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# THE CHILDREN'S CODE AND THE JUVENILE COURT

EDMUND B. SHEA\*

“THE CHILDREN'S CODE” is a title popularly applied to Bill 237, A., now pending before the Wisconsin legislature, the purpose of which is to revise and supplement the statutes relating to the care and treatment of children who are neglected, dependent, delinquent [within the technical meaning of these terms], or illegitimate. As the problems created by these classes of children are intricately interwoven with the functions of courts in cases of juvenile offenders, bastardy proceedings, and adoption cases, with the functions of reformatories, industrial schools, and other state institutions as well as the functions of private agencies such as orphanages, home finding societies and maternity hospitals, the framers of the code have undertaken to formulate a consistent, harmonious program applicable to this entire field of related functions. The bill has been justly referred to as the most important proposal before the legislature at the present session.

In general, the measure would increase the powers and jurisdiction of the juvenile court; would change methods now employed for licensing and regulating child welfare agencies, foster homes and maternity hospitals; would revise in fundamental respects the procedure in bastardy cases; would provide proper investigation in connection with the adoption of children; would alter the operation of the statutes relating to mother's aid; and would authorize the county board of every county, Milwaukee County excepted, to establish a County Children's Board, composed of citizens serving without pay and charged with the duty of obtaining for defective, neglected, dependent, delinquent, and illegitimate children within the county the protection of laws enacted specially for their benefit.

The bill was prepared under the auspices of the Wisconsin Conference of Social Work and represents the product of two years of research and public discussion promoted by its Children's Code committee. The membership of that committee includes numerous judges, social workers, lawyers, physicians, teachers, and others throughout the state, selected for such membership by reason of familiarity with the problems which the committee was appointed to consider. Hence the measure as drafted is presumed to reflect the conclusions of a repre-

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sentative group of individuals versed by study and experience in the problems of juvenile neglect, dependency, delinquency, and illegitimacy.

This subject is of interest not only from a humanitarian standpoint but also as a practical one of state polity, being bound up closely with the size and character of the population—especially the future population, of the public jails, prisons, insane asylums, and poorhouses. For it has been demonstrated that children who are allowed to become neglected, dependent, or delinquent tend later to form an undue proportion of the adult population of the institutions referred to; it has been demonstrated also that the evil consequences of continued neglect, dependency, and delinquency are in large measure preventable by early discovery and prompt treatment to remove the cause. In other words, if the proper procedure be followed in handling individual cases of children in need of care or correction, they may be enabled thereby to develop into normal, self-sustaining adults, whereas if no steps are taken, such individuals tend to develop into criminals, defectives, and public burdens. The Children's Code, offering a modern, constructive program for improving methods now employed in dealing with the groups of children referred to, is therefore worthy of consideration by thoughtful people.

Of especial interest to members of the bar are the provisions of the Code relating to the juvenile court. It will be the purpose of this article to indicate the main provisions of the Bill, which relate to that court, commenting only on features which are not found in the existing law or which would alter the operation of the statute now in effect.

The underlying policy of the measure is declared as follows:

That each child coming within the jurisdiction of the juvenile court shall receive such care, guidance, and control, preferably in his own home, as will conduce to the child's welfare and the best interests of the state; and when such child is removed from his own family, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents.<sup>1</sup>

It is declared further that the adjudication of the juvenile court upon the status of any child before it, shall not operate to impose any of the

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<sup>1</sup> This provision is taken from the Standard Juvenile Court Law prepared by the Committee on Standard Juvenile Court Laws of the National Probation Association, the committee being composed of the following: Franklin Chase Hoyt, Presiding Justice, Children's Court, New York, Chairman; Mary M. Bartelme, Judge, Juvenile Court, Chicago; Frederick P. Cabot, Judge, Juvenile Court, Boston; Bernard Flexner, Attorney-at-law, New York; Charles W. Hoffman, Judge, Court of Domestic Relations, Cincinnati; Henry S. Hulbert, Judge, Juvenile Court, Detroit; James Hoge Ricks, Justice, Juvenile and Domestic Relations Court, Richmond; Miriam Van Waters, Referee, Juvenile Court, Los Angeles; Edward F. Waite, Judge, District Court, Minneapolis; Charles L. Chute, General Secretary, National Probation Association, Secretary.

civil disabilities ordinarily imposed by conviction, and shall not be deemed a conviction; that no child shall be deemed a criminal by reason of any judgment of a juvenile court and that no child under sixteen years of age shall be charged with or convicted of a crime in any court.<sup>2</sup>

These fundamental principles of juvenile court jurisdiction are not stated in the statute now in effect and have been oftentimes overlooked by those who would regard the juvenile court as a quasi-criminal tribunal designed for the apprehension and punishment of juvenile offenders. The Children's Code emphasizes that the true purpose of the court is not penal but is to discover and correct conditions found to be causing delinquency and the forerunner of delinquency which is neglect.

The field of jurisdiction marked out for the juvenile court of each county includes all cases based on the *neglect*, *dependency*, or *delinquency* of children *residing* or *found* within the county. As these definitions form the basis of the whole juvenile court jurisdiction they are set forth in full as follows:

The words *neglected child* shall mean any child under the age of eighteen years, who is abandoned by his parent, guardian, or custodian; or who lacks proper parental care by reason of the fault or habits of the parent, guardian, or custodian; or whose parent, guardian, or custodian neglects or refuses to provide proper or necessary subsistence, education or other care necessary for the health, morals, or well-being of such child; or whose parent, guardian, or custodian neglects or refuses to provide the special care made necessary by the mental condition of the child; or who engages in an occupation or is in a situation dangerous to life or limb or injurious to the health or morals of himself or others.

The words *dependent child* shall mean any child under the age of sixteen years who is homeless or destitute or without proper support, but who is not a neglected child as defined above; or who lacks proper care by reason of the mental or physical condition of the parent, guardian, or custodian.

The words *delinquent child* shall mean any child under the age of eighteen years who has violated any law of the state or any county, city, town, or village ordinance; or who by reason of being wayward or habitually disobedient is uncontrolled by his parent, guardian, or custodian; or who is habitually truant from school or home; or who habitually so deports himself as to injure or endanger the morals or health of himself or others.

These definitions are comprehensive enough to include virtually all cases within the definitions of *neglect*, *dependency* and *delinquency* in

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<sup>2</sup> All of the form and trappings of criminal procedure at common law are done away with. There is no indictment, no warrant, no arraignment, no plea, no public trial, no confronting of witnesses, no adherence to the rules of evidence. The object of the procedure is to find out the cause of the trouble which has brought the child before the court, and to do, so far as possible, what needs to be done, to correct the wrong condition presented.

the existing law, but in addition cover many proper cases which the juvenile courts are not now able to reach.<sup>3</sup> The bill would make the jurisdiction of the juvenile court *exclusive* in all cases of neglected, dependent, and delinquent children, except cases of delinquent children over sixteen years of age, concurrent jurisdiction over the latter class of cases being reserved to the criminal courts. Under the present law all cases of children under sixteen years of age charged with state's prison offenses are brought to the juvenile court but such cases may be then transferred by that court to the proper criminal court of the county, there to be proceeded with as prosecutions against adults. Hence a child of eight or nine years charged with murder, larceny, or any other felony may be sent by the juvenile court to a criminal court to be tried like an adult criminal. The proposed revision would prevent any such prosecution of a child under sixteen years of age, placing all such children outside the reach of the criminal courts.

The bill revises upwards the age limit of delinquent boys amenable to juvenile court jurisdiction. Under the present law the upper age limit is eighteen years for girls and seventeen years for boys. The bill makes the age limit eighteen years for boys and girls alike on the theory that there exists no sufficient reason for any distinction in that regard. The only qualification of the juvenile court's jurisdiction over neglected and delinquent children up to eighteen years of age is that, as above stated, the criminal courts have concurrent power over children past sixteen years of age.

The bill proposes to vest in the juvenile court power to summon any adult found to have contributed to the delinquency, neglect, or dependency of any child before the court, and to make appropriate orders to be complied with by such adult, including orders requiring the payment of money for the maintenance and care of children whose cases are under consideration. A violation of any such order of the court is declared a contempt, to be dealt with accordingly. Such a provision has been found helpful by juvenile courts in other states in working out the solution of children's problems involving family groups.<sup>4</sup> Nothing akin to this power is found in the present law.

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<sup>3</sup>The definitions in the bill are substantially as contained in the Standard Law, and are more scientific than those found in the law at present, which, for example, makes no distinction between *dependency* and *neglect* and includes under both terms the case of "any child under the age of eight years who is found begging or playing any musical instrument upon the street for gain or is used in aid of any person so doing."

The age limit in the Standard Law is eighteen years (i.e. the eighteenth birthday of the child) for dependency as well as neglect and delinquency. The Bill distinguishes between dependency and neglect, making eighteen years the age limit for neglect and sixteen years the limit for dependency.

<sup>4</sup>The Standard Law contains this provision. Jurisdiction over adults is con-

A new and valuable feature of the bill is the provision for terminating the legal status subsisting between a parent and child, and the rights of the parent incidental to that status.

The nature of a parent's constitutional rights in that regard is described in *Lacher vs. Venus*, 177 Wis. 558. In that case Lacher's child was committed to the state public school by order of the juvenile court of Dane County, pursuant to Section 48.07 (1927 Statutes), on account of the parents' inability to provide proper support.<sup>5</sup> The section referred to authorizes the court upon finding a child to be dependent or neglected, to commit it, temporarily or permanently, to the "care, custody, and guardianship of some suitable state or county institution. . . ." Section 48.22 (1927 Statutes) provides that the state board of control shall be the legal guardian of all children in the state public school, and that as such guardian it may consent to the adoption of any such child, in the manner provided by law, with the same force and effect as though such consent were given by the parents of the child. Section 322.02 relating to adoption makes the consent of the parent or parents or legal guardian a pre-requisite to an order for adoption.<sup>6</sup>

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ferred in order to make effective the court's function of protecting and reforming children under its supervision. By reaching the individuals who surround the child the court is able more effectively to control and check harmful influences in the home which might otherwise neutralize all of the efforts of the judge.

<sup>5</sup>48.07 "When any such child shall be found to be dependent or neglected the court may make an order committing the child to the care, custody, and guardianship of some suitable state or county institution as provided by law, or to the care, custody and guardianship of some incorporated association willing to receive it, embracing in its objects the purpose of caring for or obtaining homes for dependent or neglected children; if it shall appear from the evidence in any such case that there has been an actual abandonment of the child by the parents or by the parent, if there be but one, or such gross neglect or moral unfitness on the part of such parents or parent as shall be deemed an abandonment of the child, the court shall expressly so find; if it be found that the child has been abandoned by the parents or by the parent, if there be but one, the court may order the commitment."

<sup>6</sup>322.02 "(1) No such adoption shall be made without the written consent of the living parents of such child unless the court shall find that one of the parents has abandoned the child or gone to parts unknown, when such consent may be given by the parent, if any, having the care of the child. In case where neither of the parents is living, or if living are unknown or mentally incompetent or have abandoned the child, such consent may be given by the guardian of such child, if any. If such child has no guardian such consent may be given by any of the next of kin of such child residing in this state or, in the discretion of the court, by some suitable person to be appointed by the court. (2) In case of a child not born in lawful wedlock such consent may be given by the mother, if she is living and has not abandoned such pointed by the court.

Thereafter, while the child was an inmate of the state public school, the state board of control pursuant to Section 48.22 consented to the adoption of the Lacher child by one Venus, and an order of adoption was entered upon such consent by a county court wherein the petition for adoption had been filed. Lacher later discovering what had taken place, attacked the validity of the adoption proceeding on the ground that it deprived him of his constitutional parental rights over his child without due process of law, and demanded that the child be restored to his custody. His contention was sustained by the supreme court.<sup>6a</sup>

Here then is the situation under the statute: Notwithstanding a commitment of a child to a public institution, which is thereby constituted the legal guardian of the child, notwithstanding consent by that institution to an adoption, in accordance with the letter of the law, the adoption, nevertheless may be successfully attacked by the natural parents of the child. The same question arises in connection with similar commitments to private agencies, as orphanages and home finding societies, which under Section 58.02, became the legal guardians of children committed to their care, and are authorized by the statute to consent to the adoption of their wards with the same force and effect as though such consent had been given by the natural parents.<sup>7</sup> In *Mathews' Will*, decided February 5, 1929, 223 N. W. 434, the procedure last mentioned was followed. A child was brought into juvenile court for neglect on the

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"(2) In case of a child not born in lawful wedlock such consent may be given by the mother, if she is living and has not abandoned such child; provided, that unless the living parent or parents of a minor consent to such adoption or shall have abandoned such child it shall be the duty of the court having jurisdiction of the proceedings, upon the filing of any petition for adoption, by order to appoint a time and place for hearing such petition and cause notice of such time and place to be given to such parent or parents, by personal service of said notice on such parent or parents at least ten days before the hearing or, if to the satisfaction of the court personal service cannot be obtained, by publication thereof in a newspaper in the county at least three weeks successively prior to said hearing, and when notice is duly given as herein provided the parent of any minor shall be bound by the order of adoption as fully as though he had consented thereto.

"(3) And in case such child has arrived at the age of twenty-one years such consent may be given by such child alone, and the consent of no other person in behalf of such child shall be required."

<sup>6a</sup> The decision distinguishes between proceedings for the commitment of children by the juvenile court and adoption proceedings and holds that in the former the immediate welfare of the child is the paramount if not the sole and controlling consideration and that the notice to the parents is not a jurisdictional requirement of such proceedings, the judgment being not binding on the parents, but that adoption proceedings affect the natural right of parents to the custody and affection of their children in addition to the right to their services and earnings, and that the parent cannot be deprived of such rights without a hearing.

part of the parents. The court found the child had been insufficiently nourished and cared for and was "so neglected as to amount to abandonment" and committed the child to a home finding society. The latter society, pursuant to Section 58.02, released the child for adoption by Matthews. An order for adoption, based on the consent of the home finding society, was made accordingly. Thereafter Mathews' wife having died leaving property which would have descended to the adopted child if the adoption had been valid, Mathews contested the right of his adopted child to inherit, on the ground that the order for adoption was void because made without notice to the natural parents, and without a finding by the county court, *in the adoption proceeding*, that there had been an abandonment. Mathews' contention was sustained by the supreme court and the child was denied the right to inherit from the deceased Mrs. Mathews. In short, the adoption was void.

These cases illustrate the pitfalls and difficulties surrounding the subject of adoptions, based on juvenile court commitments to institutions. The painful consequences to which parents and children alike are exposed under the procedure prescribed by the existing law are obvious.

Hence the need of a simple, clear-cut, and effective procedure to put a period to the rights of parents who have been deprived of the permanent custody, care, and guardianship of their children for proper cause. The decisions referred to make necessary for that purpose a judicial proceeding, fulfilling the constitutional requirements as to notice and hearing. While such a proceeding might be had under Section 322.02, in the county court adoption case, the publication of the names of the natural parents in connection with the name of the child and the names of the adopting parents would react prejudicially upon all parties concerned, in many such cases.

Accordingly, what is called a pre-adoption proceeding has been worked out in the following provision of the Bill:

Whenever in the course of a proceeding instituted under sections 48.01 to 48.07 or otherwise, it shall appear to the court that the person or child welfare agency (other than a parent) having the care, control, and custody of such child is not fitted therefor or that the parents of a child have abandoned such child or have substantially and continuously or repeatedly refused or being financially able having neglected to give such child parental care and protection, the court shall have juris-

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<sup>7</sup> 58.02 "(2) Every such corporation is hereby constituted the legal guardian of every child committed, for the period of minority, to its care and custody by a competent court or assigned to it by an instrument in writing executed as described in subsection (1) of section 58.02; may consent to the adoption of any such child by any person in the same manner and with the same force and effect as such consent could be given by its parent; \* \* "

diction to transfer the permanent care, control, and custody of such child to some other person, agency, or institution and in the exercise of such jurisdiction the court may terminate all rights of the parents with reference to such child, and also may appoint a guardian for the person of such child. Such transfer of the permanent care, control, and custody of a child, and if it appear wise, also the termination of all the rights of the parents with reference to such child also may be ordered by the court on consent of the parents of such child, or, in case of an illegitimate child, of the mother thereof, provided the court find the same to be in the interests of the child. *Such transfer of the permanent care, control, or custody of a child or termination of the rights of the parents with reference to a child shall be made only after a hearing before the court and the court shall cause notice of the time, place, and purpose of such hearing to be served on the parents of such child personally at least ten days prior to the date of hearing or if to the satisfaction of the court personal service cannot be obtained, then by publication thereof in a newspaper in the county once a week for three weeks prior to the date of hearing.* In case of any minor parent the court shall appoint a guardian *ad litem* therefore in the manner provided for appointment of guardians *ad litem* in the county court.<sup>7a</sup>

This juvenile court proceeding is then correlated with the adoption law by the insertion in the latter of a provision as follows:

Consent shall not be required of parents whose parental rights have been terminated by order of a juvenile or other court of competent jurisdiction; provided, however, that in such case adoption shall be permitted only on consent of the state board of control, or of the licensed child welfare agency, or county home for dependent children, to which the permanent care, custody, or guardianship of such child has been transferred by a juvenile or other court of competent jurisdiction.

Juvenile court jurisdiction, as above defined, in cases based on dependency, delinquency, or neglect, is conferred upon all of the courts of record of the state, but its exercise is limited in each county to a particular judge designated for that purpose by all of the judges of courts of record in the county from among their number. The bill does not alter this arrangement as set up in the statute now in force. It is interesting to note the peculiar character of this jurisdiction as

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<sup>7a</sup> This provision is based on the theory that parental duties as well as rights are attached to the status of parenthood, and that the state has power to terminate the rights in case of non-performance the duties of the relationship. The constitutional requirements as to hearing are well expressed in *Lacher v. Venus* as follows: "Notice that some particular judicial proceedings are already instituted or proposed to be instituted; notice of the time and place where such hearings are to be had; reasonable opportunity to be heard, are the essentials of due process of law; anything short of this is absence thereof."

explained in the language of Chief Justice Winslow in *State vs. Scholl*, 167 Wis. 504:

As matter of fact there is no "juvenile court" in the sense of a separate and independent court; it is so called simply for convenience and is a jurisdiction rather than a distinct court. As will be seen by reference to the act, all the courts of record of the state are endowed with the necessary jurisdiction to enforce it, and the judges of such courts in each county from time to time select one of their number to exercise this jurisdiction for a stated period. If he be a municipal judge the juvenile court is in fact the municipal court while he is presiding, if he be a county judge it is the county court, and if he be a circuit judge it is the circuit court. This seems somewhat anomalous to us because we have been so long accustomed to the rigidity of our court system, but no constitutional or serious practical objection can be successfully urged against it. It is a common sense step toward greater elasticity in the administration of the law by the courts which will doubtless be followed by many more.

The procedure in juvenile court under the bill is virtually the same as under the present statute in the following respects: On the receipt of information that a child is neglected, dependent, or delinquent, the court makes a preliminary inquiry to determine whether or not the case is a proper one to take cognizance of. If deemed proper, the court then authorizes the filing of a petition alleging the material facts. After such further investigation as the court may direct, a summons is issued to the proper parent or guardian, ordering the production in court of the child in the case. When the case comes on for hearing the trial is conducted informally and in private. There is no jury unless a jury be demanded.<sup>8</sup> The bill would allow the court to direct a physical or mental examination at the expense of the county in the case of any individual under its jurisdiction to enable the court to give due consideration to such physical or mental condition in disposing of the case. It would also allow the court to make and enforce orders requiring special care and treatment for children appearing to be in need thereof, the expense to be charged to the county but borne in whole or in part by the proper parent or guardian at the direction of the court. Following the hearing the court makes written findings and enters its judgment. The record is not open to the public.<sup>9</sup>

The present law contains no provision for the appointment of ref-

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<sup>8</sup> The Standard Law makes no provision for a jury. The Wisconsin Supreme Court has indicated that the constitutional guaranty of jury trial has no application to juvenile court cases, which are not criminal prosecutions. *State v. Scholl*, 167 Wis. 504. *In re Johnson*, 173 Wis. 571.

<sup>9</sup> All of the procedural provisions referred to in this paragraph are found in the Standard Law.

erees in juvenile courts. The bill would permit the appointment of such referees to hear cases and make findings subject to review by the court.<sup>10</sup> This proposal is based on the experience of other states where such methods have been employed with success especially in cases of girl delinquents tried by women referees.

Authorities on the subject of redeeming juvenile delinquents agree that children who have been brought under the jurisdiction of the juvenile court and whose cases have not been disposed of should not be confined or restrained without necessity for such action. Confinement frequently proves injurious to the child, especially where he is thereby brought in contact with older children who have also transgressed. Contact with mature criminals is still more objectionable. The bill would apply this principle further than does the present law. It would prohibit the confinement, by the juvenile court, of any child under eighteen years of age in any jail, police station, or other place where the child may come in contact with adult prisoners, although it would allow a child of sixteen years or over who is a menace to others to be detained on order of the juvenile court in a separate part of a jail apart from adults confined therein. A child whose case is pending may be left with his parents or his custodians under assurance from the latter to produce the child in court at the time appointed. Presumably this would be as at present the normal practice. Temporary detention would be permitted also in the custody of suitable persons in private homes, subject to the supervision of the court. The court would also be authorized to arrange with any incorporated institution or agency maintaining a suitable place of detention for children to receive for temporary care children within the jurisdiction of the court, the reasonable expense of such care to be paid by the county. Provision is made also for detention in a home provided by the county board for that purpose and conducted as an agency of the court. There is nothing in the present law which would permit detention at the expense of the county in private homes or in private agencies, nor is there at present any provision for the establishment of a detention home as an adjunct of the juvenile court.

In respect to the appointment and duties of probation officers the bill makes but little change in the existing statute. It would vest in the juvenile court judge of Milwaukee County, instead of in all of the judges of the county, the power to appoint the chief probation officer. The bill also prescribes qualifications for the office of probation officer somewhat in advance of the requirements now prevailing.

The bill further provides that the juvenile court upon finding a child

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<sup>10</sup> This provision is in the Standard Law.

to be delinquent, neglected, or dependent, may place the child on probation or under supervision in his own home or in the custody of a relative or other fit person upon such terms as the court shall determine. Or it may commit the child to a suitable public institution or to a suitable child welfare agency upon such terms and for such time as the court may fix, except that all commitments to the Industrial School for Girls or to the Industrial School for Boys are required to run until age twenty-one, subject to parole by the state board of control. This provision is based on the principle that the length of time in the correctional institution which may be required to restore the particular child to a correct adjustment towards life cannot be determined in advance by the court, but must be left to the authorities who have charge of the child in the institution, i. e., the state board of control. There is no basis in the juvenile court law for the mistaken notion sometimes entertained that a commitment to the Industrial School is a sentence for crime. Nor is it true that such a commitment keeps the child at the Industrial School until age twenty-one. The average duration of such commitments is actually sixteen months.

Every child whose case is heard by the juvenile court continues under its jurisdiction until he attains the age of twenty-one years unless sooner discharged by the court.<sup>11</sup> This provision in the bill is not found in the present law.

The bill also authorizes the court in committing a child to custody other than that of his parent, to charge the expense of such care to the county and to require the parent to pay all or a proper part of such charge; child welfare agencies are entitled to recover from the county for the support of each child committed to their care by the juvenile court a reasonable sum not exceeding \$3.00 per week for such care.<sup>12</sup> This is a new provision.

Appeal from the judgment of the court may be had direct to the supreme court as under the present law.

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<sup>11</sup> The Standard Law contains this provision. It is considered desirable especially in the cases of children coming into the juvenile court shortly before reaching the age of eighteen, who may be greatly benefited by probationary care for a year or two following.

<sup>12</sup> The \$3.00 per week rate applies where the child is cared for in an institution. If boarded in a family home the maximum is \$7.00 per week.