

JUVENILE COURT

CHAPTER 177.

[S. B. No. 92—Duis.]

PROVIDING FOR JUVENILE COURT.

AN ACT Relating to Children Who are Now or May Hereafter Become Dependent, Neglected or Delinquent; to Define These Terms, and to Provide for the Treatment, Control, Maintenance, Protection, Adoption and Guardianship of the Person of Such Children.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. CHILDREN WARDS OF THE STATE.] That all dependent, neglected and delinquent children under the age of eighteen years, shall, for the purpose of this act only, be considered wards of this state and their persons shall be subject to the care, guardianship and control of the court as hereinafter provided.

§ 2. DEFINITIONS.] For the purpose of this act, the words "dependent child" and "neglected child" shall mean any child who while under the age of eighteen years for any reason is destitute, homeless or abandoned; or dependent upon the public for support; or has not proper parental care or guardianship; or habitually begs or receives alms; or is found living in any house of ill-fame or with any vicious or disreputable person; or has a home which by reason of neglect, cruelty or depravity, on the part of its parents, guardian or any other person in whose care it may be, is an unfit place for such child, and any child who while under the age of eighteen years is found begging any articles or singing or playing any musical instrument for gain upon the street or giving any public entertainment for gain upon the streets or accompanies or is used in the aid of any person so doing.

The word "delinquent child" shall mean any child who while under the age of eighteen years violates any law of the state; or is incorrigible, or knowingly associates with thieves, vicious or immoral persons; or without just cause and without consent of its parents, guardian or custodian absents itself from its home or place of abode, or is growing up in idleness or crime; or knowingly frequents or visits a house of ill repute; or knowingly frequents or visits any policy shop or place where any gaming device is operated; or patronizes, visits or frequents any saloon or dram shop where intoxicating liquors are sold; or patronizes or visits any public pool room where the game of pool or billiards is being carried on for pay or hire; or any other place where

its presence is forbidden by law; or who wanders about the streets in the night time without being on any lawful business or lawful occupation; or habitually wanders about any railroad yards or tracks or jumps or attempts to jump onto any moving train; or enters any car or engine without lawful authority, or writes or uses vile, obscene, vulgar, profane or indecent language or smokes cigarettes in any public place or about the school house; or is guilty of indecent, immoral or lascivious conduct.

§ 3. JURISDICTION.] The district courts of the several counties in this state shall have original jurisdiction in all cases coming within the terms of this act.

§ 4. JUVENILE COURT.] The findings of the court shall be entered in a book or books to be kept for that purpose, and known as the "Juvenile Record" and the court may for convenience, be called the "Juvenile Court," and as far as possible the said court shall be held in chambers.

§ 5. PETITION TO THE COURT.] Any reputable person, being a resident of the state, may file with the judge or clerk of the court having jurisdiction in the matter, a petition in writing setting forth that a certain child, naming it, within his county, is either dependent, neglected or delinquent as defined in Section 1, hereof; and that it is for the interest of the child and this state that the child be taken from its parent, parents, custodian or guardian and placed under the guardianship of some suitable person to be appointed by the court; and that the parent, parents, custodian or guardian of such child, are unfit or improper guardians, or are unable or unwilling to care for, protect, train, educate, correct, control or discipline such child, or that the parent, parents, guardian or custodian consent that such child be taken from them.

The petition shall also set forth either the name, or that the name is unknown to petitioner (a) of the person having custody of such child; and (b) of each of the parents or the surviving parent of a legitimate child; or of the mother of an illegitimate child; or (c) if it allege that both parents or mother is dead, then of the guardian, if any, of such child; or (d) if it allege that both such parents are or that such mother is dead and that no guardian of such child is known to the petitioner. All persons so named in such petition shall be made defendants by name and shall be notified of such proceedings by summons if residents of this state, and if not residents, then in the same manner as is now or may hereafter be required by the laws of this state except only as herein otherwise provided.

All persons, if any, who or whose names are stated in the petition to be unknown to the petitioner, shall be deemed and taken as defendants by the name or designation of "all whom it may concern." The petition shall be verified by affidavit, which affidavit shall be sufficient if upon information and belief.

Process shall be issued against all persons made parties by the designation of "all whom it may concern" by such description, and notice given by publication as is required in this act shall be sufficient to authorize the county to hear and determine the suit as though the parties had been sued by their proper names.

These proceedings shall be on behalf of the state in the interest of the child and the state, with due regard to the rights and duties of parents and others, by petition to be filed by any reputable person, and to that end it shall be dealt with, protected and cared for in the county court as a ward of the state in the manner as hereinafter provided. A disposition of any child under this act or any evidence given in such cause, shall not, in any civil, criminal or other cause or proceeding whatever in any court, be lawful or proper evidence against such child for any purpose whatever; except in subsequent cases against the same child under this act; nor shall the name of any such child in connection with any proceedings under this act, be published in any newspaper, without a written order of the court.

§ 6. SUMMONS.] The summons shall require the person alleged to have the custody of such child to appear with the child at the time and place stated in the summons; and shall also require all defendants to be and appear and answer the petition on the return day of the summons. The summons shall be made returnable at any time within twenty days after the date thereof and may be served by the sheriff, or by any duly appointed juvenile officer, even though such officer be the petitioner. The return of such summons with endorsement of service by the sheriff or by such juvenile officer in accordance herewith shall be sufficient proof thereof. Whenever it shall appear from the petition or from affidavit filed in the cause that any named defendant resides or has gone out of the state, or on due inquiry cannot be found, or is concealed within this state or that his place of residence is unknown so that process cannot be served upon him, or whenever any person is made defendant under the name or designation of "all whom it may concern," the judge or clerk shall cause publication to be made once in some newspaper of general circulation published in his county, and if there be none published in his county, then in a newspaper published in the nearest place to his county in this state, which shall be substantially as follows:

A, B, C, D, etc. (here giving the names of such named defendants, if any), and to "all whom it may concern" (if there be any defendant under such designation.)

Take notice that on the.....day of.....A. D. 19....., a petition was filed by.....in thecourt of.....district to have a certain child, named, declared a (dependent or delinquent) and to take from you the custody

and guardianship of said child (and if the petition prays for the appointment of a guardian with power to consent to adoption, and to give said child out for adoption.) Now, unless you appear within twenty days after the date of this notice and show cause against such application, the petition shall be taken for confessed and a decree granted.

E. F., Judge or Clerk.

Dated (the date of publication.)

And he shall also within ten days after the publication of such notice send a copy thereof by mail, addressed to such defendants whose place of residence is stated in the petition and who shall not have been served with summons. Notice given by publication as is required by this act shall be the only publication notice required either in the case of residents, non-residents or otherwise. The certificate of the judge or clerk that he has sent such notice in pursuance of this section shall be evidence thereof. Every defendant who shall be duly summoned shall be held to appear and answer either in writing or orally in open court on the return day of the summons or if such summons shall be served less than one day prior to the return day, then on the following day. Every defendant who shall be notified by publication as herein provided shall be held to appear and answer either in writing or orally in open court within twenty days after the date of the publication notice. The answer shall have no greater weight as evidence, than the petition. In default of an answer at the time or times herein specified or at such further time as by order of court may be granted to a defendant, the petition may be taken as confessed. If the person having the custody or control of the child shall fail without reasonable cause to bring the child into court, he may be proceeded against as in case of contempt of court. In case the summons shall be returned and not served upon the person having the custody or control of such child or such person fails to obey the same and in any case when it shall be made to appear to the court by affidavit, which may be on information and belief that such summons will be ineffectual to secure the presence of the child, a warrant may be issued on the order of the court either against the parents or either of them, or guardian or the person having the custody or control of the child or with whom the child may be or against the child itself to bring such person into court. On default of the custodian of the child or on his appearance or answer, or on the appearance in person of the child in court with or without the summons or other process and on the answer, default or appearance or written consent to the proceedings of the other defendants thereto or as soon thereafter as may be, the court shall proceed to hear evidence. The court may in any case when the child is not represented by any person, appoint some suitable person to act on behalf of the child. At any time

after the filing of the petition and pending the final disposition of the case the court may continue the hearing from time to time and may allow such child to remain in the possession of its custodian or in its own home subject to the friendly visitation of a juvenile officer, or it may order such child to be placed in the custody of a juvenile officer of the court, or of any suitable person appointed by the court, or to be kept in some suitable place provided by the city or county authorities.

§ 7. JUVENILE OFFICERS.] The district courts of the several districts in this state shall have authority to appoint any number of discrete persons of good moral character for each of the counties in their said districts to serve as juvenile officers during the pleasure of the court; said juvenile officers to receive no compensation except their necessary expenses which shall be audited by and allowed in the discretion of the said district judge and paid by the counties for which said persons are appointed. It shall be the duty of the judge or clerk of the court, if practicable, to notify the said juvenile officers when any child is to be brought before the court; it shall be the duty of such juvenile officer to make investigation of such case; to be present in court to represent the interests of the child when the case is heard; to furnish such court such information and assistance as the court or judge may require, and to take charge of any child before and after the trial as may be directed by the court. Such juvenile officers may be of either sex.

§ 8. DEPENDENT AND NEGLECTED CHILDREN.] If the court shall find any child under the age of eighteen to be dependent or neglected within the meaning of this act, the court may allow such child to remain in its own home subject to the friendly visitation of a juvenile officer, or to report to the court or juvenile officer from its home or school at such times as the court may require. And if the parent, parents, guardian or custodian of such child are unfit or improper guardians or are unable or unwilling to care for, protect, train, educate, correct or discipline such child and that it is for the interest of such child and of the people of this state that such child be taken from the custody of its parents, custodian or guardian, the court may make an order appointing as guardian of the person of such child some reputable citizen of good moral character and order such guardian to place such child in some family home or other suitable place, which such guardian may provide for such child, or the court may enter an order committing such child to some suitable institution, organized for the care of dependent or neglected children, or to some training school or industrial school or children's home finding society or to some association embracing in its objects the purpose of caring for or obtaining homes for neglected or dependent children, which association shall have been accredited as hereinafter provided.

§ 9. GUARDIANSHIP.] In every case where such child is committed to an institution, or association, the court shall appoint the president, secretary or superintendent of such institution or association, guardian over the person of such child and shall order such guardian to place such child in such institution or with such association, whereof he is such officer and to hold such child, care for, train and educate it subject to the rules and laws that may be in force from time to time governing such institution or association, and to the supervision and further orders of said juvenile court.

§ 10. DELINQUENT CHILDREN.] If the court shall find any child under the age of eighteen (18) to be a delinquent within the meaning of this act, the court may allow such child to remain at its own home subject to the friendly visitation of a juvenile officer, such child to report to the court or juvenile officer with such record of its conduct in its home or school as the court may require as often as may be required, and if the parent, parents, guardian or custodian consent thereto, or if the court shall further find either that the parent, parents, guardian or custodian are unfit or improper guardians or are unable or unwilling to care for, protect, educate or discipline such child and shall further find that the parent, parents, guardian or custodian are unfit or improper guardians or are unable or unwilling to care for, protect, educate or discipline such child and shall further find that it is for the interest of such child and of the people of this state that such child be taken from the custody of its parents, parent, custodian or guardian, the court may appoint some proper person or juvenile officer, guardian over the person of such child and permit it to remain at its home, or order such guardian to cause such child to be placed in a suitable family home or cause it to be boarded out in some suitable home, or the court may commit such child to any institution incorporated under the laws of this state to care for delinquent children, or to any institution that has been or may be provided by the state, county, city, town or village suitable for the care of delinquent children, including a detention home or school, or to some association that will receive it, embracing in its object the care of neglected, dependent or delinquent children and which has been duly accredited as hereinafter provided. In every case where such child is committed to an institution or association, the court shall appoint the president, secretary or superintendent of such institution or association, guardian over the person of such child, and shall order such guardian to place such child in such institution or with such association, whereof he is such officer, and to hold such child, care for, train and educate it subject to the rules and laws that may be in force, from time to time governing such institution or association,

and to the supervision of and further orders of said juvenile court.

§ 11. CRIMINAL PROSECUTIONS.] The court may in its discretion in any case of a delinquent child permit such child to be proceeded against in accordance with the laws that may be in force in this state governing the commission of crimes or violation of city, village, or town ordinances; in such case the petition filed under this act shall be dismissed.

§ 12. SICK CHILDREN.] The court may, when the health or condition of any child found to be dependent, neglected or delinquent, requires it, order the guardian to cause such child to be placed in a public hospital or institution for treatment or special care, or in a private hospital or institution, which will receive it for like purposes, subject, however, to the supervision and further order of the court.

§ 13. GUARDIAN. EVIDENCE OF AUTHORITY.] Any child found to be dependent, neglected or delinquent as defined in this act, and awarded by the court to a guardian, institution or association, shall be held by such guardian, institution, or association as the case may be by virtue of the order entered of record in such case, and the judge or clerk of the court shall issue and cause to be delivered to such guardian, institution or association a certified copy of such order of the court, which certified copy of such order shall be proof of the authority of such guardian, institution or association in behalf of such child, and no other process need issue to warrant the keeping of such child. The guardianship under this act shall continue until the court shall by further order otherwise direct.

§ 14. GUARDIAN'S REPORTS.] The court may, from time to time, cite into court the guardian, institution or association to whose care any dependent, neglected or delinquent child has been awarded, and require him or it to make a full, true and perfect report as to his or its doings in behalf of such child; and it shall be the duty of such guardian, institution or association, within ten days after such citation, to make such report either in writing verified by affidavit, or verbally under oath in open court, or otherwise as the court shall direct; and upon the hearing of such report, with or without further evidence, the court may, if it sees fit, remove such guardian and appoint another in his stead, or take such child away from such institution or association and place it in another, or restore such child to the custody of its parents or former guardian or custodian.

§ 15. TRANSFERS FROM JUSTICE AND POLICE MAGISTRATES.] If any child under the age of eighteen years is arrested with or without warrant, such child shall instead of being taken before a justice of the peace or police magistrate, be given into the care of a juvenile officer of said county, and the officer having the child in charge shall take the child before such juvenile

court, and in any case the county court may proceed to hear and dispose of the case in the same manner as if the child had been brought before the court upon petition as herein provided. In any case, the court shall require notice to be given and investigation to be made as in other cases under this act, and may adjourn the hearing from time to time for that purpose.

§ 16. RIGHT OF COUNSEL AND TO GIVE BOND.] Any child within the provisions of this act, informed against or regarding which a petition has been filed, or for any purpose taken into custody, shall, at any time before it is tried and adjudged to be delinquent, be entitled, by any friend or parent offering sufficient security, to give bond or other security for its appearance at any hearing or trial of such case, as such right is given to persons informed against for crime; and the court may in any such case, upon the request of said child or its parent or persons representing it, appoint counsel to appear and defend on behalf of any such child, such counsel to receive no pay from the county.

§ 17. ORDER RELATING TO ADOPTION.] Whenever the petition filed, as is provided in section 4 hereof, or a supplemental petition filed at any time after the appointment of the guardian shall pray that the guardian appointed or to be appointed shall be authorized to consent to the legal adoption of the child, and the court upon the hearing shall find that it is to the best interests of such child that the guardian be given such authority, the courts may, in its order appointing such guardian, empower him to appear in court where any proceedings for the adoption of such child may be pending and to consent to such adoption; and such consent shall be sufficient to authorize the court where the adoption proceedings are pending to enter a proper order or decree of adoption without further notice to, or consent by the parents or relatives of such child; provided, however, that before entering such order the court shall find from the evidence that (1) the parents or surviving parent of a legitimate child or the mother of any illegitimate child, or if the child has no parents living the guardian of the child, if any, or if there is no parent living and the child has no guardian or the guardian is not known to petitioner, then a known, near relative of the child, if any there be, consents to such order; or (2) that one parent consents and the other is unfit for any of the reasons hereinafter specified to have the child, or that both parents are or that the surviving parent or the mother of an illegitimate child is so unfit for any such reasons the grounds of unfitness being (a) depravity, (b) open and notorious adultery or fornication, (c) habitual drunkenness for the space of one year prior to the filing of petition, (d) extreme and repeated cruelty to the child, (e) abandonment of child or (f) desertion of the child for more than six (6) months next preceding the filing of the

petition, and (g) that such child if of the age of fourteen years or over, consents to such order.

§ 18. RELIGIOUS PREFERENCE.] The court in committing children shall place them as far as practicable in the care and custody of some individual holding the same religious belief as the parents of said child, or with some association which is controlled by persons of like religious faith of the parents of said child.

§ 19. COUNTY BOARDS OF VISITORS AND CHILDREN'S GUARDIANS.] The district judge of each district may appoint a board of six reputable inhabitants in each of the counties of his district. Three of the members of said board shall be women. They shall serve without any compensation except their necessary expenses which shall be audited by and allowed in the discretion of the said district judge and paid by the counties for which said persons are appointed. It shall be the duty of said board to visit, as often as once a year, all institutions, societies and associations, and all persons receiving children under this act; said visits shall be made by not less than two of the members of the board, who shall go together or make a joint report; the said board of visitors shall report to the court, from time to time the condition of children received by or in the charge of such associations, institutions and persons, and shall make an annual report to said district judge in such form as the judge may prescribe. In addition thereto the said board shall act as the board of children's guardians and shall investigate into the conditions and nature and number of the dependent and neglected children in their said counties, and whenever they shall have knowledge of facts such as will cause the substantial belief that any child in said county is delinquent, dependent or neglected, as these terms are used and defined in this act, and no steps have been taken for the care of such child, it shall be their duty to themselves present to the juvenile court of their said district the petition provided for in section 5 of this act. In all cases also where a child or children have been committed or entrusted to the State Home for the Feeble Minded and either voluntarily by their parents or guardians or under due process of law and sought to be released therefrom and in all cases where waifs or illegitimate or other dependent children are sought to be released from care and guardianship or adopted, domiciled or apprenticed, the said board shall investigate into the matter within ten days after notice of the attempted action which shall in every case be given to them in writing by the person or institution seeking to release, discharge or adopt such child, whether temporarily or permanently, and said board shall advise the said district court as to the advisability and wisdom of such action, and no such action shall take place without the consent of said district judge.

§ 20. OFFICERS OF COURTS.] It shall be unlawful for any court judge or clerk or other person to tax or collect, or for any county to pay any fees whatever which may be permitted, by any law to be taxed or collected for the benefit of any court officer or person for any case concerning any child coming within the provisions of this act for violating any law of this state, unless such child shall be proceeded against under the provisions and in accordance with the purpose of this act, except in capital cases where the courts shall direct a proceeding under the criminal code, as provided in section 10 of this act.

§ 21. CONSTRUCTION OF THE ACT.] This act shall be liberally construed to the end that its purpose may be carried out, to-wit: that the care, custody and discipline of the child shall approximate as nearly as may be that which should be given by its parents, and in all cases of dependency where it can properly be done, that the child shall be placed in an approved family home, and become a member of a home and family by legal adoption or otherwise, and in cases of delinquency, that as far as practicable any delinquent child shall be treated, not as a criminal, but as misdirected and misguided and needing aid, encouragement and assistance, and if such child cannot be properly cared for and corrected in its own home, or with the assistance and help of the probation officers, then that it may be placed in some suitable institution where it may be helped and educated and equipped for industrial efficiency and useful citizenship.

§ 22. SUPPORT OF CHILDREN.] If it shall appear, upon the hearing of the cause that the parent, parents, or any person or persons named in such petition who are in law liable for the support of such child, are able to contribute to the support of such child, the court shall enter an order requiring such parent, parents or other persons to pay to the guardian so appointed or to the institution to which such child may be committed, a reasonable sum and the said court may from time to time make such alterations in the allowance as shall appear reasonable and proper. Should the court find that neither the parent nor guardian can contribute to the support of the said child, it shall then make an order directing the payment thereof by the county.

§ 23. ORDER RELATING TO SUPPORT.] If the person so ordered to pay for the support, maintenance or education, of a dependent, neglected or delinquent child shall be employed for wages, salary or commission, the court may also order that the sum be paid to him shall be paid to the guardian or institution out of his wages, salary or commission and that he shall execute an assignment thereof pro tanto. The court may also order the parent or the person so ordered to pay the sum of money for the support, maintenance or education of the child from time to time, make discovery to the court as to his place of employment

as amount earned by him. Upon his failure to obey the orders of the court he may be punished as for contempt of court.

§ 24. GUARDIANSHIP OF PERSON.] Nothing in this act shall be construed to give the guardian appointed under this act the guardianship of the estate of the child or to change the age of minority for any other purpose except the custody of the child.

§ 25. APPEALS.] Cases under this act may be received and appealed as other similar court and criminal cases.

FEES.] The fee for publishing the notice required in section 6 of this act, shall be paid for by the county, unless the child affected by such proceeding is legally dependent upon someone who is able to pay therefor.

§ 26. CONTEMPT OF COURT.] Any person who shall interfere with the direction or disposition of any child under any order of the court concerning any child, may in pursuance of the provisions of this act, or with any juvenile or other officer of the court in carrying out the directions of the court under any such order, shall be held to be in contempt of court and subject to punishment as for contempt of court.

§ 27. This act shall be construed to repeal existing laws in conflict with this act under and by which dependent, neglected and delinquent children as defined by this act might be arrested, complained against, committed, confined or taken into or placed in custody, in justice courts or police courts, but as to all other laws it shall be construed as cumulative and not as exclusive.

§ 28. EMERGENCY.] Whereas, an emergency exists, in that inadequate care and protection is now furnished to the dependent and delinquent children of this state, therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 3, 1911.

LIENS

CHAPTER 178.

[S. B. No. 195—Putnam]

REGULATING THE DISCHARGE OF LIENS.

AN ACT Regulating the Discharge of Liens, Not Dependent Upon Possession and to Provide for the Release of Liens, Filed of Record Against Real Property, and Personal Property, and the Giving of an Undertaking for the Payment Thereof.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

That whenever any mechanic's lien, lien for the service of sires, seed liens, threshing lien, farm laborer's lien, miner's lien, shall