Report of the Attorney General's Task Force on Juvenile Justice

EVELLE J. YOUNGER, Attorney General

JANUARY 1975

MEMBERS OF THE TASK FORCE ON JUVENILE JUSTICE

Hon. Joseph M. Kennick, State Senator
Hon. Louis J. Papan, State Assemblyman
Capt. G. Albert Howenstein, Jr.,
President, Juvenile Officers Association
Capt. C. L. Cronkhite,
Juvenile Division, Los Angeles Police Department
Capt. William Hanke,
Juvenile Division, Los Angeles Sheriff's Office
Leroy Ford, President, California Probation Officers Association
Margaret C. Grier, Chief Probation Officer, Orange County
James Rowland, Chief Probation Officer, Fresno County
Sandra Morris, San Diego Bar Association
Hon. Bertram D. Janes, Justice,
Court of Appeal, Third Appellate District
Hon. William P. Hogoboom,
Judge of the Superior Court, Los Angeles County
Hon. John J. Purchio,
Judge of the Superior Court, Alameda County
Hon. Stanley Arnold, Judge of the Superior Court (retired)
Hon. James A. Madden, Judge of the Superior Court (deceased)
Marjorie Childs, Referee, San Francisco Juveni e Court
Hon. Joseph P. Busch, District Attorney, Los Angeles County
Hon. Duncan M. James, District Attorney, Mendocino County
Hon. Edwin L. Miller, District Attorney, San Diego County
Paul Ligda, President, Public Defenders Association
Mariana Pfaelzer, State Bar of California
Hon. Allen F. Breed, Director of the Youth Authority
Hon. William A. Daugherty,
Administrative Officer, Youth Authority Board
Willard H. Hutchins, Chief, Bureau of Criminal Statistics

Arnold O. Overoye, Chairman, Attorney General's Representative

ACKNOWLEDGMENT

The Attorney General's Office wishes to thank the members of the Task Force who have donated their time and considerable expertise to the improvement of the Juvenile Court Law. We appreciate also the contribution of the late James A. Madden, Judge of the Superior Court for the County of San Luis Obispo, whose concerned contribution was cut short by his untimely death.

It is hoped that the efforts of this Task Force will stimulate legislative action and additional needed reform.

EVELLE J. YOUNGER
Attorney General

ATTORNEY GENERAL'S JUVENILE JUSTICE TASK FORCE

Summary of Recommendations

The following constitute the recommendations of the Attorney General's Task Force on Juvenile Justice. A textual discussion of the reasons for these changes is contained in the report.

I. Welfare & Institutions Code section 654 providing for informal probation in lieu of court proceedings with the consent of the parent or guardian should be amended to require an agreement upon prescribed conditions for a program of supervision and to require a report of actual program measures undertaken at the conclusion of the period of supervision. The authority of the probation officer to file the withheld petition is also clarified.

II. Welfare & Institutions Code section 601 should be amended in the format of section 600 to provide jurisdiction for violations of probation ordered pursuant to section 725. The authority of the court to require periodic reports should also be expanded to include reports prepared under sections 654 and 725.

III. The Juvenile Court should be given express power to enter orders applicable to the parent or guardian.

IV. The District Attorney should be required to appear and participate in both the jurisdictional and dispositional hearings in all contested cases alleging jurisdiction under section 602 (violation of the criminal law).

V. Rigid time limits under the Juvenile Court Law require the addition of a second detention hearing within 5 judicial days to consider evidence of the prima facie case if that evidence is requested by counsel. The initial detention hearing will thus guard against unwarranted detention while realistically providing the time necessary to consider the prima facie case.

VI. The nature and circumstances of the offense should be considered, on the issues of detention and fitness for treatment as a juvenile.

REPORT OF THE ATTORNEY GENERAL'S TASK FORCE ON JUVENILE JUSTICE

INTRODUCTION

The Attorney General's Task Force on Juvenile Justice was formed in September of 1974. It was formed in an area of the law which has been the subject of myriad studies and recommendations. We have looked at many studies and articles. The membership of the Task Force has consciously reflected the juvenile justice spectrum to maximize our input. Only through the consensus of many may realistic proposals for change be effected. Only through consensus may proposals for further study receive action. The proposals which follow should be regarded within that framework. Our endeavor has been to collate various suggestions and to define areas of agreement for legislative change. The Task Force recognized at the same time that its goal should be limited to what is immediately and realistically attainable and at the same time to make recommendations for continued study of problem areas. The need for large scale study and revision is manifest.

BACKGROUND

The Juvenile Court Law has changed dramatically since its original enactment in 1909. Stats. 1909, ch. 133, p. 213. The law superseded the act establishing a state reform school for juvenile offenders. Jurisdiction under this new law was

conferred upon the superior court in every county, which, while sitting in the exercise of its new jurisdiction, was to be known as the "juvenile court." All cases were to be heard at a special or separate session. The act provided for the creation of probation officers and assistant probation officers. Their duties were to inquire into the antecedents, character, family history, environment and cause of dependency or delinquency. The probation officers were to represent the interests of the minor and to furnish information and assistance to the juvenile court. The court, in turn, was enjoined "to hear and dispose of the case in a summary manner." Stats. 1909, ch. 133, § 4.

The act was to be liberally interpreted to approximate the care, custody and discipline which would be given by parents. The purpose was not punishment for offenses done, but reformation and training of the child to habits of industry with a view toward future usefulness. The state as parens patriae succeeded to control of the minor and stood in loco parentis. The restraint imposed by public authority was in its nature and purpose the same which, under other conditions, was traditionally imposed by the parent or guardian. The principal object of the act was the proper custody and education of children who would otherwise lack the care deemed essential to proper development--whether or not their situation was likely to lead to crime. In re Maginnis, 162 Cal. 200 (1912). The primary consideration

in such proceedings was the welfare of the minor. The focus was on individualized treatment with emphasis upon the minor's correction and rehabilitation rather than his particular antisocial conduct.

Sheer numbers illustrate how difficult these goals are to attain. From information obtained from the Bureau of Criminal Statistics (Exhibit A), in 1973 there were 362,617 juvenile detentions (4 Cal.3d 767). Of these, 145,555 or 40% were handled within the arresting agency.[1] Fifty-six percent went to juvenile probation (205,317).[2] In that same year, there were 164,436 initial juvenile referrals. Of the initial referrals, 47.8% were closed. These represent releases by probation without further action. They may represent reprimands, closures for insufficient evidence, or closures because the minor is already on probation. Another 14.5% were disposed of by informal probation under Welfare and Institutions Code section 654. Petitions were filed in

---

1. It was suggested by some members of the Task Force that specific statutory authorization would be helpful to permit law enforcement handling. Under the Arnold-Kennick Juvenile Court Law, as reflected in Part II of the Governor's Special Study Commission on Juvenile Justice (November 1960), A Study of the Administration of Juvenile Justice in California, the necessity for the detaining agency to investigate background and prior history are specifically recorded (p. 99). Such an investigation is characterized as essential in order to make an intelligent decision concerning referral. Increased pre-adjudication referral options for law enforcement have been noted and urged. Ibid, pp. 101-102. See also California Council on Criminal Justice, Task Force on Juvenile Delinquency, April 1, 1969, pp. 30-32, 105; 55 Ops.Atty.Gen. 89, 92, n. 2 Law enforcement referrals accordingly appear to be within the legislative intent of the Juvenile Court Law.

2. The remainder represented individuals referred to other jurisdictions.

30.8% of the probation referrals (13% of the arrests), but 30.4% of the petitions that were filed were dismissed. Of probation determinations made in the first half of 1974, 48.5% were closed and another 16.5% were placed on informal probation under section 654 (Exhibit B). Of active juvenile caseloads in the first half of 1974, 21.6% were on informal probation under section 654 (Exhibit C). More significantly, some counties have reported probation supervision caseloads in excess of one hundred and fifty per probation officer, thereby casting doubts upon the efficacy of the supervision.

Finally, the Bureau of Criminal Statistics has recently completed a pilot study of ten representative California counties utilizing the JARPE concept (Juvenile Arrests as Related to Probation Referral Evaluation). That study alarmingly indicates that approximately one in five juveniles are already under probation supervision when arrested thereby indicating a high rate of juvenile recidivism. The recent report of the Assembly Select Committee on Juvenile Violence, November 1974, shows a sharp increase in juvenile crimes of violence (pp. 20, 28). A doubling of the percentage increase of juveniles committing violent offenses is noted in the period from 1968 forward (p. 28).

The foregoing is recited to reflect the change in what was originally conceived to be a benign, attentive,

parens patriae approach to juvenile justice. The foregoing suggests the futility of treating all forms of juvenile (and parental) problems alike--the futility of approaching parental guidance problems within the same framework as felony offenses.

Immense impetus for change in the parens patriae approach came from the Supreme Court decision, In re Gault, 387 U.S. 1 (1967). The same decision called for a reappraisal of the claimed benefits of the parens patriae approach. The emphasis had been premised upon the solicitous correction of problems, whether or not manifested by a violation of the criminal law. Such an approach was understandable where the state acted as substitute parent in matters wherein it assumed jurisdiction.

Now, however, the emphasis is upon the ascertainment of fault with the concomitant right to defend against an adjudication of fault. Under the present Juvenile Court Law, lack of fault may even be shown to demonstrate that the parent is responsible for a child being beyond control in a delinquent tendencies proceeding pursuant to section 601.[3/] In re Henry G., 28 Cal.App.3d 276 (1972).

The Task Force has recognized problems which may not be simply legislated away. The most significant is attitudinal. The juvenile court was formed upon laudatory precepts. Minors

---

3. All section references are to the Welfare and Institutions Code unless otherwise indicated.

deserved special consideration to ameliorate the rigors of the criminal law. Early and special attention, it was assumed, would divert minors from a later life of crime.

What has happened, however, is alarming recidivism rates and, since 1968, an increase in juvenile violence far outstripping the increase for adults--53% for juveniles to 35% for adults. Report of Assembly Select Committee on Juvenile Violence, November 1974, p. 20. Without criticizing referees, the system which uses referees tends to impart a second-class status. It reflects a belief that the system is not sufficiently important to warrant judges. The use of referees contradicts the priority that we assert is being given to juveniles. Also, over and over we hear that under the rotation system judges do not like to serve as judges of the juvenile court. In many cases the newest attorneys are assigned to juvenile court practice. In some cases dissident attorneys are "exiled" to juvenile court practice for reformation until proving themselves worthy of better and more important duties.

Allocation of monies reflects the problem. Public Law No. 93-415 was just passed by the last Congress. It noted in its Findings and Declaration of Purpose, 42 U.S.C. section 5601, that juveniles account for almost one-half of the arrests for serious crimes in the United States today and that understaffed and overcrowded juvenile courts are unable

to provide either individualized or effective help. That same act proposed money for the states for new and innovative programs in juvenile justice. The act was passed, but monetary assistance was disapproved. Significantly, one of the provisions approved was a disclaimer of federal jurisdiction to proceed against juveniles leaving the cost of administration with our local counties. 18 U.S.C. section 5032. In our own state, funds for Youth Service Bureaus to be administered by the Youth Authority is still pending consideration under Statutes of 1974, chapter 1488.

The net result is a need to rethink priorities. We must utilize people who want to serve. There must be programs backed by action. Only then can we avoid what appears to be present ineffectuality. Only then can we hope that youth who come before the juvenile justice system will have respect for its efficacy.

Part of this problem may be overcome by the development of rules of procedure. We urge that court rules be promulgated and that procedures be developed for the hearing of juvenile cases. There is a need for procedures such as contained in Penal Code section 1538.5 relating to the suppression of illegally seized evidence and Penal Code section 1324 relating to immunity for testimony. At the present time, there is yet a case-by-case approach to juvenile court procedure which

awaits a fortuitous appellate decision to establish rules.

The Task Force has also received much interest in the creation of a family court. Interest has been expressed in the creation of an administrative procedure for handling dependency cases under section 600 and delinquency cases under section 601, thereby keeping these cases out of the overtaxed court system.

Another area demanding attention is facilities. Presently, segregated facilities are required to segregate dependency cases under section 600 from delinquency and criminal cases under sections 601-602. Numerous criticisms have been made of the association of youth who have committed no crime with youth who are serious violators of the criminal law and who then impart their criminal method to their unsuspecting associates. Indeed, if federal money is to be made available for local programs, it appears that the segregation of the criminal violator will be mandated. See Pub. L. No. 93-415, § 223(a). There is a serious need for authority to commit mentally disabled youth to the Department of Health which is disfavored by that Department because of segregation restrictions. Such commitments may presently be effected only pursuant to Short-Doyle, Welfare and Institutions Code sections 5600, et seq.

PROPOSALS

I. Welfare and Institutions Code section 654, providing for informal probation with the consent of the minor's parent or guardian should be amended to require an agreement for a program of supervision and to require at the conclusion of the program a report of actual program measures undertaken. It is also recommended that the authority of the probation officer to file the petition which was originally withheld from filing be clarified.

Comment

Section 654 authorizes a program of informal probation in lieu of the initiation of formal juvenile court action by the filing of a petition. A primary criticism of the efficacy of probation programs has been one of staffing. There has been frequently, of sheer necessity, a lack of follow-up supervision. The Task Force has heard views that minors have no belief in or respect for the process because actual follow-up has not been made. Where programs have been suggested, there has been no requirement of participation. A free-ride concept has been developing because the minor has not been actually required to participate in any program. The problem has been exacerbated by multileval informal referrals. As a result, there is a tendency for each level of contact with the minor to attempt its own rehabilitative measures. Law enforcement may counsel and release and has developed its own youth service programs. If the youth's difficulties persist, referral is made to probation. Probation will then attempt its own informal rehabilitative measures. It may informally close and later undertake informal supervision

under prescribed conditions. When the minor's problems persist, a petition is filed. In court, informal procedures may be undertaken again. With ineffective supervision, problems of the minor worsen. Judge Kenyon observed in the Hearings on Juvenile Violence that by the time the court takes jurisdiction, the minor is often confirmed in his criminal attitude.

This amendment is designed to insure that where informal referrals are utilized, at some point there has been an actual program of supervision with follow-up. We do not believe significant increased effort will be required beyond that which the law presently requires. Section 653 presently requires recorded reasons for declining to file a petition. The information and statistics available from this amendment will provide an additional basis for evaluating the benefits and efficacy of programs. A simple form may be used to embrace the filed agreement, conditions, and follow-up.

It was generally believed that some means of enforcing section 654 was needed and it was initially proposed that the violation of conditions of informal probation be made an independent basis for juvenile court jurisdiction under section 601. Because of assumed legal problems, however, it was preferred to clarify the authority of the probation officer to later file the petition which was originally withheld from filing. The probation officer could also, of course, file a new petition if the minor's conduct warranted that action. Although a member of the Task Force dissented from this view, it is believed that such was the intent of the original law and also serves to provide an alternative should the course of informal probation prove unproductive.

REVISION I

Section 654 is amended as follows:

"§ 654. In any case in which a probation officer, after investigation of an application for petition or other investigation he is authorized to make, concludes that a minor is within the jurisdiction of the juvenile court or will probably soon be within such jurisdiction, he may, in lieu of filing a petition or subsequent to dismissal of a petition already filed, and with consent of the minor's parent or guardian undertake a program of supervision of the minor under prescribed conditions for not to exceed six months, and attempt thereby to adjust the situation which brings the minor within the jurisdiction of the court or creates the probability that he will soon be within such jurisdiction. Nothing in this section shall be construed to prevent the probation officer from filing a petition at any time within said six-month period based upon either the original conduct or conduct subsequently occurring.

"The program of supervision of the minor undertaken pursuant to this section may call for the minor to obtain care and treatment for the misuse of restricted dangerous drugs or addiction to narcotics from a county mental health service or other appropriate community agency.

"At the conclusion of the program of supervision, the probation officer shall prepare and maintain a follow-up report of the actual program measures undertaken."

II. Section 601 should be modified in the format of section 600 and amended to provide jurisdiction for violation of informal probation under section 725.

Comment

Welfare and Institutions Code section 601 is presently a narrative section embracing a wide variety of conduct. The Task Force is of the opinion that enumerated categories in the format of section 600 are preferable. It has also been agreed that the idle, lewd and dissolute provisions should be deleted.

Over the years there has been varied criticism of the subject matter and breadth of section 601. Its entire repeal has at times been advocated. It is believed, however, that section 601 provides a viable and salient alternative to conduct which would be a basis for a dependency proceeding and conduct which would constitute a violation of the criminal law. The California Supreme Court has recognized that "Indeed, the youth's alleged crime may often be only the latest or most overt symptom of an underlying behavioral or personality disorder which could equally well warrant a declaration of wardship pursuant to other provisions of the code." In re Dennis M., 70 Cal.2d 444, 456 (1969).

Additionally, Penal Code section 26 provides that persons under the age of fourteen are incapable of committing

crimes in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness. Section 26 is applicable in juvenile court, In re Gladys R., 1 Cal.3d 855 (1970), thereby providing additional justification for the jurisdictional option of section 601. See 1 Cal.3d 855, 866, n. 22, In re Michael John B., ____ Cal.App.3d ____ (1975). In re Gladys R., at note 19, recites that in fact the most acceptable function of section 601 may be the placement of youths who are not covered by section 602, i.e., those who have violated the criminal law. See President's Commission on Law Enforcement and the Administration of Justice, The Challenge of Crime in a Free Society (1967), p. 85.

The widespread use of informal probation has also presented the juvenile court with enforcement difficulties should that probation be violated. It is accordingly proposed that a separate jurisdictional base be provided under section 601 for violation of probation that is granted following the filing of a petition alleging jurisdiction pursuant to section 601.

The Youth Authority is presently an alternative disposition for a violation of orders of the juvenile court pursuant to section 601. Considerable sentiment was expressed against the continuation of this option. Its continuation is nevertheless recommended because of the total lack of options available to the smaller counties.

Finally, the authorization to require periodic probation reports pursuant to section 728 is expanded to include informal probation referrals pursuant to sections 654 and 725(a).

REVISION II

Section 601 is repealed. Section 601 is added to read:

"§ 601. Any person under the age of 18 years who comes within any of the following descriptions is within the jurisdiction of the juvenile court and may be adjudged a ward of the court.

"(a) Any person who persistently or habitually refuses to obey the reasonable and proper orders or directions of his parents, guardians, custodian or school authorities, or who is beyond the control of such person.

"(b) Any person who is a habitual truant from school within the meaning of any law of this State.

"(c) Any person who has violated the terms of probation referred to in subdivision (a) of section 725 following the filing of a petition alleging that the minor is a person described by section 601."

Section 602 of the Welfare and Institutions Code is amended to read:

"§ 602. Any person under the age of 18 years who violates any law of this State or of the United States or any ordinance of any city or county of this State defining crime or who, after having been found by the juvenile court to be a person described by Section 601, fails to obey any lawful order of the juvenile court, or who has violated the terms of probation referred to in subdivision (a) of Section 725 following the filing of a petition alleging that the minor is a person described by Section 602, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court."

Section 725 of the Welfare and Institutions Code is amended to read:

"§ 725. After receiving and considering the evidence on the proper disposition of the case, the court may enter judgment as follows:

"(a) If the court has found that the minor is a person described by Sections 601 or 602, it may, without adjudging such minor a ward of the court, place the minor on probation, under the supervision of the probation officer under prescribed conditions, for a period not to exceed six months.

"(b) If the court has found that the minor is a person described by Sections 601 or 602, it may order and adjudge the minor to be a ward of the court.

"(c) If the court has found that the minor is a person described by Section 600, it may order and adjudge the minor to be a dependent child of the court."

Section 728 of the Welfare and Institutions Code is amended to read:

"§ 728. The court may require the probation officer or any other agency to render such periodic reports concerning minors committed to its care, custody, and control under the provisions of Section 654 or of paragraph (a) of Section 725 or of paragraphs (c) or (d) of Section 727 as the court may deem necessary or desirable, and the court may require that the probation officer, or may, with the consent of such other public agency, provide that any other public agency organized to provide care for needy or neglected children, shall perform such visitation and make such periodic reports to the courts concerning minors committed under such provisions as the court may deem necessary or desirable."

III. Section 727 should be amended to authorize the juvenile court to enter orders applicable to the parents or guardians of minors.

Comment

Few subjects of the Task Force received more support than that the juvenile court should have authority to deal with the parent. The emphasis of the present law on the concept of fault has already been noted. Several suggestions were received for a no-fault concept to be embodied within sections 600 and 601. Interest in the creation of a family court was also high.

It is believed that productive recognition of these views is attainable by this amendment authorizing the juvenile court to enter orders applicable to the parents or guardians. By being able to deal with the parents, dispositional orders more realistically recognizing the absence of black and white adjudications would be possible. There would be a reduced tendency for every adjudication under section 600 to reflect parental fault and every adjudication under section 601 to reflect the fault of the minor.

Testimony of Fresno Superior Court Judge Andreen in San Francisco for the Assembly Committee on Criminal Justice recited that counseling orders can be effective. There must, however, be a statutory authority for their entry. This amendment is designed to accomplish that goal.

REVISION III

Section 727 is amended to read:

"§ 727. When a minor is adjudged a dependent child of the court, on the ground that he is a person described by Section 600, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of such minor, including medical treatment, subject to further order of the court.

"The court may order the care, custody, control and conduct of such minor to be under the supervision of the probation officer or may commit such minor to the care, custody and control of:

"(a) Some reputable person of good moral character who consents to such commitment.

"(b) Some association, society, or corporation embracing within its objects the purpose of caring for such minors, with the consent of such association, society, or corporation.

"(c) The probation officer, to be boarded out or placed in some suitable family home or suitable private institution, subject to the requirements of Chapter 1 (commencing with Section 16000) of Part 4 of Division 9;

provided, however, that pending action by the State Department of Health, the placement of a minor in a home certified as meeting minimum standards for boarding homes by the probation officer shall be legal for all purposes.

"(d) Any other public agency organized to provide care for needy or neglected children.

"When a minor is adjudged a dependent child of the court, on the ground that he is a person described by ~~subdivision (d) of~~ Section 600 and the court orders that a parent or guardian shall retain custody of such minor subject to the supervision of the probation officer, the parent or guardian ~~shall~~ may be required, and may be ordered, ~~as a condition~~ of ~~his~~ continuing ~~custody~~ to participate in a counseling program to be provided by an appropriate agency designated by the court. When a minor is adjudged a dependent child of the court on the ground that he is a person described by subdivision (d) of Section 600 and the court orders that a parent or guardian shall retain custody of such minor subject to the supervision of the probation officer, the parent or guardian shall be required to participate in a counseling program to be provided by an appropriate agency

designated by the court.

"(e) When a minor has been adjudged a ward of the court on the grounds that he is a person described in Section 601 or 602 and the court finds that notice has been given in accordance with Section 659(f) or Section 661, the parent or guardian may be required to participate with such minor in a counseling program to be provided by an appropriate agency designated by the court."

Section 659 is amended to read:

"§ 659. The notice must contain:

"(a) The name and address of the person to whom the notice is directed.

"(b) The date, time, and place of the hearing on the petition.

"(c) The name of the minor upon whose behalf the petition has been brought.

"(d) Each section and subdivision under which the proceedings has been instituted.

"(e) A statement that the minor and his parent or guardian or adult relative, as the case may be, to whom notice is required to be given, are entitled to have an attorney present at the hearing on the petition, and that, if the parent or guardian or such adult relative is indigent and cannot afford

an attorney, and the minor or his parent or guardian or such adult relative desired to be represented by an attorney, such parent or guardian or adult relative shall promptly notify the clerk of the juvenile court.

"(f) A statement that the parent or guardian may be required to participate with the minor in a counseling program."

Section 661 is amended to read:

"§ 661. In addition to the notice provided in Sections 658 and 659, the juvenile court may issue its citation directing any parent or guardian of the person concerning whom a petition has been filed to appear at the time and place set for any hearing under the provisions of this chapter, including a hearing under the provisions of Section 563, and directing any person having custody or control of the minor concerning whom the petition has been filed to bring such minor with him. The notice may in addition provide that a parent or guardian may be required to participate in a counseling program with the minor concerning whom the petition has been filed. Personal service of such citation shall be made at least 24 hours before the time stated therein for such appearance."

IV. Section 681 should be amended to require the presence and participation of the District Attorney in contested cases alleging jurisdiction pursuant to section 602 and to allow discretion for his participation in other cases.

Comment

One of the present problems under the Juvenile Court Law is the blurred role of the participants. Under existing law the District Attorney shall appear at contested proceedings with the consent or at the request of the juvenile court judge to "participate in the hearing to assist in the ascertaining and presenting of the evidence."

The probation officer is vested with the authority to file the petition. In re Steven C., 9 Cal.App.3d 255 (1970). That same case recites that the probation officer, too, may appear and participate in the hearing to assist in the ascertaining and presenting of evidence. 9 Cal.App.3d at 264. He does not, however, act as an attorney or represent the minor as an advocate. Ibid, p. 265. His role is as an arm of the court to represent the minor's best interests, however antithetical they may be to the minor's desires. Ibid, pp. 265-266.

Section 680 provides that the court "shall control all proceedings during the hearings with a view to the expeditious and effective ascertainment of the jurisdictional facts."

The impact of In re Gault, supra, 387 U.S. 1, was to place the bulk of adult criminal protections in the

juvenile court. Proof beyond a reasonable doubt must be adduced to sustain the petition. In re Winship, 397 U.S. 358 (1969). The exclusionary rules relating to illegally seized evidence apply, In re Robert T., 8 Cal.App.3d 990 (1970), as do rules relating to pretrial identification procedures. In re Carl T., 1 Cal.App.3d 344 (1969). Advice of rights under Miranda v. Arizona is required prior to eliciting statements, In re Roderick P., 7 Cal.App.3d 801, 811 (1972), and the minor is protected by the provisions relating to double jeopardy. Richard M. v. Superior Court, 4 Cal.3d 370 (1971). Even in uncontested hearings where an admission of guilt is entered, an explicit waiver of the rights of confrontation and self-incrimination must be entered. In re Michael M., 11 Cal.App.3d 741 (1970).

The presence of the judge or referee is only a partial solution. In cases under section 600, it has been held improper for the referee to both call and question witnesses and then to rule on the outcome of the proceedings. Lois R. v. Superior Court, 19 Cal.App.3d 895 (1971); Gloria M. v. Superior Court, 21 Cal.App.3d 525 (1971). The ascertaining of evidence and ruling on objections by the referee is equally improper in cases arising under section 602. In re Ruth H., 26 Cal.App.3d 77 (1972).

Justice Janes, of the Third District Court of Appeal, stated in the first meeting of the Task Force that one may have a finely tuned probation officer, but the probation officer has never been to law school. Consequently,

serious errors may be made in the presentation of evidence and in the omission of evidence. On appeal the record may also present difficulties for adequate review. Judge Hogoboom of Los Angeles County has recommended that the District Attorney put on the case and also appear at the dispositional hearings.

The District Attorney, then, should appear as an advocate and conduct the proceedings in contested proceedings alleging jurisdiction pursuant to section 602. He may, as is the present practice in several counties, confer with the probation department in the technical formulation of pleadings. It is recommended, however, that he receive a copy of petitions pursuant to section 658.

Existing law is retained for other proceedings. Several jurisdictions requested amendments to give the District Attorney discretion to appear in other proceedings. Existing practice, however, will permit that appearance. Amendments are made to section 658, however, to assure the District Attorney's notice of these other proceedings.

REVISION IV

Section 681 is repealed. Section 681 is added to read:

"§ 681. In a contested juvenile court hearing where the petition alleges that a minor is a person described in Section 602, or on a contested hearing on a supplemental petition for modification of an order entered pursuant to Section 731, the district attorney shall

appear in the interest of the state at the jurisdictional and dispositional hearings. The district attorney shall also appear and represent the minor in the interest of the state where a petition in a juvenile court proceeding alleges that a minor is a person described in subdivision (a), (b), or (d) of Section 600, and either of the parents, or the guardian, or other person having care or custody of the minor, or who resides in the home of the minor, is charged in a pending criminal prosecution based upon unlawful acts committed against the minor. In uncontested juvenile court hearings under Section 602 and in other juvenile court hearings where the minor who is the subject of the hearing is represented by counsel, the district attorney shall, with the consent or at the request of the juvenile court judge upon approved terms and conditions of representation, appear and participate in the hearing to assist in the ascertaining and presenting of the evidence."

Section 634.5 is amended to read:

"§ 634.5. Nothwithstanding the provisions of Section 634, when a minor who is alleged to be a person described in subdivision (d)

of Section 600 appears before the juvenile court at a detention hearing, the court shall appoint counsel. The court may appoint the district attorney to represent the minor pursuant to Section 681. The counsel appointed by the court shall represent the ~~minor~~ party so appointed at the detention hearing and at all subsequent proceedings before the juvenile court.

"The district attorney shall represent the minor in accordance with Section 681."

Section 658 is amended to read:

"§ 658. Upon the filing of the petition, the clerk of the juvenile court shall issue a notice, to which shall be attached a copy of the petition, and he shall cause the same to be served upon the minor, if the minor is 14 or more years of age or, in a case in which the minor is alleged to be a person described in Section 601 or 602, if the minor is eight or more years of age, and upon each of the persons described in subdivision (e) of Section 656 whose residence addresses are set forth in said petition and thereafter before the hearing upon all such persons whose residence addresses become known to the clerk. If the petition alleges that the

minor is a person described in Section 601 or 602 the clerk shall issue a copy of the petition, to the minor's attorney and to the district attorney, ~~if the date of the hearing, and~~ containing the time, date, and place of the hearing. If the petition alleges that the minor is a person described in Section 600, the clerk shall issue a copy of the petition to the attorney for the minor's parent or guardian and to the district attorney, ~~if the date of the hearing, and~~ containing the time, date and place of the hearing."

V. Rigid time limits under the Juvenile Court Law require the addition of a second detention hearing within five judicial days to consider evidence of the prima facie case if that evidence is requested by counsel. The initial detention hearing will thus guard against unwarranted detention while realistically providing the time necessary to consider the prima facie case.

Comment

The Welfare and Institutions Code sets forth rigid time limits for the conduct of juvenile proceedings. Following the detention of a minor, he must be released unless a petition is filed within 48 hours after he has been taken into custody, excluding nonjudicial days. § 631. Unless sooner released, a minor taken into custody must be accorded a detention hearing before the expiration of the next judicial day after a petition is filed. § 632. Detention may be ordered for a period not to exceed 15 judicial days. § 636.

The provisions in adult court for the preliminary hearing of a felony offense to establish probable cause or a prima facie case are inapplicable in the juvenile court. In re T.R.S., 1 Cal.App.3d 178, 181 (1969); In re R.C., 39 Cal.App.3d 887, 896 (1974). Nevertheless, the minor has a right, upon request, to have the prima facie case established. In re William M., 3 Cal.3d 16 (1970). The practical problems of securing witnesses are manifest. The Task Force also noted that existing time limitations make it impossible for counsel

to prepare or to evaluate the case. It is accordingly recommended that section 637 be amplified to provide also for a rehearing to consider evidence of the prima facie case. The initial detention hearing will thus guard against unwarranted detention while realistically providing the time necessary to consider the prima facie case.

REVISION V

Section 637 is amended to read:

"§ 637. When a hearing is held under the provisions of this article and no parent or guardian of such minor is present and no parent or guardian has had actual notice of the hearing, a parent or guardian of such minor may file his affidavit setting forth such facts with the clerk of the juvenile court and the clerk shall immediately set the matter for rehearing at a time within 24 hours, excluding Sundays and nonjudicial days from the filing of the affidavit. Upon the rehearing, the court shall proceed in the same manner as upon the original hearing.

"Upon request of the minor or, if the minor is represented by an attorney, upon the request of the minor's attorney, a rehearing may be requested within five judicial days to consider evidence of the prima facie case. If a prima facie case is not established the minor shall be released from detention."

VI. Section 636 and section 707 should be amended to authorize consideration of the nature of the offense on the issues of detention and fitness for treatment within the juvenile court system.

Comment

The Juvenile Court Law has come under the seemingly inconsistent attack of being at once too harsh and too lax. Public clamor has been evident against the "soft" treatment of youths who commit serious and violent crimes. Harshness has been claimed with respect to the treatment of certain predelinquent tendencies. The Task Force has recognized both concerns.

Detention of the minor may be ordered pursuant to section 636 where it is a matter of immediate and urgent necessity for the protection of such minor or the person or property of another. Because the concept of bail is inapplicable, In re William M., supra, 3 Cal.3d at 26, the matter of immediate and urgent necessity for the protection of others has been required. Where, however, the offense itself shows, for example, violence against another or sale of narcotics to another, evidence thereof should be considered along with other evidence, in resolution of the questions of detention.

The same is equally true with fitness for juvenile court treatment under section 707. The report has already noted the dramatic increase in juvenile violence. But Exhibit A

attached hereto shows that in 1973 there were only 679 minors remanded to adult court on initial petitions out of 362, 617 initial detentions -- only 18/100 of 1%.[4/] Of course only minors 16 years of age or older who are alleged to come within section 602 may be considered for remand,[5/] but considering the high rate of juvenile recidivism suggested by the pilot JARPE study few indeed are tried as adults.

Juveniles are committing serious crimes of violence. The Juvenile Court is criticized as being soft. One view is that the court is relatively powerless because of the present law.

The question how best to change the law to correct the inequities produced varied response. The Los Angeles District Attorney's office has favored a lowering of Juvenile Court age. Another suggested that the law ought to frankly recognize that in dealing with certain crimes, such as murder, the question should not be amenability to Juvenile Court treatment, because if one commits serious crimes, he simply ought to be punished.

Existing law recognizes that it is appropriate to consider the circumstances of the offense as part of the behavioral pattern. Donald L. v. Superior Court, 7 Cal.3d 592, 600 (1972);

---

4. The figures do not include 25,007 subsequent petitions. These, however, total only approximately 100 additional remands.

5. Of the 362, 617 detentions, 118,629 were at the felony level (there were 149,439 additional misdemeanor detentions).

Jimmy H. v. Superior Court, 3 Cal.3d 709, 716 (1970). It is accordingly recommended that section 707 be amended to authorize a finding of unamenability based upon the circumstances and gravity of the particular offense.

Finally, the wording of section 636 should be amended to avoid a problem of construction encountered in certain jurisdictions. Under section 636, detention may be ordered if it appears that the minor is likely to flee the jurisdiction of the court. Some jurisdictions have construed this phrase to preclude consideration of detention for one who may not absent himself from the jurisdiction, i.e., who may not flee the county, but who is nevertheless likely to go into hiding to conceal himself from the court's jurisdiction. It is accordingly recommended that the section be amended to authorize detention where the minor is likely to flee to avoid the jurisdiction of the court.

REVISION VI

Section 636 is amended to read:

"§ 636. If it appears upon the hearing that such minor has violated an order of the juvenile court or has escaped from a commitment of the juvenile court or that it is a matter of immediate and urgent necessity for the protection of such minor or the person or property of another that he be detained or that such minor is likely to flee to avoid the

jurisdiction of the court, the court may make its order that such minor be detained in the juvenile hall or other suitable place designated by the juvenile court for a period not to exceed 15 judicial days and shall enter said order together with its findings of fact in support thereof in the records of the court. The circumstances and nature of the offense may be considered to determine whether it is a matter of immediate and urgent necessity for the protection of the minor or the person or property of another that the minor be detained.

Section 707 is amended to read:

"§ 707. At any time during a hearing upon a petition alleging that a minor is, by reason of violation of any criminal statute or ordinance, a person described in Section 602, when substantial evidence has been adduced to support a finding that the minor was 16 years of age or older at the time of the alleged commission of such offense and that the minor would not be amenable to the care, treatment and training program available through the facilities of the juvenile court, or if, at any time after such hearing, a minor who was 16 years of age or older at the time of the commission of an offense and who was committed therefor by the court

to the Youth Authority, is returned to the court by the Youth Authority pursuant to Section 780 or 1737.1, the court may make a finding noted in the minutes of the court that the minor is not a fit and proper subject to be dealt with under this chapter, and the court shall direct the district attorney or other appropriate prosecuting officer to prosecute the person under the applicable criminal statute or ordinance and thereafter dismiss the petition or, if a prosecution has been commenced in another court but has been suspended while juvenile court proceedings are held, shall dismiss the petition and issue its order directing that the other court proceedings resume.

"*In determining whether the minor is a fit and proper subject to be dealt with under this chapter, the offense, in itself, shall not be sufficient to support a finding that such minor is not a fit and proper subject to be dealt with under the provisions of the Juvenile Court Law.*

"In determining whether the minor is a fit and proper subject to be dealt with under this chapter, the circumstances and gravity of the offense may support a finding that such minor

is not a fit and proper subject to be dealt with under the provisions of the Juvenile Court Law.

"A denial by the person on whose behalf the petition is brought of any or all of the facts or conclusions set forth therein or of any inference to be drawn therefrom is not, of itself, sufficient to support a finding that such person is not a fit and proper subject to be dealt with under the provisions of the Juvenile Court Law.

"The court shall cause the probation officer to investigate and submit a report on the behavioral patterns of the person being considered for unfitness."

1973

	Statewide
Juvenile Arrests	362,617
Handled within department	145,155
Other jurisdiction	12,145
Juvenile probation	205,317
Initial Juvenile Referral	164,436
Closed	78,540 (47.8)
Other agencies	11,349 (6.9)
Informal (654)	23,868 (14.5)
Petition filed	50,679 (30.8)
Petition Disposition (Initial Petitions)	51,468
Dismissed	15,667 (30.4)
725a	5,545 (10.8)
Ward	29,275 (56.9)
Remanded to adult court	679 (1.3)
California Youth Authority	302 (0.6)
Subsequent Petitions	25,007

EXHIBIT B

PROBATION DETERMINATIONS HALF YEAR COUNT, JUNE 1974

COUNTY	TOTAL	CLOSED		REFERRED TO OTHER AGENCY		PLACED UNDER INFORMAL SUPERVISION		PETITION FILED	
		NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT
TOTAL	95,467	46,304	48.5	6,046	6.2	15,776	16.5	27,541	28.8
Alameda	not available yet								
Alpine	2							2	100.0
Amador	68	34	50.0	13	19.1	16	23.5	5	7.4
Butte	656	323	49.2	162	24.7	80	12.2	91	13.9
Calaveras	102	23	22.5	47	46.1	18	17.6	14	13.7
Colusa	69	43	62.3	6	8.7	15	21.7	5	7.2
Contra Costa	2,400	1,197	49.9	129	5.4	141	5.9	933	38.9
Del Norte	194	121	62.4	16	8.2	24	12.4	33	17.0
El Dorado	460	155	33.7	170	37.0	99	21.5	36	7.8
Fresno	2,393	1,630	68.1	223	9.3	130	5.4	410	17.1
Glenn	166	89	53.6	26	15.7	39	23.5	12	7.2
Humboldt	765	556	72.7	72	9.4	37	4.8	100	13.1
Imperial	688	386	56.1	88	12.8	106	15.4	108	15.7
Inyo	31	1	3.2	-	-	17	54.8	13	41.9
Kern	2,858	1,841	64.4	291	10.2	232	8.1	494	17.3
Kings	321	125	38.9	43	13.4	53	16.5	100	31.2
Lake	26							26	100.0
Lassen	106	54	50.9	9	8.5	30	28.3	13	12.3
Los Angeles	29,231	11,497	39.3	-	-	7,941	27.2	9,793	33.5
Madera	221	58	26.2	8	3.6	98	44.3	57	25.8
Marin	696	453	65.1	46	6.6	26	3.7	171	24.6
Mariposa	43	14	32.6	15	34.9	4	9.3	10	23.3
Mendocino	276	117	42.4	103	37.3	11	4.0	45	16.3
Merced	757	283	37.4	217	28.7	171	22.6	86	11.4
Modoc	70	25	35.7	1	1.4	28	40.0	16	22.9
Mono	54	13	24.1	20	37.0	21	38.9	-	-
Monterey	1,529	1,105	72.3	18	1.2	116	7.6	290	19.0
Napa	810	561	69.3	75	9.3	88	10.9	86	10.6
Nevada	144	60	41.7	1	.7	49	34.0	34	23.6
Orange	6,701	2,245	33.5	223	3.3	500	7.5	3,733	55.7
Placer	927	439	47.4	296	31.9	80	8.6	112	12.1
Plumas	112	71	63.4	4	3.6	23	20.5	14	12.5
Riverside	3,824	1,280	33.5	899	23.5	936	24.5	709	18.5
Sacramento	3,693	2,030	55.0	495	13.4	415	11.2	753	20.4
San Benito	143	87	60.8	5	3.5	33	23.1	18	12.6
San Bernardino	3,806	1,476	38.8	521	13.7	297	7.8	1,512	39.7
San Diego	6,531	4,055	62.1	-	-	207	3.2	2,269	34.7
San Francisco	3,020	1,891	62.6	173	5.7	113	3.7	843	27.9
San Joaquin	1,407	1,025	72.9	-	-	113	8.0	269	19.1
San Luis Obispo	425	233	54.8	7	1.6	9	2.1	176	41.4
San Mateo	1,924	1,107	57.5	2	.1	94	4.9	721	37.5
Santa Barbara	1,058	408	38.6	20	1.9	360	34.0	270	25.5
Santa Clara	5,712	3,333	58.4	180	3.2	1,145	20.0	1,054	18.5
Santa Cruz	875	514	58.7	210	24.0	56	6.4	95	10.9
Shasta	533	94	17.6	123	23.1	239	44.8	77	14.4
Sierra									
Siskiyou	213	89	41.8	60	28.2	50	23.5	14	6.6
Solano	1,545	1,121	72.6	131	8.5	93	6.0	200	12.9
Sonoma	1,514	731	48.3	186	12.3	352	23.2	245	16.2
Stanislaus	1,772	1,136	64.1	1	.1	303	17.1	332	18.7
Sutter	149	58	38.9	9	6.0	33	22.1	49	32.9
Tehama	256	110	43.0	25	9.8	82	32.0	39	15.2
Trinity	33	8	24.2	4	12.1	18	54.5	3	9.1
Tulare	962	37	3.8	443	46.0	184	19.1	298	31.0
Tuolumne	166	76	45.8	28	16.9	20	12.0	42	25.3
Ventura	2,435	1,423	58.4	117	4.8	328	13.5	567	23.3
Yolo	397	209	52.6	77	19.4	57	14.4	54	13.6
Yuba	398	254	63.8	8	2.0	46	11.6	90	22.6

EXHIBIT C

JUVENILE ACTIVE CASELOADS
AS OF JUNE 1974

COUNTY	GRAND TOTAL	PENDING COURT ACTIONS	UNDER ACTIVE SUPERVISION TOTAL	INFORMAL PROBATION (654)		SIX-MONTH SUPERVISION (725-a)		WARD	
				Number	Percent	Number	Percent	Number	Percent
TOTAL	72,786	7,712	65,074	14,073	21.6	3,297	5.1	47,704	73.3
00 Los Angeles	24,181	2,974	21,207	5,432	25.6	740	3.5	15,035	70.9
10 Imperial	384	23	361	104	28.8	6	1.7	251	69.5
11 Orange	6,939	1,221	5,718	491	8.6	381	6.7	4,846	84.7
12 Riverside	2,438	100	2,338	854	36.5	152	6.5	1,332	57.0
13 San Bernardino	2,986	388	2,598	357	13.7	73	2.8	2,168	83.4
14 San Diego	3,416	440	2,976	214	7.8	99	3.3	2,663	89.5
15 Santa Barbara	1,209	61	1,148	464	40.4	44	3.8	640	55.7
16 Ventura	1,357	141	1,216	293	24.1	193	15.9	730	60.0
20 Alameda	3,917	354	3,563	1,079	30.3	207	5.8	2,277	63.9
21 San Francisco	2,473	291	2,182	247	11.3	117	5.4	1,818	83.3
22 Santa Clara	3,855	148	3,707	849	22.9	187	5.0	2,671	72.1
30 Contra Costa	2,295	409	1,889	218	11.5	290	15.4	1,381	73.1
31 Marin	405	23	382	27	7.1	8	2.1	347	90.8
32 Napa	368	16	352	95	27.0	11	3.1	246	69.9
33 San Mateo	1,680	117	1,563	110	7.0	96	6.1	1,357	86.8
34 Solano	472	43	429	97	22.6	18	4.2	314	73.2
35 Sonoma	784	40	744	286	38.4	75	10.1	383	51.5
40 Fresno	1,005	58	947	155	16.4	123	13.0	669	70.6
41 Kern	1,841	59	1,782	197	11.1	30	1.7	1,555	87.3
42 Kings	346	32	314	61	19.4	8	2.5	245	78.0
43 Madera	191	21	170	73	42.9	4	2.4	93	54.7
44 Merced	376	13	363	132	36.4	32	8.8	199	54.8
45 San Joaquin	851	57	794	137	17.3	26	3.3	631	79.5
46 Stanislaus	1,059	88	971	274	28.2	51	5.3	646	66.5
47 Tulare	863	36	827	179	21.6	28	3.4	620	75.0
50 Butte	330	20	310	91	29.4	3	1.0	216	69.7
51 Colusa	52	-	52	12	23.1	-	-	40	76.9
52 Glenn	77	4	73	55	75.3	2	2.7	16	21.9
53 Placer	319	42	277	94	33.9	22	7.9	161	58.1
54 Sacramento	2,375	179	2,196	366	16.7	87	4.0	1,743	79.4
55 Shasta	476	9	467	197	42.2	43	9.2	227	48.6
56 Sutter	145	6	139	33	23.7	5	3.6	101	72.7
57 Tehama	207	14	193	58	30.1	3	1.6	132	68.4
58 Yolo	265	25	240	56	23.3	10	4.2	174	72.5
59 Yuba	202	21	181	37	20.4	12	6.6	132	72.9
60 Monterey	646	79	567	114	20.1	27	4.8	426	75.1
61 San Benito	70	6	64	22	34.4	5	7.8	37	57.8
62 San Luis Obispo	282	54	228	10	4.4	1	.4	217	95.2
63 Santa Cruz	285	15	270	51	18.9	11	4.1	208	77.0
70 Alpine	5	-	5	-	-	-	-	5	100.0
71 Amador	27	2	25	16	64.0	-	-	9	36.0
72 Calaveras	47	2	45	21	46.7	-	-	24	53.3
73 Del Norte	72	8	64	22	34.4	7	10.9	35	54.7
74 El Dorado	211	9	202	93	46.0	11	5.4	98	48.5
75 Humboldt	212	6	206	35	17.0	7	3.4	164	79.6
76 Inyo	55	-	55	14	25.0	1	1.8	40	72.7
77 Lake	53	-	53	-	-	-	-	53	100.0
78 Lassen	52	5	47	30	63.8	6	12.8	11	23.4
79 Mariposa	19	4	15	6	40.0	3	20.0	6	40.0
80 Mendocino	113	6	107	13	12.1	13	12.1	81	75.7
81 Modoc	53	8	45	23	51.1	6	13.3	16	35.6
82 Mono	24	1	23	21	91.3	-	-	2	8.7
83 Nevada	154	4	150	48	32.0	2	1.3	100	66.7
84 Plumas	51	2	49	19	38.8	4	8.2	26	53.1
85 Sierra									
86 Siskiyou	68	3	65	29	44.6	1	1.5	35	53.8
87 Trinity	58	7	51	41	80.4	-	-	10	19.6
88 Tuolumne	90	21	69	21	30.4	6	8.7	42	60.9

END