JUVENILE LAW AND THE JUVENILE COURT SYSTEM

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By far the most significant development which occurred in the field of juvenile law during this past survey year was the passage of the first amendment[1] to the 1971 Georgia Juvenile Court Code. In essence, this act sought to accomplish five purposes: to redefine the term "child" as used in the code to fix Juvenile court jurisdiction; to realign the jurisdictional limits of the juvenile and superior courts; to clarify commitment procedures for children found to be mentally ill or retarded; to toughen the Code provisions concerning publication of juveniles' names; and finally, to provide for referral of certain issues by the superior court to the juvenile court.

Although the 1971 code had provided that beginning July 1, 1973, the juvenile court would have jurisdiction over individuals under the age of 18, all references to this provision were stricken by the 1973 General Assembly. As a result, now juvenile court jurisdiction continues to extend only to those youth who are 17 years of age and under.[2] Thus, the handiwork of the previous legislative session in harmonizing the various laws relating to the age of majority[3] has been unraveled and a hiatus created for those individuals who are between the ages of 17 and 18 years; in civil matters they are to be treated as minors; in criminal accusations, they are considered adults.

An even more troubling change is the long-awaited statutory clarification of the allocation of powers between the juvenile courts and the superior courts. For almost 20 years,[4] the Georgia legislature had been attempting to do the impossible feat of granting by statute exclusive jurisdiction over juvenile offenders to juvenile courts despite a constitutional provision vesting jurisdiction over all those individuals 13 years or older in the superior courts. Vested at last with the requisite authority,[5] the 1973 legislature

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1. Ga. Laws, 1973, p. 882.

2. Note, however, that the 1973 amendment left untouched the "continuing" jurisdiction of the juvenile court to reach youths under the age of 21 who have been placed under supervision or probation by a previous juvenile court order. GA. CODE ANN. §24A-401(c)(2) (1971).

3. Ga. Laws, 1973, p. 193.

4. The 1951 Juvenile Court Act was the first legislative attempt to confer upon the juvenile courts "exclusive original jurisdiction" over all juveniles charged with offenses. This act was declared unconstitutional in Jackson v. Balkcom, 210 Ga. 412, 80 S.E.2d 319 (1954). For further discussion of this and subsequent collisions on this point between the legislature and the judiciary, *see* Henritze, *Persisting Problems of Georgia Juvenile Court Practice,* 23 MERCER L. REV. 341, 349-55 (1972).

5. An amendment to the Georgia Constitution, art. VI, §4, proposed by Ga. Laws, 1972,

conferred upon the juvenile courts "exclusive original jurisdiction" over all juvenile offenders except those who are charged with having committed offenses "punishable by loss of life or life imprisonment." Concurrent jurisdiction was given to both juvenile and superior courts over those juveniles charged with "capital" offenses.[6]

While theoretically the legislature was empowered to cede exclusive original jurisdiction over all offenses, regardless of grade, to the juvenile court, it was politically not feasible. For juvenile advocates who might have wished for more, at least now the jurisdictional thicket has been cleared. Moreover, the 1973 amendment encircles the grant of concurrent jurisdiction to the superior court with some important limitations.

Even if a child is charged with a capital offense, he can be detained, pending indictment or commitment hearing,[7] only in one of the following places: a licensed or court-approved foster home; a facility operated by a licensed child welfare agency; an approved detention home, center, or other facility for delinquent children; or any place of security (i.e., jail) only if a juvenile detention facility is not available and the child is kept in a separate room, apart from adult offenders.[8] The only recognized exception to the continuation of this policy of avoiding the mixture of juveniles with adult offenders is when the juvenile court is willing to certify "that public safety and protection reasonably require detention in a common jail and the court so orders." This proviso seeks to avoid the prospect, which could occur in many of the less populous circuits, of a child's languishing in jail simply by virtue of the particular offense label affixed by the arresting officer. Furthermore, the new amendment imposes a duty upon jailers to notify the juvenile court when anyone under the age of 17 is brought into their facilities. A jailer must take any juvenile, regardless of the charges, to the juvenile court or deliver him to a facility designated by the court.[9]

The 1973 amendment clarifies the role of the police officer who takes a juvenile into custody. What before was an apparent authority of an arresting officer has now become an explicit discretion. Having charged a juvenile with the commission of a capital offense, the officer has two options: he may file his charges in the superior court and, pending a committal

p. 1544, was ratified in the November 1972 general elections. *See* Henritze, *Annual Survey of Georgia Law: Juvenile Law and the Juvenile Court System,* 24 MERCER L. REV. 187 (1973). Subsequently in an official opinion, the Georgia Attorney General rued that the amendment did not per se change the juvenile court's jurisdiction or revitalize the 1971 Juvenile Court Code provisions, but, instead, merely permitted the General Assembly to prospectively realign jurisdiction. OP. GA. ATT'Y GEN. NO. 72-179 (1972).

6. For simplicity of discussion, the terms "capital" and "noncapital" offenses will be used herein although in this amendment the grade of offense is described in terms of punishment, consistent with the terminology of the criminal code.

7. GA. CODE ANN. Ch. 27-24 (Rev. 1972).

8. GA. CODE ANN. §24A-1403 (1971).

9. GA. CODE ANN. §24A-1403 (1971), as amended, Ga. Laws, 1973, p.887.

hearing there or an indictment, he must transport the juvenile to a detention facility designated by the juvenile court;[10] or he may file in the juvenile court a delinquency petition alleging the identical charges.[11] If the officer elects to activate the juvenile court process, then the juvenile court must conduct a waiver hearing before it transfers the juvenile for trial as an adult. The wisdom of allowing crucial jurisdictional issues to be resolved by low-level decision-making officials continues to be suspect;[12] it seems unavoidable, however, where the legislature confers concurrent jurisdiction upon two courts. It should be noted that there is no option open to an arresting officer when he charges a child with non-capital offenses; he must file a petition in the juvenile court which now has a bona fide exclusive jurisdiction over all juveniles who are charged with "crimes" carrying less than the ultimate penalties.

The capital, non-capital dichotomy is continued in the revision of Ga. Code Ann. §24A-2501 (1971) dealing with transfers from the juvenile court to the superior court.[13] Any juvenile brought initially before the juvenile court must be accorded a due process hearing, without true criminal analogue, on the issue of whether or not he should be heard in juvenile court before that court may transfer or "waive" jurisdiction to the superior court. Previously the code had provided that only children 15 years of age or older were subject to transfer; now, however, a child who has attained age 13, the age of criminal accountability, and who is charged with a capital offense may be transferred for trial as an adult.[15]

In sum, the 1973 General Assembly carved out a province of shared jurisdiction for youths charged with the most serious, the "capital" offenses, from the otherwise exclusive domain of the juvenile courts. All provisions of the previous Juvenile Code, principally those governing transfer hearings, detention, and obligations of official custodians, were likewise altered to reflect this single category of concurrent jurisdiction respecting these offenders.[16]

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10. GA. CODE ANN. §24A-1402(a)(3) (1971), as amended, Ga. Laws, 1973, p. 885.

11. The availability of this option is implicit in the grant of concurrent jurisdiction to the juvenile court, GA. CODE ANN. §§24A-301, -1402(a)(2) (1971).

12. For a more detailed discussion of this problem *see* Henritze, note 4 *supra* at 350-51.

13. J.E. v. State, 127 Ga. App. 589, 194 S.E.2d 288 (1972), decided within the survey year, is not discussed in the body of this article because its issues are now controlled by the 1973 amendments. The case involved an allegedly improper transfer order by the juvenile court which was "cured" when the grand jury indicted the juvenile for murder.

14. For an excellent discussion of the due process requisites for the transfer hearing, *see* Reed v. State, 125 Ga. App. 568, 188 S.E.2d 392 (1972). The opinion is by Judge Clark who remains one of the few appellate judges who has thoroughly absorbed both the letter and spirit of the Georgia Juvenile Code.

15. GA. CODE ANN. §24A-2501(a)(4) (1971), as amended by Ga. Laws, 1973, p. 888.

16. The capital—non-capital distinction, in part, also controls whether a child is committed into the juvenile or adult correctional system. A separate statute passed by the 1973 General Assembly, which amended the Children and Youth Act, GA. CODE ANN. §99-209(a)(5)

This 1973 amendment also shed some light on the required procedures governing mentally ill or retarded children. Formerly Ga. Code Ann. §24A-2601 (1971) provided in the comments following that after considering reports verifying that a child was suffering from such a mental condition, the court must order the child detained and "proceed within 10 days to initiate appropriate proceedings for the child's commitment." Many juvenile court judges had expressed concern about the purport of this section. Despite the code's grant of exclusive jurisdiction to the juvenile courts concerning children who are found to be in need of treatment or commitment,[17] was this section intended to vest only the power to conduct some sort of preliminary hearing, leaving the ultimate decision on commitment to the courts of the ordinary? Or, after the fact finding hearing, was the juvenile judge to file in his own court a petition for commitment?

As a result of this concern about statutory ambiguities, the commitment provision has now been amended to eliminate the duty for any further "proceedings." After the entry of findings based upon reports substantiating the need of treatment, the juvenile court "shall order the child detained and proceed within 10 days to commit the child to the Georgia Department of Human Resources, Mental Health Division."[18]

Similarly after nearly two years' experience under the 1971 Juvenile Code, two flaws surfaced in its provision forbidding the unauthorized publication of the names of juveniles who are before the court for the first time. The 1973 amendment cured these defects. The prohibition now extends to "any news media" and, therefore, would cover visual as well as audio and written reporting. More importantly, contempt is now available to the juvenile courts as a sanction for any over-zealous reporter who ignores the duty to obtain first an order of release from the court.[19]

Finally, the new amendment attempts to resolve a continuing source of appeals and activity—the issue of whether the superior court may transfer to the juvenile court isolated issues of custody or support for its independent judgment. In two cases during this survey year,[20] the supreme court correctly pointed out that all erstwhile statutory referral provisions had

(Rev. 1968), provides that a youth convicted of a capital felony can only be sentenced into the adult system (i.e., into the custody of the State Department of Offender Rehabilitation). A middle group of offenders, composed of those found to be guilty or convicted of voluntary or involuntary manslaughter, mayhem, aggravated sodomy, aggravated assault, aggravated battery, false imprisonment, kidnapping, robbery (excluding robbery by sudden snatching) or an attempt to commit any of these enumerated crimes, may, in the discretion of the court, either be committed to the juvenile correctional system or committed as Youthful Offenders to the adult system. By implication, those juveniles convicted of all other offenses are to be committed into the juvenile system. Ga. Laws, 1973, p. 563.

17. Ga. Code Ann. §24A-301(a)(2)(1971).

18. Ga. Code Ann. §24A-301(a)(2)(1971), as amended, Ga. Laws, 1973, p. 888.

19. Ga. Code Ann. §24A-3503(g)(1)(1971), as amended, Ga. Laws, 1973, p. 888.

20. Showalter v. Sandlin, 229 Ga. 405, 191 S.E.2d 828 (1972); Parker v. Parker, 229 Ga. 405, 192 S.E.2d 341 (1972).

been expressly repealed by the 1971 Juvenile Court Code. The new section reinstating the authority for transfer of selected issues reads as follows:

> Where custody is the subject of controversy, except in those cases where the law now gives the superior courts exclusive jurisdiction, in the consideration of those cases, the juvenile court shall have concurrent jurisdiction to hear and determine the issue of custody and support when the issue is transferred by proper order of the superior court.[21]

This amendment is a verbatim re-enactment of a provision of the Juvenile Court Act of 1951;[22] however, the surrounding context of the 1971 Juvenile Court Code into which this amendment purportedly fits differs substantially from the 1951 composite version of juvenile statutory law. Elsewhere in the 1971 Juvenile Court Code the juvenile court is granted "jurisdiction over proceedings involving any child whose custody is the subject of controversy,"[23] although this provision has yet to be considered by the appellate courts. Construing the newly amended section with the existing grant of custody jurisdiction, the only sensible interpretation appears to be that in litigation exclusively within the ambit of superior court jurisdiction, such as divorce, separate maintenance, or modification actions, the superior court may delegate decision-making on issues of support and custody to the juvenile court. However, unlike its authority under the 1951 law,[24] the superior court may not simply refer the issue for an advisory opinion; it may only refer the issue for final determination by the juvenile court. Such issues thus are to be resolved by a hearing-within-a-hearing process with each court involved retaining its respective decisional autonomy.

Never before has the amount of child support been a referrable issue from the superior court to the juvenile court, and as might be expected with novel statutory provisions, the new statute invites appellate litigation in order to resolve its potential conflict with existing Georgia law. Since child support is subsumed in the concept of alimony in Georgia, and since the superior court is granted exclusive jurisdiction by the constitution over questions of divorce,[25] can there be a lawful statutory delegation of authority to the juvenile court to decide questions of support? Similarly, since there is a vested right to jury determination of the issue of alimony, is a litigant deprived of this right when the issue of support is referred for judicial decision in the juvenile court? It seems safe to predict that the Georgia appellate courts have not seen the last of cases involving issue referral to the juvenile courts.

In a long-overdue recognition of the need to emphasize rehabilitation instead of concentrating upon punishment, a pair of 1973 statutes author-

21. GA. CODE ANN. §24A-301(c)(Supp. 1973).
22. Ga. Laws, 1951, pp. 291, 297, codified as GA. CODE ANN. §24-2408(5)(Rev. 1971).
23. GA. CODE ANN. §24A-302 (1971).
24. Ga. Laws, 1951, p. 291, at 298, codified as GA. CODE ANN. §24-2409 (Rev. 1971).
25. GA. CONST. art. VI, §4 (1945); GA. CODE ANN. §2-3901 (Rev. 1948).

izes the commitment of juveniles and young adults to "Community Rehabilitation Centers" in lieu of incarceration.[26] As defined in both acts, such a center is a "rehabilitation and custodial center established within a county for the purpose of assisting in the rehabilitation of [delinquent and unruly children and youthful offenders] in a neighborhood and family environment in cooperation with community education, medical and social agencies. . . ."[27] In addition, these centers, to be established as nonprofit corporations, can be located only in counties having at least one full time juvenile court judge and with express approval of the senior judicial circuit judge, the judge or judges of the juvenile court, the county school superintendent, and the Director of the State Department of Offender Rehabilitation. The executive officer of the center must give written acceptance of responsibility for the committed individual before this alternative disposition becomes available for either juvenile or youthful offenders. The experience of the Division of Community Services, Department of Human Resources, has demonstrated on an experimental basis that community-based treatment programs can substantially reduce the recidivism rate of juvenile delinquency.[28] Legislative support of the establishment of such centers on a more broadly-based program is a heartening development for all interested in penal reform.

In contrast to statutory developments during the survey year, judicial decisions in the area of juvenile law are few. By far the most significant case was *M.E.B. v. State*[29] which decided the hotly debated issue of whether the venue provisions of the 1971 Juvenile Court Code[30] are constitutional. The code authorizes the adjudicatory hearing to be held in the county in which the offense allegedly occurred, but requires that the dispositional hearing, which follows if a child is adjudicated delinquent, must be held in the county of the child's residence. The rationale of the Georgia Supreme Court can most charitably be described as pure sophistry. The opinion attempts to characterize the dispositional hearing as the one in which "the actual '*case*' is tried," in an end-run around the constitutional guarantee that in civil proceedings, such as juvenile court cases, the defendant must be tried in the county of his residence.[31] This opinion, unanimously subscribed to by all members of the court, illustrates, as no other

26. Ga. Laws, 1973, p. 579, amending GA. CODE ANN. §24A-2302(b)(1971), and Ga. Laws, 1973, p. 581, amending GA. CODE ANN. §77-359(a)(Supp. 1972).

27. GA. CODE ANN. §24A-401(j) (Supp. 1973) and GA. CODE ANN. §77-346(h) (Rev. 1964).

28. In 1972, 521 children committed to the State Depratment of Human Resources for institutionalization were shunted into community based programs, either community treatment centers or group homes. The recidivism rate for this group was 15.7% as compared to institutional releases which show a rate of 48.9%. Scanlon, Ard, and Brand "Community Approaches to Treatment of the Juvenile Offender" (Mimeograph Division of Community Services, Department of Human Resources, April 1973).

29. 230 Ga. 154, 195 S.E.2d 891 (1973).

30. GA. CODE ANN. §24A-1101 (1971).

31. GA. CONST. art. VI, §14 (1945), GA. CODE ANN. §2-4906 (Rev. 1948).

opinion can, the lamentable lack of appreciation of modern juvenile procedure[32] and judicial precedent[33] that many judges as well as lawyers demonstrate. Juvenile law is a fast-paced area of the law which has only come into its own within the past decade, long after most of us completed our formal legal study. It is, however, of some consolidation that the particular decision reached on the venue issue in this case is supportable albeit on different grounds than those offered in the court's opinion.

The only issue uniquely of concern to juvenile law in *C.A.J. v. State*[34] is its ruling on the nature of judicial responsibility in a dispositional hearing. Appellant claimed error, *inter alia,* because the juvenile court mentioned as persuasive certain allegations in the juvenile's record as had been maintained by the court, i.e., that two prior cases against him had been dismissed, according to certain notes, for reasons other than lack of evidence for conviction or evidence of exoneration. Based upon the juvenile's past record, despite testimony from two of his teachers, his probation officer, and his mother concerning a rather marked progress toward self-discipline and control since the current charge had been filed,[35] the court committed the juvenile to the state juvenile correctional system. The court of appeals approved this order:

> [T]he probative value to be accorded any evidence is within the sound discretion of the trier of fact, in this case, the court, and should not be

32. The issue of guilt or innocence is the finding of fact which becomes the final judgment rendered at the adjudicatory hearing. GA. CODE ANN. §24A-2201(a)(1971). This issue cannot be reopened at the dispositional hearing; there the sole issue is the determination of which mode of treatment or rehabilitation is appropriate in the individual case. GA. CODE ANN. § 24A-2201(b), (c) (1971). Therefore, it is startling and dismaying to read in the opinion of the supreme court the following:

> [T]he delinquency adjudication hearing. . .merely serves the same purpose in the civil juvenile court proceeding as an arraignment under the Criminal Code. The adjudication proceeding is actually nothing more than a pretrial hearing. . . .But it is at the dispositional hearings . . . that the actual "*case*" is tried. . . .

230 Ga. at 156, 195 S.E.2d at 892.

Actually, the exact reverse is true; moreover, the adjudication hearing bears no more resemblance to an arraignment than, to borrow a phrase from Mark Twain, does lightning to a lightning bug.

33. Because guilt or innocence is in the fact finally decided at the adjudicatory hearing, it is the process of adjudication there which has come under appellate scrutiny within the past decade. It was the adjudicatory hearing, not the dispositional hearing or any other post-adjudicative phase, which was under review by the United States Supreme Court in *In re* Gault, 387 U.S. 1 (1967), *In re* Winship, 397 U.S. 358 (1970), and McKeiver v. Pennsylvania, 403 U.S. 528 (1971). It was the adjudicatory hearing, not the dispositional hearing, which prompted the landmark Georgia precedents of Daniels v. State, 226 Ga. 269, 174 S.E.2d 422 (1970) and Robinson v. State, 227 Ga. 140, 179 S.E.2d 248 (1971). Furthermore, the decision in *M.E.B.* totally ignores the contrary result reached by the court of appeals in Whitman v. State, 96 Ga. App. 730, 101 S.E.2d 621 (1957).

34. 127 Ga. App. 813, 195 S.E.2d 225 (1 973).

35. Trial transcript of dispositional hearing before the DeKalb Juvenile Court, June 15, 1972, State v. C.A.J., at 22.

> disturbed in the absence of a manifest abuse of discretion. There is no indication in the record that the court considered and relied solely on any evidence to the rejection of all other.[36]

Morris v. Department of Family & Children Services[37] is the first appellate decision involving the recently expanded grounds for termination of parental rights in the juvenile court. The 1971 code added a new ground justifying termination which states as follows:

> The court by order may terminate the parental rights of a parent with respect to his child if:
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> . . . .
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> (2) the child is a deprived child[38] and the court finds that the conditions and causes of the deprivation are likely to continue or will not be remedied and that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm.[39]

Termination was ordered in the juvenile court on this ground. The headnote opinion in *Morris* does not indicate that an attack was made upon this new provision as being unconstitutionally vague; the appeal apparently proceeded only upon the general grounds, and the court approved the juvenile court decision that termination was justified under the evidence in this case. It can probably be safely assumed that in the future more and more termination cases will be presented to the appellate courts due to the growing numbers of children who are maturing in the no-man's land of publically supported foster home care.

The survey year indicates both a legislative and judicial retrenching from the advance marked by the passage of the 1971 Juvenile Court Code. What now appears necessary is a greater sharing of information about how the system works, where it fails, and how it might be improved by the rather small cadre of concerned citizens, lawyers and judges who know from personal observation what adjustments are necessary to insure an effective system of juvenile justice.

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36. 127 Ga. App. at 816, 195 S.E.2d at 228 (1973).
37. 127 Ga. App. 36, 192 S.E.2d 389 (1972).
38. As defined by GA. CODE ANN. § 24A-401(h) (1971).
39. GA. CODE ANN. §24A-3201(a)(2) (1971).