunately, the syllabus contains this rather ambiguous statement:

"3. The exclusive jurisdiction granted to the juvenile courts by Code 49-5-3, as amended, dealing with trials of persons under eighteen years of age, charged with having committed criminal offenses, relates only to trials of such persons as to charges of juvenile delinquency, and not to trials and punishment for criminal offenses."

This part of the syllabus corresponds to a dictum3 in the opinion and was not germane to the issues, since the offense with which Hinkle was charged is a capital one and by clear statutory expression is in no case subject to the delinquency jurisdiction of the juvenile court. The uncertainty created by syllabus 3 of the Hinkle case was heightened by a further dictum in the body of the opinion that "we

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1 Op., Att'y Gen. (W. Va., Feb. 22, 1957). Query: as to what age limits are intended to be covered by the term "juvenile".
3 Id. at 124, 75 S.E.2d 227. "Neither do the statutes attempt to bestow upon the juvenile courts any criminal jurisdiction. The trial of a juvenile for delinquency is in no sense a criminal trial."
need not decide whether a circuit court is precluded from taking jurisdiction in the first instance of an offence other than a capital one.”

The climax came in State ex. rel. Wade v. Skeen, where the court, without discussion, and relying solely on point 3 of the syllabus in the Hinkle case, proclaimed that the circuit court had original jurisdiction of a charge of burglary, a noncapital offense, against a person under eighteen years of age. Thus, the simple proposition that under the statute the juvenile court has no criminal jurisdiction was transformed to the rather doubtful proposition that the criminal jurisdiction of the circuit courts is unaffected by the statute, i.e., that the circuit courts have not lost jurisdiction over persons under eighteen years of age charged with having committed offenses which would not be capital offenses if committed by an adult.

The facts in State ex. rel. Wade v. Skeen were somewhat unusual. The circuit court wherein the charge was brought was the only court in that county exercising juvenile jurisdiction. It was contended by the defendant that the failure to transfer the case from the circuit court, as such, to the circuit court as a juvenile court was a violation of Code c. 49, art. 5, § 8, as amended. The second paragraph of section 3 provides:

“If during the pendency of a criminal proceeding against a person in a court other than a juvenile court, it shall be ascertained, or it shall appear, that the person was under the age of eighteen years at the time of the alleged offense, the court, judge, or magistrate shall immediately transfer the case with all the papers, documents, and testimony connected therewith to the juvenile court having jurisdiction. The juvenile court shall proceed to hear and dispose of the case in the same manner as if it had been instituted in that court in the first instance.”

The question of a nominal transfer had already been raised and lightly treated in State ex rel. Hinkle v. Skeen, where the court said:

“Can the pertinent statutes quoted be construed to mean that a circuit court having jurisdiction of a criminal case is required to certify the case to itself as a juvenile court, and then, as a juvenile court, certify the case back to the circuit court before a juvenile could be tried for the crime charged?”

4 Ibid.
6 It is respectfully submitted that the identity of judges in both courts should not and cannot be reason to disregard the mandate of the statute and ignore the substantial differences in atmosphere and procedure prevailing in the juvenile and criminal courts.
Could any prejudice result to the defendant because of a failure of a court having jurisdiction of the offense and of the person to make such certification?"\(^7\)

Thus, the court failed to fully respect the mandate in the last sentence of section 8, quoted above, that "the juvenile court shall proceed to hear and dispose of the case in the same manner as if it had been instituted in that court in the first instance." West Virginia Code c. 49 art. 5, § 14, provides that "... the court or judge may after the proceedings, make any of the following dispositions:

"(3) If the child be over sixteen years of age at the time of the commission of the offense the court may, if the proceedings originated as a criminal proceeding in a court other than the juvenile court, enter an order transferring the case back to the court of origin. ..."\(^8\)

It is to be noted that such order retransferring the case may be made "after the proceedings" in the juvenile court. Failure of the circuit court to transfer the case would necessarily deprive the defendant of the hearing provided in the juvenile court. Such hearing may strongly influence the judge in the exercise of his discretion. Ordinarily some disposition other than retransfer will be made. Of even greater significance is the fact that the power of the juvenile court to transfer the case back to the court of origin is granted only where the child is over the age of sixteen years. Thus, it can readily be seen that the defendant could be materially prejudiced by a failure to transfer a proper case to the juvenile court in compliance with the statute.

In neither State ex rel. Hinkle v. Skeen nor State ex rel. Wade v. Skeen did the court consider the mandatory effect of the language in Code c. 49, art. 5, § 3. Generally the word "shall" when used in constitutions and statutes leaves no way open for the substitution of discretion.\(^9\) The rule that "shall" should be construed as mandatory has appropriate application where the provision of the statute relates to the essence of the thing to be done.\(^10\) Here the requirement that the court "shall immediately transfer the case with all the papers, documents, and testimony" strongly indicates a man-


\(^8\) Subsection (3) added by amendment. W. Va. Acts 1939, c. 105. (Emphasis supplied.)


datory intent. The provision divests such court of all that is essential to a determination of the case once it appears that the person was under the age of eighteen years at the time of the alleged offense.

It was held in State ex rel. Hinkle v. Skeen that the right of a party to object to the jurisdiction of the court over his person may be waived and that the failure of the defendant to inform the court that he was under eighteen years of age at the time of the offense constituted such waiver. Query, as to the correctness of this holding. That the defendant is under eighteen years of age is a fact going to the jurisdiction of the subject-matter and cannot be waived. In State ex rel. Wade v. Skeen, however, there was no question of waiver. The trial judge knew that the defendant was under eighteen years of age and the case was a proper one for transfer under the statute. Yet such transfer was not made, solely upon the authority of the statement in point 3 of the syllabus in State ex rel. Hinkle v. Skeen that the jurisdiction of the juvenile court relates only to charges of juvenile delinquency, and not to criminal charges.

**Legislative Perplexity**

We must now deal with a grave uncertainty which arises out of the jurisdictional statutes themselves. West Virginia Code c. 49, art. 1, § 4, provides:

"'Delinquent child' means a person under the age of eighteen years who:

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"(2) Commits an act which if committed by an adult would be a crime not punishable by death or life imprisonment;

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If the jurisdiction of the juvenile court is based on the above provision of the statute, it could never acquire jurisdiction of a person who had committed an act which if committed by an adult would be punishable by life imprisonment. However, if such jurisdiction is based on Code c. 49, art. 5, § 3, it includes all except

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offenses which if committed by an adult would be capital offenses.\textsuperscript{12} The two provisions are clearly in conflict and are irreconcilable. This is undoubtedly due to an oversight on the part of the legislature. It can be resolved only by the application of principles of statutory construction.

The primary rule of statutory construction is to determine and give effect to the intention of the legislature.\textsuperscript{13} The legislative intent is not always discernible from the statute itself. The definition section is not to be overlooked for it is there that the legislature interprets what is meant by the terms used, and if clear it should be followed.\textsuperscript{14} But that is not an infallible test, for the definitions are often open to construction. The true legislative intent can be discovered only by factual inquiry into the history of the enactment, the background circumstances which brought the problem before the legislature, the legislative committee reports, statements of the committee chairman, and the course of enactment.\textsuperscript{15}

A significant statement evidencing legislative intent is found in the Report of the Joint Legislative Committee on Social Security in West Virginia,\textsuperscript{16} submitted to the governor on June 3, 1936. In regard to the child welfare provisions of the then pending legislation, the report states:

"The jurisdiction of the juvenile courts has been simplified and extended to give exclusive jurisdiction over all criminal proceedings against a person under sixteen years of age, except in cases of capital offense."\textsuperscript{17}

The bill was subsequently enacted without change in the provisions to which the statement pertains. What clearer expression of legislative intent could be desired? The jurisdiction of the juvenile courts is to be "exclusive over all criminal proceedings" against juveniles, "except in cases of capital offense." The definition of

\textsuperscript{12} In a pending case, the juvenile court of Kanawha County took the position that its jurisdiction was based on the delinquency of the child and did not include offenses punishable by life imprisonment. The intermediate court of the same county insisted that under W. Va. Code c. 49, art. 5, § 8, (Michie 1955), charges against persons under eighteen for such offenses must first be brought in the juvenile court. Op., ATT'Y GEN. (W. Va., Feb. 22, 1957).

\textsuperscript{13} Vest v. Cobb, 138 W. Va. 660, 76 S.E.2d 885 (1953).

\textsuperscript{14} 2 SUTHERLAND, STATUTORY CONSTRUCTION § 3002 (3d ed. 1943).

\textsuperscript{15} 1 id. § 4507.


\textsuperscript{17} As originally enacted, the controlling age was sixteen. Increased to eighteen by amendment, W. Va. Acts 1939, c. 105. (Emphasis supplied.)
“delinquent child” in Code c. 49, art. 1, § 4, if it is to be construed as pertaining to the jurisdiction of the juvenile court, should be given the same interpretation.

Constitutionality

Article VIII, § 12 of the West Virginia Constitution provides that the circuit courts “... shall, except in cases confined exclusively by this Constitution to some other tribunal, have original and general jurisdiction ... of all crimes and misdemeanors.” The court in State ex rel. Hinkle v. Skeen noted that if Code c. 49, art. 5, § 3, is to be construed as giving the juvenile courts exclusive jurisdiction to hear and determine criminal charges against juveniles, except in cases of capital offense, then, we may face the question whether it violates the above provision of the constitution. In determining whether the legislature actually intended the jurisdiction of the juvenile court to be exclusive, the history of the enactments pertaining to the juvenile courts is enlightening. The first statute with regard to the subject was enacted by Acts 1915, c. 70. Section 2 of such act provided that the “Circuit and Criminal Courts ... shall have original jurisdiction in all cases coming within the terms of this act.” Section 2 was amended by Acts 1917, c. 63 to read: “Where a court of common pleas or intermediate court having chancery jurisdiction has been or shall be created, such court shall have exclusive original jurisdiction in all such cases.”

The jurisdiction provisions of the 1931 Code omitted the term “exclusive”. The reviser’s note to the section18 states that the provisions were changed to avoid “possible constitutional objections.” Nevertheless, the legislature, in 1936 in the face of these possible objections, enacted the present provisions, again using the term exclusive with regard to the jurisdiction of the juvenile court. Considering the language of the statute, the history of the enactment and prior enactments on the same subject, and that the legislature is presumed to have knowledge of all such prior statutes,19 the conclusion is unavoidable that the legislature intended the jurisdiction granted to the juvenile courts to be exclusive. The constitutional question is thus squarely presented and unless the statute can be given a construction consistent with the intent of the legislature which does not interfere with the constitutional jurisdiction of the circuit courts, it must fail.

The construction placed upon the statute by the court in syllabus 3 of the *Hinkle* case is not objectionable and is a reasonable interpretation of it, though lacking much in the way of clarity. However, the application of that construction in *State ex rel. Wade v. Skeen* is inconsistent with the purpose of the statute, that is, to relieve the juvenile of a criminal trial in all but a few well recognized instances and appears to be a useless sacrifice of a useful statute. If the juvenile may be proceeded against as an adult in the circuit court, then a major and primary purpose of the statute has been defeated. This is unacceptable while there is yet a more reasonable interpretation.

At common law a person under the age of seven years is conclusively presumed to be *doli incapax*, that is, incapable of the malice required for the commission of a crime. As to persons between the ages of seven and fourteen, this is only a prima facie conclusion and may be rebutted by a showing that such person is capable of such malice. The idea is expressed in the maxim "*malitia supplet aetatem*—malice supplies [the want of] age." Our statute, then, amounts to this: the legislature, in the exercise of its inherent power to change the common law, has moved the common law presumption from the age group of seven to fourteen, to the age group of sixteen to eighteen, and has dispensed with the presumption altogether in capital offenses, which by their very nature indicate that the juvenile makes up in malice what he lacks in age. Under this interpretation, an act committed by a person under eighteen years of age which is not a capital offense, is prima facie no crime at all. But the act may be a violation of law which, under *Code* c. 49, art. 1, § 4, as amended, requires a finding of juvenile delinquency on the part of such person so as to give the juvenile court exclusive jurisdiction. The proceeding in the juvenile court is not a criminal trial and the juvenile is not to be convicted or punished for his acts. However, if, after the proceedings, the juvenile court is of the opinion that the person is *doli capax*, it may, if the child is over sixteen years of age, transfer the case back to the court of origin or other court having criminal jurisdiction for criminal prosecution. If the child is under the age of sixteen years,

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the juvenile court has no power at all to transfer the case back. Therefore, as to such persons, the presumption of doli incapax is conclusive. This interpretation does no injustice to either the constitution or the statutory provisions. It is consistent with the court's interpretation in State ex rel. Hinkle v. Skeen, and more nearly approaches the purpose of the legislature in enacting the statutes relating to child welfare.

Conclusion

Since the proceedings in the juvenile courts are not criminal in nature and no conviction or punishment may result therefrom, it is apparent that no criminal jurisdiction was conferred upon the juvenile courts. The delinquency jurisdiction of the juvenile courts is "exclusive", however, in the sense that acts, which under the statute constitute delinquency, and which formerly were punishable as crimes, are now prima facie noncriminal and no longer within the jurisdiction of the circuit and criminal courts, except where the juvenile court has found that a person above the age of sixteen years possesses that degree of malice which makes up for his lack of age. The opinion of the attorney general that criminal charges against juveniles may be instituted and prosecuted in the criminal courts is contrary to the law of this state, as evidenced by the constitution, the pertinent statutes, the principles of the common law and the expressed intention of the legislature.

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Extension of Legislative In Personam Jurisdiction Over Foreign Corporations

In the past twelve years, a number of leading cases have established a substantially new test of legislative jurisdiction over foreign corporations. The liberalization began with International Shoe v. Washington which recognized the impracticability of the fictional consent and presence doctrines as valid methods of determining whether or not a state can constitutionally exercise in personam jurisdiction over foreign corporations.

2 326 U.S. 310 (1945).