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NOTES AND COMMENTS

appellate division. No court except the appellate division has jurisdiction to restrict, control, or review the orders of the trial division.27

The Court on the Judiciary provides a much improved and effective method for removal and retirement. Under the Court on the Judiciary, removal and retirement is expedient, not cumbersome. Removal and retirement is the business of the Court on the Judiciary, not a side line. The procedure is inexpensive, whereas a special session of the legislature or the extension of a regular session to serve as an indicting body and court of impeachment is expensive. The procedure is judicial, rather than political, with provisions for notice and hearing to the respondent and with the full observance of safeguards and requirements of a fair trial. The initiation of proceedings is fixed with a number of responsible individuals to insure justified complaints. The method of selecting judges is designed to preclude political considerations in the selection of personnel, and these judges are subject to disqualification for interest, prejudice, or partiality. Appellate review by experienced judges further guarantees fairness and thorough consideration.

After looking at the present methods for removal and the proposed Court on the Judiciary, one can see that the Court on the Judiciary would be a beneficial addition to removal procedure in Oklahoma.

William Thomas Coffman

THE JUVENILE COURT ACT

In the past few years in Oklahoma, controversy has swirled around the present judicial system and its operation. A good part of the debate has been concerned with the method of selecting judges by election. Most judges in Oklahoma are selected by vote of the people; however, the juvenile court judge is selected by commission and appointed to office. The purpose of this article is to aid the reader in understanding how an appointive judge system might operate. To carry out this purpose, the authority and operation of the juvenile court will be examined.

On April 18, 1949, the legislature of Oklahoma gave final approval to House Bill 230 establishing an independent juvenile court system in Oklahoma.2 Section One of the act set out that each county having a population of 100,000 but less than 244,000 was to have a juvenile court.3 Subsequently, there has been a revision in that clause increasing the population requirements in accordance with the 1950 census.4

27 Ibid.

1 20 OKLA. STAT. § 851 (1961).
2 OKLA. SESS. LAWS, 1949, at 194. An emergency was declared in the bill; 10 OKLA. STAT. § 102 (1961); County courts exercise jurisdiction over minors in similar matters. Presently they control juvenile problems in those counties not having a juvenile or children's court.
3 OKLA. SESS. LAWS, 1949, c. 11, art. 1, § 1. Population requirements have been lifted to cover the present population of Tulsa County, 20 OKLA. STAT. § 102 (1961). Presently only Tulsa County has a juvenile court.
The juvenile court has withstood the question of constitutionality insofar as the State Constitution is concerned. In *Killion v. Walker*, the court held that the statutes creating the juvenile court on a population basis were constitutional, thereby, rejecting the argument that it was a special law even though it covered some counties and excluded others. Certain parts of the act were held unconstitutional as being discriminatory, particularly those portions that discriminated between male minors in one county and male minors in other counties. Discrimination was shown in that males in counties not having a juvenile court would not be covered by the county court acting in its juvenile capacity after age 16, while males in counties having juvenile courts as set out in title 20 would be covered until age 18. Where minor females are involved there is no discrimination because the jurisdictional age limit of 16 is the same with or without a juvenile court in the county.

Under the act, the juvenile court judge is selected by the Governor from a list of three attorneys submitted by a local board. All of those nominated must be residents of the county. The local nominating committee is composed of five lawyers and two laymen who are chosen by the president of the county bar association. Appointment of the judge is for a term of six years. At the end of his term he may be renominated along with two others to compose a new list. During tenure no judge may run for public office or maintain an office in a political party. Should a vacancy arise during a term, the nominating committee submits three names to the Governor in the regular manner for selection. It is the manifest intent of the act to bring about an unbiased, non-partisan selection in the hope that judges of high quality may be selected without regard to political affiliation.

The original jurisdiction of the court covers children under 18. Several sections enumerating the jurisdiction overlap emphasizing the broad coverage of the act. The court has the power to hear proceedings concerning any child living within the county where there is a question of neglect or where a child is otherwise without proper care or support. The court has the right to hear cases concerning a child whose associations, job, friends, or behavior might be deemed injurious to his welfare. The court gains jurisdiction over the child that cannot be controlled by his parents or guardian or when he is deemed a truant. Children under 18 who violate any state or municipal ordinance also fall under the purview of the act.

Other juvenile problems falling under the jurisdiction of the court include; cases where a child needs judicial consent to marry; the commitment to institutional care of mentally defective or ill children; and cases involving the complexities arising from the birth of a bastard child. In

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6 *334 P.2d 454 (Okla. Cr. 1959); 20 Okla. Stat. § 850 (1961).*
7 *Killion v. Walker, supra, note 5.*
8 *20 Okla. Stat. § 791 (1961).*
9 *20 Okla. Stat. § 792 (1961).*
10 *20 Okla. Stat. §§ 773, 775 (1961); In re Sweet, 317 P.2d 231 (Okla. 1957); In re Barnes, 356 P.2d 363 (Okla. 1960).*
cases of neglect or delinquency, the court may determine custody—
temporary or permanent—and it may designate one to care for the child
while the action is pending.

Originally the statutes provided that other courts could certify
questions to the juvenile court for determination. However, in
Crawford v. Young,12 the court held that this portion of the act was unconstitutional.
It reasoned that Section 773 relating to referral of special matters to the
juvenile court with special jurisdiction to determine custody provided a
different means of determination than would be available to residents of
other counties of the state. For authority, the court cited Williams v.
Johnson wherein prohibition had been granted under similar circum-
cstances.13 In that case the court held the operation of the Conciliation
Department unconstitutional since it discriminated between persons in
counties having this special court and those not.

In certain cases involving adults, the court has original concurrent
jurisdiction with courts of general jurisdiction and those that handle
misdemeanors.14 Where an adult violates any law which causes or tends
to cause or encourages a child to come within the basis for jurisdiction as
set out in Section 773 the court has jurisdiction. In paternity cases where
a child born out of wedlock is in issue, or where one caring for a child
deserts, abandons, or fails to provide support for it as required by law,
the court has original concurrent jurisdiction. However, the court is
limited in this area when the defendant is entitled to a trial by jury. The
juvenile court then acts only as a committing or arraigning court and
may hold the defendant for the proper court, where the trial is to occur.
The court has jurisdiction in all of the aforementioned proceedings except
when another court has first exercised proper jurisdiction. A further
limitation to its jurisdiction is that either the parent or the one in charge
of the child, or the child himself, must reside in the county.

To attain the highest possible degree of justice, the act provides for
informal proceedings.15 The guiding factors are formulated to preserve the
best interests of the child. For this reason, we find a deviation from the
common law system of trial. To further insure that the interest of children
will be protected the legislature directed the courts to give a liberal
construction to the act.16 The legislative intent is to provide to the child,
as nearly as possible, the equivalent to that which should have been
supplied to him by those having custody of him. It is the responsibility
of the judge to see that this purpose is carried out.

A child's case is initiated whenever any person informs the court
that a child is within the purview of the act.17 It is the duty of the court
to then make a preliminary investigation to determine whether any

12 397 P.2d 497 (Okla. 1964); referring to; 20 OKLA. STAT. §§ 771, 772,
13 396 P.2d 518 (Okla. 1964).
16 20 OKLA. STAT. § 848 (1961); Killion v. Burham, 191 Okla. 248, 130
P.2d 538 (1942); In re Greenback, 207 Okla. 30, 246 P.2d 733 (1952).
17 Killion v. Burham, In re Greenback, supra, note 16; 20 OKLA. STAT. §
801 (1961).
further action is necessary. After its investigation, the court may file or require to be filed a petition setting out the facts of the case. If the petition is filed and the court decides that further action be taken, the parties named are issued summons briefly stating the material allegations. Service should be personal in all cases where possible and must be made at least forty-eight hours before the time set for hearing. If the person to be served is other than parent or guardian of the child, then the parent or guardian of the child is also notified as to the pendency of the case and the time and place of the hearing. Process may also issue at the discretion of the court to any other person whose presence is deemed necessary. If it appears that the conditions are such that the child's welfare requires him to be immediately removed, the court may order his immediate withdrawal from those caring for the child. Service of process may be made by anyone appointed by the court. If a person is summoned and refuses to appear without good cause, the court has the power to issue warrants against that person or against the child himself if he fails to appear. The procedure for cases of adults is essentially the same as that set out for cases involving children. The court may require an adult to post bond to insure compliance with any order issued.

If the material allegations in the petition are found to be true, the child might be placed in a home or on probation, or in the custody of a suitable person. The court also has the power to place a child in a private institution or with a private agency that is approved by the State Department of Public Welfare. And generally, the court may order such special care or treatment as it deems necessary. Where custody of the child is granted to one other than the parents, the court may order the parents to contribute to the support of the child. And, where such parent willfully fails or refuses to pay such support, he is subject to contempt proceedings.

In determining what shall be done with a child under the act, it is of great importance that the court consider the right of the parent to the custody of that child. However, a parent does not have an absolute right. Such right is qualified by that which is in the best interest of the child. A natural parent may lose custody of a child permanently and have all of the rights of a parent terminated by the juvenile court. Interestingly, Section 824 of the act does require that where such child is given up for adoption or placed in the custody of another for adoption, the court shall attempt to select an institution, person or agency governed by persons of the same religious faith as that of the child. Or, if the child's faith

18 20 OKLA. STAT. § 802 (1961).
25 Ex parte Walters, 92 Okla. Cr. 1, 221 P.2d 659 (1950); McNatt v. State, 350 P.2d 600, (Okla. 1958); Marston v. Marston, 389 P.2d 510 (Okla. 1964); In re Davis, 244 P.2d 555 (Okla. 1952).
26 20 OKLA. STAT. § 824 (1961).