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A Compendium of Major California Juvenile Law Decisions with Brief Analyses, 1979

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A COMPENDIUM OF MAJOR CALIFORNIA JUVENILE LAW DECISIONS WITH BRIEF ANALYSES, 1979

Society has been plagued with the problem of whether the police, the courts and the correction agencies are to administer juveniles for their protection and treatment, or for their punishment. To facilitate a better understanding of juvenile administration the authors have analyzed the California juvenile law cases for the year 1979. The article consists of six major areas of interest; parent-child custody, sentencing, procedure, jurisdiction, evidentiary and constitutional which will be used to highlight some of the more significant decisions in the past year, thus enabling the reader to assess changes occurring in the juvenile system.

A COMPENDIUM OF RECENT CALIFORNIA JUVENILE LAW CASES

CASE NAME	CITATION	HOLDING
I. PARENT-CHILD CUSTODY		
1. <i>In re</i> W.O.	88 Cal. App. 3d 906, 152 Cal. Rptr. 130 (1979).	Possession of cocaine and marijuana by the parents did not justify loss of custody.
2. <i>In re</i> Fred J.	89 Cal. App. 3d 168, 152 Cal. Rptr. 327 (1979).	The mother does not have standing to invoke the psychotherapist - patient privilege of her children.

CASE NAME	CITATION	HOLDING
3. Smith v. Alameda County Social Services Agency	90 Cal. App. 3d 929, 153 Cal. Rptr. 712 (1979).	A new cause of action for negligence did not arise where a social agency could not find a minor an adoptive home.
4. <i>In re</i> David B.	91 Cal. App. 3d 184, 154 Cal. Rptr. 63 (1979).	State may permanently sever the parent-child relationship when certain clear and convincing evidence is established.
5. Ruddock v. Ohls	91 Cal. App. 3d 271, 154 Cal. Rptr. 87 (1979).	If a minor is not formally a party to a dissolution in which paternity is established, the paternity determination is not binding on the child.
6. <i>In re</i> Lynna B.	92 Cal. App. 3d 682, 155 Cal. Rptr. 256 (1979).	Foster parents subsequently appointed as guardians are still within the supervision of the juvenile court.
7. <i>In re</i> Nicole B.	93 Cal. App. 3d 874, 155 Cal. Rptr. 916 (1979).	A juvenile court has jurisdiction where there is evidence of physical abuse of a child by a custodian, parent, or guardian.
8. <i>In re</i> LaShonda B.	95 Cal. App. 3d 593, 157 Cal. Rptr. 280 (1979).	A child may be removed from the custody of one parent and given to the other upon a showing that the parent is capable of having custody.
9. <i>In re</i> Geoffrey G.	98 Cal. App. 3d 412, 159 Cal. Rptr. 460 (1979).	Parent was unfit to retain child custody after having committed a crime showing unfitness.
II. SENTENCING		
10. <i>In re</i> Harm R.	88 Cal. App. 3d 438, 152 Cal. Rptr. 167 (1979).	A minor may not be held in physical confinement for a period longer than required for the underlying crime; physical confinement expressly includes juvenile hall.
11. <i>In re</i> Carrie W.	89 Cal. App. 3d 642, 152 Cal. Rptr. 690 (1979).	The purpose of juvenile court law is rehabilitation, not punishment.
12. <i>In re</i> Maurice S.	90 Cal. App. 3d 190, 153 Cal. Rptr. 317 (1979).	Denial of precommitment credit to a minor confined to the CYA constitutes a violation of equal protection.

CASE NAME	CITATION	HOLDING
13. <i>In re James V.</i>	90 Cal. App. 3d 300, 153 Cal. Rptr. 334 (1979).	The CYA has the function of determining the amount of time which a minor must serve in custody or on parole.
14. <i>In re Richard W.</i>	91 Cal. App. 3d 960, 155 Cal. Rptr. 11 (1979).	Court is limited to fixing maximum period of confinement in the absence of a supplemental petition showing the ineffectiveness of previous dispositions.
15. <i>In re Robert S.</i>	92 Cal. App. 3d 355, 154 Cal. Rptr. 832 (1979).	The maximum term of physical confinement may be determined with reference to previously sustained petitions.
16. <i>In re Isaac G.</i>	93 Cal. App. 3d 917, 156 Cal. Rptr. 123 (1979).	A minor is not deprived of equal protection of the laws when a juvenile court orders confinement for the longest of three time periods without a showing of aggravated circumstances as required for adults.
17. <i>In re John R.</i>	94 Cal. App. 3d 566, 155 Cal. Rptr. 78 (1979).	Requiring a longer period of probation for juveniles than adults does not violate equal protection of the law.
18. <i>People v. Carl B.</i>	24 Cal. 3d 212, 594 P.2d 14, 155 Cal. Rptr. 189 (1979).	A CYA recommendation that a minor be committed to a Youth Authority rather than prison is not binding on the court, but is entitled to great weight.
19. <i>In re Robert D.</i>	95 Cal. App. 3d 767, 157 Cal. Rptr. 339 (1979).	Subsequent illegal acts dissipate any taint caused by an initial unauthorized police action. Imposition of a maximum term for such illegal acts does not violate equal protection of the laws.

CASE NAME	CITATION	HOLDING
20. <i>In re Johnny G.</i>	96 Cal. App. 3d 289, 158 Cal. Rptr. 68 (1979).	Denial of precommitment credit to a minor confined to camp does not violate equal protection of the law.
21. <i>In re Todd W.</i>	96 Cal. App. 3d 408, 157 Cal. Rptr. 802 (1979).	Auto theft did not justify commitment to the CYA.
22. <i>In re Ruben M.</i>	96 Cal. App. 3d 690, 158 Cal. Rptr. 186 (1979).	Prior offenses may be used in determining the minor's period of confinement.
23. <i>In re Eric J.</i>	25 Cal. 3d 522, 601 P.2d 549, 159 Cal. Rptr. 317.	A provision imposing a confinement period for a minor which equals the longest term that could be imposed on an adult for the same offense is not a denial of equal protection even though aggravating circumstances are not shown.
24. <i>In re Jeanice D.</i>	98 Cal. App. 3d 965, 159 Cal. Rptr. 788 (1979).	A term of 25 years to life does not require a minor to be sent to the CYA for evaluation.
III. PROCEDURE		
25. <i>In re Jonathan S.</i>	88 Cal. App. 3d 468, 151 Cal. Rptr. 810 (1979).	Ex parte contacts between judge and attorney were improper, but did not prejudice the case.
26. <i>In re Richard C.</i>	89 Cal. App. 3d 477, 152 Cal. Rptr. 787 (1979).	Court allowed review by writ where there was no danger of retrial.
27. <i>In re Frank F.</i>	90 Cal. App. 3d 383, 153 Cal. Rptr. 375 (1979).	In determining which statute is applicable, the juvenile court will look to legislative intent.
28. <i>In re Owen E.</i>	23 Cal. 3d 398, 529 P.2d 720, 154 Cal. Rptr. 204 (1979).	Juvenile court may not vacate a proper commitment to CYA unless it appears that the CYA failed to comply with the law.
29. <i>In re Jimmy M.</i>	93 Cal. App. 3d 369, 155 Cal. Rptr. 534 (1979).	The juvenile court must inform a minor of the possible consequences of an admission.

CASE NAME	CITATION	HOLDING
30. <i>In re</i> Mary Jo. D.	95 Cal. App. 3d 34, 156 Cal. Rptr. 829 (1979).	A juvenile court may not use criminal contempt as a basis for elevating what would be a Welfare and Institutions Code section 601 offense to a section 602 offense.
31. <i>Craig LaMont S. v. Superior Court of L.A. County</i>	95 Cal. App. 3d 568, 157 Cal. Rptr. 285 (1979).	A change of lawyers by the court constituted an abuse of judicial discretion.
32. <i>In re</i> Steven B.	25 Cal. 3d 1, 598 P.2d 480, 157 Cal. Rptr. 510 (1979).	When the records of a jurisdictional hearing are inadvertently destroyed, the minor is entitled to a new jurisdictional hearing.
33. <i>In re</i> Adolphus T.	96 Cal. App. 3d 642, 158 Cal. Rptr. 186 (1979).	Failure to warn minor of his rights only constituted technical error and was thus harmless.
34. <i>In re</i> Freddie R.	96 Cal. App. 3d 829, 158 Cal. Rptr. 260 (1979).	On an application for rehearing, the court must specify its reasons for a delay on its determination.
35. <i>In re</i> Ray O.	97 Cal. App. 3d 136, 158 Cal. Rptr. 550 (1979).	Failure to provide a transcript at a dispositional hearing was prejudicial error.
36. <i>In re</i> Glen J.	97 Cal. App. 3d 981, 159 Cal. Rptr. 148 (1979).	Modification of a disposition order did not require the filing of a supplemental petition.
37. <i>In re</i> Michael C.	98 Cal. App. 3d 117, 159 Cal. Rptr. 306 (1979).	Delay in production of transcripts was not adequate to establish good cause to allow extension or petition.
IV. JURISDICTION		
38. <i>In re</i> Donald B.	89 Cal. App. 3d 804, 152 Cal. Rptr. 868 (1979).	Juvenile court did not lose jurisdiction over unsentenced juvenile offenses when an 18 year old was sentenced as an adult.

CASE NAME	CITATION	HOLDING
39. <i>In re</i> Carlo S.	94 Cal. App. 3d 377, 156 Cal. Rptr. 442 (1979).	Where a minor remains silent and makes no objection to the procedure, the juvenile court may not, without appropriate amendment or previous notice to the minor, find the minor guilty of uncharged and unincluded lesser offenses.
40. <i>People v. Superior Court</i> (John D.)	95 Cal. App. 3d 380, 157 Cal. Rptr. 157 (1979).	The juvenile court exceeds its jurisdiction by making an indefinite commitment pursuant to a finding of mere dependency.
41. <i>In re</i> Vicki H.	99 Cal. App. 3d 484, 160 Cal. Rptr. 294 (1979).	Insanity defense on successfully proven diverts the court of juvenile jurisdiction.
V. EVIDENCE		
42. <i>In re</i> Darrel T.	90 Cal. App. 3d 325, 153 Cal. Rptr. 261 (1979).	Minor was not allowed to review the transcript of a fitness hearing involving a codefendant.
43. <i>In re</i> Clyde H.	92 Cal. App. 3d 338, 154 Cal. Rptr. 727 (1979).	The legislature may set forth the standard by which a minor will be found capable of committing a crime.
44. <i>In re</i> Charles G.	95 Cal. App. 3d 62, 156 Cal. Rptr. 832 (1979).	Circumstantial evidence was sufficient to show a youth had committed auto burglary.
45. <i>In re</i> David G.	93 Cal. App. 3d 247, 155 Cal. Rptr. 500 (1979).	Requiring a minor to litigate search and seizure issues at an adjudication hearing does not violate equal protection of the law.
46. <i>In re</i> Frederick G.	96 Cal. App. 3d 353, 157 Cal. Rptr. 769 (1979).	Corroboration of an accomplice's testimony is not applicable to juvenile court proceedings.
47. <i>In re</i> Johnny G.	25 Cal. 3d 543, 601 P.2d 196, 159 Cal. Rptr. 180 (1979).	Extrajudicial identification that cannot be confirmed at trial is not sufficient to sustain conviction in the absence of other evidence.
48. <i>In re</i> Joseph H.	98 Cal. App. 3d 627, 159 Cal. Rptr. 681 (1979).	Right to a jury trial is inapplicable to juvenile court proceedings.

CASE NAME	CITATION	HOLDING
VI. CONSTITUTIONAL		
49. <i>In re</i> Scott K.	24 Cal. 3d 395, 595 P.2d 105, 155 Cal. Rptr. 671 (1979).	Parents of a minor may not summarily waive their child's right to search and seizure protections.
50. <i>In re</i> Edward B.	94 Cal. App. 3d 362, 156 Cal. Rptr. 405 (1979).	A minor who has had an adjudication hearing before a juvenile court and whose petition for rehearing is denied by a superior court judge has had a "determinative hearing by a judge."
51. <i>In re</i> Kathy P.	25 Cal. 3d 91, 599 P.2d 65, 157 Cal. Rptr. 876 (1979).	The hearing of a contested traffic violation by a juvenile traffic hearing officer is constitutional because the hearing officer is performing a subordinate judicial duty.
52. Michael M. v. Superior Court of Sonoma County	25 Cal. 3d 608, 601 P.2d 572, 159 Cal. Rptr. 340 (1979).	"Statutory Rape" statute does not violate the equal protection clause.
53. <i>In re</i> Wayne J.	97 Cal. App. 3d 776, 159 Cal. Rptr. 106 (1979).	Imposition of home probation on minor for possession of marijuana does not violate the equal protection clause.
54. <i>In re</i> Jesse W.	26 Cal. 3d 41, 603 P.2d 1296, 160 Cal. Rptr. 700 (1979).	A minor is subjected to double jeopardy if a juvenile court judge conducts a de novo rehearing subsequent to the referee's initial findings.

I. PARENT-CHILD CUSTODY

1. *IN RE* W.O.

88 Cal. App. 3d 906, 152 Cal. Rptr. 130 (1979)

W.O. and T.O., minors, were removed from the custody of their parents after cocaine and marijuana had been discovered at their residence. The evidence indicated that four-month-old T.O. and his two-year-old brother, W.O., were receiving excellent physical

care in the home and that the parents were deeply concerned about the children.

The trial court concluded that having those drugs in the home created the possibility of harm or injury to the children. The parents appealed an order removing the two minor children from their custody.

At issue was whether the trial court may remove a child from parental custody when there is a "remote possibility" that the children may be endangered in their present environment.¹

In reversing the trial court, the court of appeal relied upon *In re Robert P.*² The court said: "The right to custody of one's own children, free from unwarranted state interference, has long been recognized as a fundamental right."³ As a fundamental right, a showing of a compelling state interest is required in order to justify the taking of the children.

The court also relied on another case, *In re B.G.*⁴ where the supreme court said:

[W]e conclude that section 4600 permits the juvenile court to award custody to a non parent against the claim of a parent only upon a clear showing that such award is essential to avert harm to the child. A finding that such an award will promote the "best interests" of the "welfare of the child will not suffice."⁵

The court concluded that there was no evidence supporting the conclusion that parental custody would actually harm the children.⁶ The court pointed out that "[f]undamental rights do not fade before remote possibilities."⁷

2. *IN RE* FRED J.

89 Cal. App. 3d 168, 152 Cal. Rptr. 327 (1979)

A petition was filed under Welfare and Institutions Code sections 387⁸ and 388,⁹ to remove custody of two dependent children

1. *In re* W.O., 88 Cal. App. 3d 906, 907, 152 Cal. Rptr. 130, 131 (1979).

2. *Id.* at 911, 152 Cal. Rptr. at 133 (citing *In re* Robert P., 61 Cal. App. 3d 310, 132 Cal. Rptr. 5 (1976)).

3. *In re* Robert P., 61 Cal. App. 3d 310, 319-20 n.9, 132 Cal. Rptr. 5, 11 n.9 (1976) (citations omitted).

4. 88 Cal. App. 3d at 909, 152 Cal. Rptr. at 132 (citing 11 Cal. 3d 679, 523 P.2d 244, 114 Cal. Rptr. 444 (1974)).

5. *Id.* at 698-699, 523 P.2d at 257, 114 Cal. Rptr. at 457-58. The applicable parts of California Civil Code section 4600 state:

Before the court makes any order awarding custody to a person or persons other than a parent, without the consent of parents, it must make a finding that an award of custody to a parent would be detrimental to the child and the award to a non parent is required to serve the best interests of the child

CAL. CIV. CODE § 4600 (West Supp. 1979).

6. 88 Cal. App. 3d at 911, 152 Cal. Rptr. at 133.

7. *Id.*

8. The applicable part of Welfare and Institutions Code section 387 provides

from their mother. The petition alleged that the mother refused to adequately cooperate with the social worker to provide an appropriate environment for the children. Separate attorneys were appointed to represent the mother and the children.¹⁰

Over the objection of the mother, two psychiatrists testified as to the children's emotional problems. The juvenile court declared the minors to be dependent children under Welfare and Institution Code section 300.¹¹

On appeal, the Third District Court of Appeal found that the mother did not have standing to raise the issue of invoking the children's psychotherapist-patient privilege.¹² The court determined "[t]here was no 'privity' between the mother and the children; each had separate counsel, and their interests were not at all identical, indeed were largely divergent."¹³ The court could find no reason to depart from this general rule.¹⁴

The court also held that "a petition for modification . . . is judged by a preponderance of the evidence standard,¹⁵ . . . whereas a supplemental petition is judged by the same standard as the original proceeding."¹⁶ Where a child may be removed from his/her parent's custody under a section 300 hearing, the level of evidence

that an "order changing or modifying a previous order by removing a minor from the physical custody of a parent . . . and directing placement in a foster home, or commitment to a private institution . . . shall be made only after noticed hearing upon a supplemental petition." CAL. WELF. & INST. CODE § 387 (West Supp. 1979).

9. CAL. WELF. & INST. CODE section 388 provides in pertinent part:

Any parent or other person having an interest in a child who is a dependent child of the juvenile court or the child himself . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. . . .

10. Pursuant to CAL. RULES OF COURT 1363(c).

11. The applicable part of Welfare and Institutions Code section 300 provides:

Any person under the age of 18 years who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge such person to be a dependent child of the court:

(a) Who is in need of proper and effective parental care or control and has no parent or guardian, or has no parent or guardian willing to exercise or capable of exercising such care or control, or has no parent or guardian actually exercising such care or control.

CAL. WELF. & INST. CODE § 300 (West Supp. 1979).

12. *In re Fred J.*, 89 Cal. App. 3d 168, 179, 152 Cal. Rptr. 327, 332 (1979).

13. *Id.*

14. *Id.*

15. 89 Cal. App. 3d at 174, 152 Cal. Rptr. at 329. *See also* CAL. EVID. CODE § 115 (West 1966).

16. 89 Cal. App. 3d at 174, 152 Cal. Rptr. at 329.

necessary "requires application of the clear and convincing evidence standard."¹⁷

3. SMITH V. ALAMEDA COUNTY SOCIAL SERVICES AGENCY 90 Cal. App. 3d 929, 153 Cal. Rptr. 712 (1979)

The Alameda County Social Services Agency placed "seventeen-year-old Dennis in a series of foster homes but no one adopted him."¹⁸ "The agency left him with one set of foster parents for several years without asking them whether they wanted to adopt Dennis."¹⁹ Dennis charged the agency with negligence in failing to take reasonable actions to bring about Dennis' adoption.

At issue was whether a new cause of action arose creating liability upon a public adoption agency for negligent failure to find an infant an adoptive home.²⁰

In holding that a new cause of action did not arise the court looked at the "duty of care."²¹ The First District Court of Appeals stated; "The existence or absence of a duty cannot be determined by mechanical or formal tests."²² Instead, the court chose to base liability in negligence upon consideration of public policy.²³ "[D]uty' is not sacrosanct in itself, but only an expression of the sum total of those considerations of policy which lead the law to say that the particular plaintiff is entitled to protection."²⁴

The court concluded that "[w]hen we apply the various considerations of policy we find that they militate strongly against liability."²⁵ "The duty sought to be imposed by Dennis does not present a reasonably clear or manageable standard for assessing the wrongfulness of the agency's conduct."²⁶

Whether an agency could or should have done something different with regard to the placement of any of the many children who received foster

17. *Id.* See also *In re Robert P.*, 61 Cal. App. 3d 310, 132 Cal. Rptr. 5 (1976); *In re Christopher B.*, 82 Cal. App. 3d 608, 147 Cal. Rptr. 390 (1978).

18. *Smith v. Alameda County Social Services Agency*, 90 Cal. App. 3d 929, 934, 153 Cal. Rptr. 712, 714 (1979).

19. *Id.*

20. *Id.* at 935, 153 Cal. Rptr. at 714. The court determined that no new cause of action arose, so the issue of governmental immunity became unimportant. *Id.* at 939, 153 Cal. Rptr. at 717. See *A. VAN ALSTYNE, CALIFORNIA GOVERNMENT TORT LIABILITY* 143 (1964).

21. 90 Cal. App. 3d at 935, 153 Cal. Rptr. at 714.

22. *Id.*

23. *Id.* at 935, 153 Cal. Rptr. at 714-15 (citing *Peter W. v. San Francisco Unified School Dist.*, 60 Cal. App. 3d 814, 131 Cal. Rptr. 854 (1976); *Dillon v. Legg*, 68 Cal. 2d 728, 441 P.2d 912, 69 Cal. Rptr. 72 (1968); *Raymond v. Paradise Unified School Dist.*, 218 Cal. App. 2d 1, 31 Cal. Rptr. 847 (1963)).

24. 90 Cal. App. 3d at 935, 153 Cal. Rptr. at 715 (citing *W. PROSSER, LAW OF TORTS*, 333 (3d ed. 1964)).

25. 90 Cal. App. 3d at 936, 153 Cal. Rptr. at 715.

26. *Id.*

care but were not fortunate enough to be adopted would involve an inquiry of a highly speculative nature.

.....

[U]nlike the activity of the highway or the marketplace, social work methodology provides no readily acceptable standards of care or cause.²⁷

The court construed the nature of the injury and damages to be highly uncertain with respect to their cause and existence.²⁸

4. *IN RE DAVID B.*

91 Cal. App. 3d 184, 154 Cal. Rptr. 63 (1979)

A judgment was entered by the trial court freeing forever David B. from the parental custody and control of his mother. The identity of the child's father was not known. The proceeding was initiated pursuant to section 232 of the Civil Code,²⁹ to terminate the parental relationship due to mental deficiency or mental illness of the parent.³⁰ The mother had a long history of mental illness. After David was born he was taken into protective custody. "[T]here was no evidence that the mother had ever abused David because he had never lived with her."³¹ However, "there was evidence of the mother's violent behavior toward her cats and her neighbors. There was further evidence that the [mother] had neglected to obtain proper prenatal care and that her mental illness had resulted in an impulsive, nomadic life style which was not conducive" to raising a child.³² The trial court found that the mother was and would remain incapable, in the foreseeable future, of supporting and controlling the child in a proper manner. The court also found that available social services were not sufficient for the welfare of the child so as to enable the parent to regain custody.³³ The mother appealed contending that Civil Code section 232, subdivision (a)(6)³⁴ denied her substantive due

27. *Id.* at 937, 153 Cal. Rptr. at 716.

28. *Id.* at 939-41, 153 Cal. Rptr. at 717-18.

29. Section 232 deals with persons entitled to be declared free from parental custody and control. Subdivision (a)(6) of this section is at issue and is set forth in the following footnote. CAL. CIV. CODE § 232 (West Supp. 1979).

30. *In re David B.*, 91 Cal. App. 3d 184, 187, 154 Cal. Rptr. 63, 65 (1975).

31. *Id.* at 191, 154 Cal. Rptr. at 68.

32. *Id.* at 191-92, 154 Cal. Rptr. at 68.

33. *Id.* at 198, 154 Cal. Rptr. at 72.

34. Section 232(a) provides in pertinent part:

(6) Whose parents or parents are, and will remain incapable of supporting or controlling the child in a proper manner because of mental deficiency or mental illness, if there is testimony to this effect from two physicians and surgeons each of which have been certified either by the

process in violation of the fourteenth amendment and California Constitution article I, section 7, subdivision (a), in that it authorized a severing of the parental relationship without a showing of actual neglect or mistreatment of the child.³⁵

The appellate court stated that “[a] parent’s interest in the care, custody, and companionship of a child is a liberty to be ranked among the most basic of civil rights”³⁶ and that this liberty is protected against unreasonable or arbitrary legislative governmental interference by substantive due process.³⁷ Therefore, the parenting right may not be interfered with absent a compelling state interest.³⁸

The court concluded that the legislature has determined that when the parent is unable, due to mental illness, to properly care for the child over an extended period of time, the child should be placed for adoption so that it may obtain a stable home, rather than remain in temporary foster care pending a possible return to the custody of the parent.³⁹ The state is thereby attempting to prevent permanent psychological harm which would result to the minor if he was moved from various foster homes until he obtained majority.

The appellate court held that “the state may permanently sever the parental relationship to free the child for adoption whenever it is established by clear and convincing proof that because of a mental illness or mental deficiency, the parents are and will remain incapable of providing the necessary support and control for the child.”⁴⁰ Such a conclusion is reasonable and consistent with substantive due process provided the trial court finds:

- (1) on the basis of the consistent opinions of two physicians that the par-

American Board of Psychiatry and Neurology or under Section 6750 of the Welfare and Institutions Code. . . .

CAL. CIV. CODE § 232(a)(6) (West Supp. 1979).

35. 91 Cal. App. 3d at 192-93, 154 Cal. Rptr. at 68-69.

36. *Id.* at 193, 154 Cal. Rptr. at 68 (citing *Stanley v. Illinois*, 405 U.S. 645, 651 (1972)). The rights to conceive and raise one’s children have been deemed essential, basic civil rights of citizens.

37. 91 Cal. App. 3d at 193, 154 Cal. Rptr. at 68. *See also* U.S. CONST. amend. XIV.

38. 91 Cal. App. 3d at 192, 154 Cal. Rptr. at 68 (citing *Roe v. Wade*, 410 U.S. 113 (1973)).

39. 91 Cal. App. 3d at 195, 154 Cal. Rptr. at 71. The court stated that the purpose behind section 232 proceedings was expounded by the legislature when it added section 232.9 to the Civil Code.

It is the intention of the Legislature in enacting this act to extend adoption services for the benefit of children residing in foster homes at public expense by facilitating legal actions required for adoption so that these children may be placed in adoptive homes where they will have the benefits of stability and security.

Id. (citing 1970 Cal. Stats. Ch. 583, § 1).

40. 91 Cal. App. 3d at 196, 154 Cal. Rptr. at 71.

ent's mental illness or deficiency is settled in that it will continue in the foreseeable future regardless of any medical treatment that would be available to the parent and (2) that the immediate severance of the parental relationship is the least detrimental alternative available to protect the welfare of the child.⁴¹

Thus, section 232, subdivision (a)(6) does not violate substantive due process.

5. RUDDOCK V. OHLS

91 Cal. App. 3d 271, 154 Cal. Rptr. 87 (1979)

A divorce decree between Darrel and Diane Ohls was obtained in an Oregon court. The decree stated that Darrel was not the father of the minor child. The child was not joined as a party to the action nor was a guardian *ad litem* appointed. The decree indicated that the paternity and child support issues were fully litigated.⁴² In California, the mother petitioned for the appointment of a guardian *ad litem* in order to bring an action to establish that Darrel was the minor's father. A guardian was appointed and a complaint filed. Darrel contended that the Oregon decree bound the minor to said decree because the mother was acting in a full representative capacity for the child. The trial court found for Darrel and the minor appealed through her guardian *ad litem*. The issue presented is whether the minor was bound by the paternity determination in the dissolution proceeding.⁴³

The appellate court stated that "the establishment of a parent-child relationship is the most fundamental right a child possesses. To hold a child bound . . . by a finding of nonpaternity in a divorce action in which the child was not a party would be to allow the conduct of the mother to foreclose the most fundamental right"⁴⁴ possessed by the child. The court held that in dealing with the prospective rights of a minor to establish paternity, the child, if not formally a party, is not bound by a paternity determination in a dissolution action.⁴⁵ There is a burden of proof to show that the minor was a party to the action or in some other

41. *Id.*

42. *Ruddock v. Ohls*, 91 Cal. App. 3d 271, 275, 154 Cal. Rptr. 87, 89 (1979).

43. *Id.* at 276, 154 Cal. Rptr. at 90.

44. *Id.* at 277-78, 154 Cal. Rptr. at 91.

45. *Id.* at 285, 154 Cal. Rptr. at 96. The court also stated that "[i]n contrast, in an action for support under the Uniform Parentage Act formally brought on behalf of the child, the judgment may be . . . binding without actual joinder if the mother acted in a proper representative capacity." *Id.*

manner⁴⁶ is bound prospectively by the findings and judgment in the parents' marital dissolution action.

6. *IN RE LYNNA B.*

92 Cal. App. 3d 682, 155 Cal. Rptr. 256 (1979)

When Lynna was young, her mother voluntarily placed her in the home of licensed foster parents. With the mother's consent, the foster parents were appointed guardians of Lynna. After several years the guardians became concerned for the general welfare of Lynna and were worried about the lack of stability in the arrangement with Lynna's mother. The guardians petitioned the superior court to declare the child free from the custody and control of her natural parents under section 232, subdivision (a)(7) of the California Civil Code.⁴⁷ The mother's contact with Lynna had been minimal and there was little evidence showing the mother's affection and concern for the minor; she had never been taken to the mother's house. There was evidence that Lynna had developed strong ties with her guardians and that she considered them her family. The trial court found that placing her with the mother would be detrimental to the child and that the mother was likely to fail in maintaining an adequate parental relationship and continuous contact with the child. On these findings the trial court granted the guardians' petition. The mother appealed claiming as error: (1) the insufficiency of the evidence to support the judg-

46. See *Armstrong v. Armstrong*, 15 Cal. 3d 942, 951, 544 P.2d 941, 950, 126 Cal. Rptr. 805, 904 (1976). In this case two children, ages 16 and 19, of divorced parents sued their father for past child support and for misappropriation of the income from a testamentary trust established by their paternal grandfather. The mother had obtained an interlocutory divorce decree 14 years earlier which had incorporated the terms of a property settlement involving the trust property. The children argued that the interlocutory and final divorce judgments should not be binding on them because they were not parties to the action. The court held that the mother was entrusted with the care and custody of the children and was a proper representative of their interests.

47. Civil Code Section 232 provides:

(a) An action may be brought for the purpose of having any person under the age of 18 years declared free from the custody and control of either or both of his parents when such person comes within any of the following descriptions:

(7) Who has been cared for in one or more foster homes under the supervision of the juvenile court, the county welfare department . . . for two or more consecutive years, providing that the court finds by clear and convincing evidence that return of the child to his parent or parents would be detrimental to the child and that the parent or parents have failed during such period, and are likely to fail in the future, to do the following:

(i) Provide a home for the child;
(ii) Provide care and control for the child, and
(iii) Maintain an adequate parental relationship with the child.

CAL. CIV. CODE § 232 (West Supp. 1979).

ment⁴⁸ and (2) the failure of the court to consider less drastic alternatives.⁴⁹

The appellate court noted that the judgment was based on Civil Code section 232, subdivision (a)(7)⁵⁰ and that Civil Code section 4600⁵¹ was also applicable. It also noted that its duty was to determine whether there existed substantial evidence to support the conclusion of the trier of fact.⁵²

The mother claimed that Lynna had not been cared for in a foster home for two or more consecutive years as required by Civil Code section 232, subdivision (a)(7) because the order appointing the foster parents as guardians of Lynna had terminated their status as foster parents. The appellate court cited no cases in support of the mother's contention and determined that a foster parent can fulfill dual roles: those of foster parent and of guardian.⁵³

The mother next claimed that the evidence was insufficient to support the trial court's finding that placement of Lynna with her natural mother would be detrimental to the child. The appellate court noted that while the termination of a parent-child relationship is a "drastic remedy which should be resorted to only in extreme cases. . . ."⁵⁴ the protection of the child is its primary

48. *In re Lynna B.*, 92 Cal. App. 3d 682, 696, 155 Cal. Rptr. 256, 263 (1979).

49. *Id.* at 701-02, 155 Cal. Rptr. at 266.

50. *Id.* at 695, 155 Cal. Rptr. at 261-62. See note 1 *supra*.

51. The pertinent parts of Civil Code section 4600 are as follows:

In any proceeding where there is at issue the custody of a minor child, the court may, during the pendency of the proceeding, or at any time thereafter, make such order for the custody of such child during his minority as may seem necessary or proper . . . custody should be awarded in the following order of preference:

- (a) To either parent according to the best interests of the child.
- (b) To the person or persons in whose home the child has been living in a wholesome and stable environment.
- (c) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

Before the court makes any order awarding custody to a person or persons other than a parent, without the consent of the parents, it must make a finding that an award of custody to a parent would be detrimental to the child and the award to a nonparent is required to serve the best interests of the child

CAL. CIV. CODE § 4600 (West 1970).

This section calls for attention to be focused on the detriment to the child rather than parental unfitness. *In re B.G.*, 11 Cal. 3d 679, 523 P.2d 244, 114 Cal. Rptr. 444 (1974).

52. 92 Cal. App. 3d at 694, 155 Cal. Rptr. at 262.

53. *Id.* at 696, 155 Cal. Rptr. at 263.

54. *Id.* at 699, 155 Cal. Rptr. at 264 (citing *In re Carmaleta B.*, 21 Cal. 3d 482, 579

concern.⁵⁵ The court held, in considering what was best for the child, that the trial court had substantial evidence on which to base its findings that it would be detrimental to return Lynna to her mother, and to thereby sever her relationship with the foster parents.⁵⁶

The mother's last contention was that the trial court failed to consider less drastic alternatives. The appellate court acknowledged that it had recently reiterated the principal advanced by the mother. The principal being that "before state action may be undertaken to involuntarily terminate the natural relationship of parent and child, less drastic alternatives, such as provision for child protection services, must first be explored."⁵⁷ The court stated that since the mother had not requested a finding on the issue, none was made, but held there was substantial evidence to support the implied findings that services were considered and offered and that additional efforts at reunification would be unproductive.

7. *IN RE NICOLE B.*

93 Cal. App. 3d. 874, 155 Cal. Rptr. 916 (1979)

Nicole B. was declared to be a minor falling within the provisions of Welfare and Institutions Code section 300, subdivision (d)⁵⁸ which states that a minor may be adjudged to be a dependent child of the court when the child's home is determined unfit by reason of physical abuse by his parents or any other person having custody over him. The minor was placed in the home of her mother and under the supervision of the county department of welfare. A male friend of the mother had been living with the mother and child for three months. Nicole had been badly beaten

P.2d 514, 146 Cal. Rptr. 623 (1978) (insufficient evidence of cruelty and neglect); *In re T.M.R.*, 41 Cal. App. 3d 694, 116 Cal. Rptr. 292 (1974) (where the mother was no longer incarcerated and was in a position to provide a normal home for her children, she could not be deprived of custody)).

55. 92 Cal. App. 3d at 698-99, 155 Cal. Rptr. at 264 (citations omitted).

56. *Id.* at 698, 155 Cal. Rptr. at 264 (citing *In re Marcos S.*, 73 Cal. App. 3d 768, 140 Cal. Rptr. 912 (1977) (father convicted of manslaughter of his wife, was in prison, and had not supported or communicated with his minor child)).

57. 92 Cal. App. 3d at 698-99, 155 Cal. Rptr. at 264 (citing *In re Heidi T.*, 87 Cal. App. 3d 864, 151 Cal. Rptr. 263 (1979)).

58. Welfare and Institutions Code section 300(d), in pertinent part reads as follows:

Any person under the age of 18 years who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge such person to be a dependent child of the court:

(d) Whose home is an unfit place for him by reason of neglect, cruelty, depravity, or physical abuse of either of his parents, or of his guardian or other person in whose custody or care he is.

CAL. WELF. & INST. CODE § 300(d) (West Supp. 1979).

by the friend, and such abuse was of the type contemplated by section 300 (d). The mother alleged no knowledge of the physical abuse and the male friend no longer resided with the mother and was not allowed to come about the home. The mother claimed that the facts were not sufficient to support the court's assumption of jurisdiction.

The appellate court first noted that the welfare of the child was its paramount concern.⁵⁹ The court then stated that the evidence must be viewed in the light most favorable to the lower court's ruling and that the facts supported the lower court's determination that the home was unfit.⁶⁰

"The court's involvement in wardship matters is not necessarily based on a parent's wrongdoing."⁶¹ In assuming jurisdiction in this case, the court was not examining the fitness of the mother. Section 300 (d) calls for the investigation of any person having custody or care over the minor who causes the home to be an unfit place for the minor. Thus, subdivision (d) gives the court jurisdiction where a child is physically abused by a person who has custody of that child.⁶²

The appellate court found the physical abuse to the minor to be substantial and stated that it "cannot close its eyes to this sort of extreme abuse."⁶³ The court held that there was sufficient evidence to exercise jurisdiction and to adjudge the minor to be a ward of the court. It noted the fact that there was nothing in the record to indicate that the male friend would not return, and coupled with his close association with the mother, indicated that the child was still in danger if allowed to stay in the home.⁶⁴

59. 93 Cal. App. 3d 874, 879, 155 Cal. Rptr. 916, 918 (1979) (citing *In re Raya*, 255 Cal. App. 2d 260, 264, 63 Cal. Rptr. 252, 255 (1967)). See also *In re Florence*, 47 Cal. 2d 25, 300 P.2d 825 (1956); CAL. WELF. & INST. CODE § 202 (West Supp. 1979).

60. 93 Cal. App. 3d at 879, 155 Cal. Rptr. at 918 (citing *In re Robert P.*, 61 Cal. App. 3d 310, 132 Cal. Rptr. 5 (1976); *In re Luwanna S.*, 31 Cal. App. 3d 112, 107 Cal. Rptr. 62 (1973)).

61. 93 Cal. App. 3d at 879, 155 Cal. Rptr. at 918. The court also stated that "[t]he authority of the court to assume jurisdiction is based on a determination that one of these apparent exigent circumstances exists, indicating the minor may be in need of assistance." *Id.* The court was referring to the circumstances contained in CAL. WELF. & INST. CODE § 300 (West Supp. 1979).

62. 93 Cal. App. 3d at 882, 155 Cal. Rptr. at 920.

63. *Id.* at 879, 155 Cal. Rptr. at 918.

64. *Id.* at 882, 155 Cal. Rptr. at 920.

8. *IN RE LA SHONDA B.*
95 Cal. App. 3d 593, 157 Cal. Rptr. 280 (1979)

The Los Angeles County Department of Public Social Services (DPSS) filed a dependency petition arising out of the physical abuse of a two month old girl by her unmarried mother. The trial court dismissed the petition with prejudice and gave custody to the father, who lived apart from the mother.

At issue was whether a child can be removed from the home of the unfit parent at the adjudication hearing without prejudicing the other parent's right to gain custody of the child on a sufficient showing that he or she is capable of providing parental care.⁶⁵ The Second District Court of Appeal found that the child can be removed from the parent with custody and the other parent can be given custody upon a showing of capacity. With respect to this case, the trial court erred in finding that the father made such showing.⁶⁶

In reversing the order, the court relied on *In re Adele L.*⁶⁷ That court upheld the adjudication of dependency in *Adele L.* on the same grounds that apply in *La Shonda*; the minor's parents do not share the same home.⁶⁸

The court concluded that where a minor had been neglected or abused by either parent, there is a judicial finding that the minor is a person described by section 300 of the Welfare and Institutions Code.⁶⁹ Thus, even though the father lived apart from the mother, it was still necessary to make a "sufficient showing that he or she is capable of exercising proper and effective parental care."⁷⁰ There was no such showing⁷¹ on behalf of the father, con-

65. *In re La Shonda B.*, 95 Cal. App. 3d 593, 597, 157 Cal. Rptr. 280, 282 (1979).

66. *Id.* at 600, 157 Cal. Rptr. at 284.

67. *Id.* at 599, 157 Cal. Rptr. at 283 (citing *In re Adele L.*, 267 Cal. App. 2d 397, 73 Cal. Rptr. 76 (1968)).

68. 95 Cal. App. 3d at 599, 157 Cal. Rptr. at 283.

69. *Id.* at 600, 157 Cal. Rptr. at 284. The pertinent provisions of section 300 are:

Any person under the age of 18 years who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge such person to be a dependent child of the court:

(a) who is in need of proper and effective parental care or control and has no parent or guardian, or has no parent or guardian willing to exercise or capable of exercising such care or control, or has no parent or guardian actually exercising such care or control.

(d) whose home is an unfit place for him by reason of neglect, cruelty, depravity, or physical abuse of either of his parents, or of his guardian or other person in whose custody or care he is.

CAL. WELF. & INST. CODE § 300 (West Supp. 1979).

70. 95 Cal. App. 3d at 600, 157 Cal. Rptr. at 284.

71. The legislature has added sections 355.1, 355.2, 355.3 and 355.4 to the Welfare and Institutions Code. These sections create presumptions as to the need of proper and effective parental care. These sections provide as follows:

sequently the lower court erred in giving custody to the father.

9. *IN RE GEOFFREY G.*

98 Cal. App. 3d 412, 159 Cal. Rptr. 460 (1979)

The trial court ordered that Geoffrey be declared free from the custody and control of his natural father under the provision of Civil Code section 232.⁷² His father was serving a prison sentence for voluntary manslaughter arising out of the homicide of the boy's mother.

The Fifth District Court of Appeal rejected the contention that parental custody would not be detrimental to the child.⁷³ The trial court found the father was an unfit parent not simply because he had committed a homicide, but also on the basis of the violent nature of the felony.⁷⁴ "Such a statement is sufficient to satisfy the requirements of Civil Code section 4600⁷⁵ which section does not specify any particular form for findings thereun-

CAL. WELF. & INST. CODE § 355.1 (West Supp. 1979). Presumption as to need of proper and effective parental care.

CAL. WELF. & INST. CODE § 355.2 (West Supp. 1979). Presumption of unfit home by reason of neglect of the minor.

CAL. WELF. & INST. CODE § 355.3 (West Supp. 1979). Presumption of unfit home by reason of cruelty to the minor.

CAL. WELF. & INST. CODE § 355.4 (West Supp. 1979). Presumption of unfit home by reason of physical abuse to the minor:

72. Civil Code section 232 provides in pertinent part:

An action may be brought for the purpose of having any person under the age of 18 years declared free from the custody and control of either or both of his parents when such person comes within any of the following descriptions:

(4) Whose parent or parents are convicted of a felony, if the facts of the crime of which such parent or parents were convicted are of such nature as to prove the unfitness of such parent or parents to have the future custody and control of the child.

CAL. CIV. CODE § 232 (West Supp. 1979).

73. *In re Geoffrey G.*, 98 Cal. App. 3d 412, 420, 159 Cal. Rptr. 460, 464 (1979).

74. *Id.* at 421, 159 Cal. Rptr. at 465.

75. Civil Code § 4600 states:

In any proceeding where there is at issue the custody of a minor child, the court may, during the pendency of the proceeding or at any time thereafter, make such order for the custody of such child during his minority as may seem necessary or proper. If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to his wishes in making an award of custody or modification thereof. Custody should be awarded in the following order of preference:

(a) To either parent according to the best interests of the child.

(b) To the person or persons in whose home the child has been living in a wholesome and stable environment.

der.”⁷⁶

Next the court considered whether the state should have followed less drastic alternatives. The court of appeal determined that the only alternative was to place Geoffrey with his grandparents. “It could not be productive of good to take Geoffrey from his grandparents, the only parents he knew, and place him with third parties.”⁷⁷ The court ruled out any future attempt at reunification because the court already found the father was “unfit to have the future custody and control.”⁷⁸

II. SENTENCING

10. *IN RE HARM R.*

88 Cal. App. 3d 438, 152 Cal. Rptr. 167 (1979)

A minor had originally been made a ward of the juvenile court on his admission of trespassing and committing a curfew violation. He was placed in several private open institutions but had run away from each of them. However, during the three year period covering these placements, he spent 191 days in the open facilities and 145 days in juvenile hall, where he was detained between runaways. The juvenile court judge continued the minor as a ward of the court and released him to his mother on the condition that he remain with her.

The minor argued that the juvenile court had lost jurisdiction over him, since he had spent more time in custody than the maximum term of imprisonment for an adult charged with his original offense.

The appellate court held that the juvenile court still had jurisdiction over the minor.⁷⁹ The reasoning was that section 726 of the Welfare and Institutions Code,⁸⁰ which limits the time a minor may be held in physical confinement to the maximum period

(c) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

Before the court makes any order awarding custody to a person or persons other than a parent, without the consent of parents, it must make a finding that an award of custody to a parent would be detrimental to the child and the award to a nonparent is required to serve the best interests of the child

CAL. CIV. CODE § 4600 (West 1970).

76. 98 Cal. App. 3d at 422, 159 Cal. Rptr. at 465.

77. *Id.*

78. *Id.*

79. *In re Harm R.*, 88 Cal. App. 3d 438, 442, 152 Cal. Rptr. 167, 169 (1979).

80. Welfare and Institutions Code section 726 reads in pertinent part:

In any case in which the minor is removed from the physical custody of his parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the of-

imposable on an adult for the same offense, was not applicable to the case at bar because the placement of minors in open institutions does not come under the statute's definition of physical confinement.⁸¹

The court then addressed itself to the issue of credit for time already served. The court declined to comment on the controversy surrounding Penal Code section 2900.5 and proceeded directly to section 726 and 602. The court held:

Section 726 provides that when a minor is removed from the custody of his parents as the result of an order of wardship made pursuant to section 602 (the instant case), a minor may not be held in a physical confinement for longer than the underlying crime and physical confinement expressly includes juvenile hall. Thus, the 145 days in juvenile hall must be credited against the total time the minor may be held within the jurisdiction of the juvenile court. Thus, while the juvenile court has not lost jurisdiction of the minor, he may not be committed to a juvenile hall, home, ranch, camp, foster camp or the CYA for longer than 35 days, i.e., 180 days minus 145 days.⁸²

11. *IN RE CARRIE W.*

89 Cal. App. 3d 642, 152 Cal. Rptr. 690 (1979)

A juvenile commitment petition filed under Welfare and Institutions Code section 602⁸³ charged sixteen-year-old Carrie W. with placing numerous unauthorized long distance telephone calls while she was residing at a home for unwed mothers.

The trial court ordered the juvenile committed to the Youth Au-

fense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.

CAL. WELF. & INST. CODE § 726(c) (West Supp. 1979).

81. 88 Cal. App. 3d at 442, 152 Cal. Rptr. at 169. Welfare and Institutions Code section 726 states in pertinent part:

Physical confinement means placement in a juvenile hall, ranch, camp, forestry camp or secure juvenile home pursuant to Section 730, or in any institution operated by the Youth Authority.

The court held that the minor's placement did not come within the plain language of this statute, but rather the placements were all under section 727, subdivision (1) (b) which provides:

Some association, society, or corporation embracing within its objects the purpose of caring for such minors

CAL. WELF. & INST. CODE § 726(c) (West Supp. 1979).

82. 88 Cal. App. 3d at 445, 152 Cal. Rptr. at 171.

83. CAL. WELF. & INST. CODE § 602 (West 1972). 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, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

thority for a maximum term of three years even though Carrie W. had previously been involved in only mildly delinquent behavior.

The sole issue considered by the court of appeal was whether the commitment order was inconsistent with the general purposes of the juvenile court law.

The court of appeal reversed that part of the judgment ordering defendant committed to the Youth Authority. The general purpose of the juvenile court law is to rehabilitate and treat, not to punish.⁸⁴ The court stated, "Commitments to the California Youth Authority are made only in the most serious cases and only after all else has failed."⁸⁵ Carrie does not fit within this category.⁸⁶ Carrie had not been involved in any aggressive, destructive, or assaultive conduct. "The commitment to CYA was unnecessary to protect the public against such comparatively innocuous activity."⁸⁷

The court concluded that commitment to the CYA cannot be justified on the existence of a defiant, recalcitrant attitude.⁸⁸

12. *IN RE MAURICE S.*

90 Cal. App. 3d 190, 153 Cal. Rptr. 317 (1979)

The juvenile court committed Maurice S. to the California Youth Authority upon findings "that he took personal property from the possession and immediate presence of a victim . . . and that he escaped from juvenile hall."⁸⁹ The judge denied Maurice credit against his term of confinement for thirty-seven days actually spent in custody and eighteen days good time credit. Maurice argued that it was a denial of equal protection to withhold from a juvenile offender the benefit of provisions which have the effect of shortening the actual period of confinement of adult offenders.

Maurice contended that he was entitled to credit by citing as authority Penal Code section 2900.5⁹⁰ which allows credit for time

84. *In re Michael R.*, 73 Cal. App. 3d 327, 333-34, 140 Cal. Rptr. 716, 720 (1977).

85. THOMPSON, CALIFORNIA JUVENILE COURT DESKBOOK, § 9.15 (2d ed. 1978).

86. The court lists several "inappropriate cases" for commitment, including (1) youths who are dependant or primarily placement problems; (2) unsophisticated, mildly delinquent youth; *In re Aline*, 14 Cal. 3d 557, 564-65, 536 P.2d 65, 121 Cal. Rptr. 816, 821 (1975).

87. *In re Carrie W.*, 89 Cal. App. 3d 642, 647, 152 Cal. Rptr. 690, 693-94 (1979).

88. *Id.* at 648, 152 Cal. Rptr. at 694.

89. *In re Maurice S.*, 90 Cal. App. 3d 190, 192, 153 Cal. Rptr. 317, 318 (1979).

90. Section 2900.5 reads in pertinent part:

In all felony and misdemeanor convictions, either by plea or by verdict, when the defendant has been in custody, . . . all days of custody of the defendant, including days served as a condition or probation in compliance with a court order . . . shall be credited upon his term of imprisonment. . . .

CAL. PENAL CODE § 2900.5 (West Supp. 1979).

spent prior to the commencement of sentence. Maurice's stated term of confinement was thirty-six months at the California Youth Authority. An adult would also be sentenced to confinement for up to thirty-six months for the same offense. However, the adult would be allowed precommitment credits⁹¹ while Maurice was not, therefore, Maurice claimed denial of equal protection.

The court of appeal relied heavily on *People v. Olivas*⁹² and adopted its rationale that there is no justification for differences in the potential duration of incarceration between youthful and adult offenders. The court stated:

We conclude, on the authority of *Olivas*, that Youth Authority confinement of juveniles and Adult Authority confinement of adult prisoners share for the purposes of equal protection analysis a common purpose of punishment. No basis has been found for distinguishing between Youth Authority inmates and adult prisoners in regard to credit for time in confinement.⁹³

Thus, the court held that it was a denial of equal protection to withhold from a juvenile offender the benefit of provisions which have the effect of shortening the actual period of confinement of adult offenders.⁹⁴

13. *IN RE JAMES V.*

90 Cal. App. 3d 300, 153 Cal. Rptr. 334 (1979)

James, a seventeen-year-old, was committed to the Youth Authority as a ward of the court under Welfare and Institutions Code section 602.⁹⁵ He had molested an eleven-year-old girl and

91. *Id.*, See *In re Leonard R.*, 76 Cal. App. 3d 100, 103, 142 Cal. Rptr. 632, 634 (1977).

92. 17 Cal. 3d 236, 551 P.2d 375, 131 Cal. Rptr. 55 (1976).

In this case the defendant, age 19 at the time of arrest, was tried and convicted as an adult of a misdemeanor assault. He was committed to the California Youth Authority (CYA). The court held that the time spent at CYA could not exceed the maximum term which could have been imposed had the defendant been sentenced to county jail. Any excessive confinement would violate the constitutional requirement of equal protection of the law. The court stated that neither the state's interest in rehabilitating youthful offenders, nor any other conceivable interest could constitute a compelling interest so as to justify the difference in maximum terms of confinement.

93. 90 Cal. App. 3d 190, 194, 153 Cal. Rptr. 317, 319 (1979).

94. *Id.*

95. California Welfare and Institutions Code section 602 defines the jurisdiction of the juvenile court in matters involving juvenile offenders. This section provides:

Any person who is under the age of 18 years when he violates any law of

compelled a seven-year-old girl to orally copulate.

The court of appeal considered whether commitment to the Youth Authority was an abuse of discretion. The minor was committed for the maximum confinement, which was four years for violation of Penal Code Section 288,⁹⁶ whereas an adult convicted of that statute could be sentenced to four years only if the court made a finding of aggravating circumstances.⁹⁷

The court held that commitment to the Youth Authority "does not determine the amount of time which appellant must serve in custody or on parole. The Youth Authority will do that."⁹⁸ The Court further pointed out that "[i]f the Youth Authority should hold appellant beyond the established limit, there is a convenient judicial remedy."⁹⁹

14. *IN RE* RICHARD W.

91 Cal. App. 3d 960, 155 Cal. Rptr. 11 (1979)

Richard W. was found by a juvenile court to have committed two counts of burglary. "The court made a specific finding that the public should be protected from the minor pursuant to Welfare and Institutions Code section 202, subdivision (b)."¹⁰⁰ At a dispositional hearing, Richard was committed to the Youth Authority for a maximum period of six years and four months. This case raised several questions.

1. Was Richard denied his right to a fair and impartial hearing before an unbiased judge because the trial court previously accepted the admission of the other minor who had been with Richard the night of the burglary?

this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

CAL. WELF. & INST. CODE § 602 (West Supp. 1979).

96. CAL. PENAL CODE § 288(a) (West 1970) provides the punishment for acts of perversion and oral copulation.

97. The contention raised by James V. brings up the challenge of whether youths should be treated differently from adult criminals. Two court of appeal cases, *In re Eric J.*, 86 Cal. App. 3d 573, 150 Cal. Rptr. 299 (1978) and *In re Dennis C.*, 86 Cal. App. 3d 663, 150 Cal. Rptr. 356 (1978) have been granted a hearing by the supreme court and are contained in this compendium.

98. *In re James V.*, 90 Cal. App. 3d 306, 308, 153 Cal. Rptr. 334, 338 (1979).

99. *Id.*

100. *In re Richard W.*, 91 Cal. App. 3d 960, 969, 155 Cal. Rptr. 11, 18 (1979); Welfare and Institutions Code section 202 (b) provides:

The purpose of this chapter also includes the protection of the public from the consequences of criminal activity, and to such purpose probation officers, peace officers, and juvenile courts shall take into account such protection of the public in their determinations under this chapter.

CAL. WELF. & INST. CODE § 202(b) (West Supp. 1979).

The appellate court noted that a juvenile is entitled to a trial by a judge who is detached, fair and impartial.¹⁰¹ In the instant case, the court held that the minor had failed to affirmatively show prejudice as required in order to receive a new trial.¹⁰² The court also stated that "[a] judge is not disqualified to try a case merely because he previously, in a separate proceeding, heard a case of a coparticipant or passed on the application of a codefendant for probation.¹⁰³ The court held that the record did not indicate that any statement of the minor in the other action was considered by the juvenile court in deciding Richard's case and that there was substantial evidence indicating that Richard had participated in the burglaries.¹⁰⁴

2. Was the out-of-court field identification in the patrol car a few minutes after the minors were observed impermissibly suggestive and was Richard entitled to counsel at this stage?

A witness to the incident identified Richard while he was sitting in the back of a patrol car shortly after the occurrence of the incident. Richard asserted that the identification was inadmissible because the circumstances of the identification were impermissibly suggestive in that it showed only the two minors handcuffed inside a police car.¹⁰⁵ The appellate court held that the law favors field identification measures when in close proximity in time and place to the scene of the crime.¹⁰⁶ The rationale for this is that immediate knowledge of whether the correct suspect has been apprehended is of primary importance to society and the suspect himself.¹⁰⁷ The court also held that because field identifications

101. 91 Cal. App. 3d at 967, 155 Cal. Rptr. at 17. *See also In re Richardson*, 251 Cal. App. 2d 222, 59 Cal. Rptr. 323 (1967). *See generally* U.S. CONST. amend. V.; CAL. CONST. art. I, § 7(a).

102. 91 Cal. App. 3d at 968, 155 Cal. Rptr. at 17. *See also People v. Beaumaster*, 17 Cal. App. 3d 996, 95 Cal. Rptr. 360 (1971).

103. 91 Cal. App. 3d at 968, 155 Cal. Rptr. at 17.

104. *Id.*

105. *Id.* at 769-70, 155 Cal. Rptr. at 18.

The assertion was based on *People v. Sandoval*, 70 Cal. App. 3d 73, 138 Cal. Rptr. 609 (1977), which stated the proposition that a "single person showup" should not be used without a compelling reason. The appellate court in the case at bar noted that *Sandoval* did not involve a field identification and that the rationale of cases upholding field identifications justifies single person showups provided the procedures used do not give rise to impermissible suggestions.

106. 91 Cal. App. 3d at 970, 155 Cal. Rptr. at 18. *See also People v. Craig*, 86 Cal. App. 3d 905, 150 Cal. Rptr. 676 (1978); *People v. Colgain*, 276 Cal. App. 2d 118, 80 Cal. Rptr. 659 (1969).

107. *See People v. Anthony*, 7 Cal. App. 3d 751, 764-65, 86 Cal. Rptr. 767, 776 (1970).

are of great reliability and because of the practical impossibility of representation by counsel at an immediate field identification, the right to counsel was not required for a field identification.¹⁰⁸

3. Did the court properly aggregate Richard's terms of commitment on multiple petitions by giving him adequate notice that the prior charges would be used to compute the commitment?

Richard contended that previously adjudicated offenses may not be utilized in setting the maximum period of physical confinement. The social worker's report recommended that Richard's commitment include time for previously sustained violations. His counsel received and reviewed this report but Richard claimed such notice was inadequate to give timely notice of the "possible consequences."¹⁰⁹

Sections 656¹¹⁰ and 700 of the Welfare and Institutions Code, when read together, mandate notice be given to the minor of possible consequences, including the maximum period of physical confinement. Although it was error for the juvenile court not to advise Richard of such possible consequences, no prejudice was shown.

The appellate court held that Welfare and Institutions Code section 726¹¹¹ authorizes aggregating periods of confinement attributable to previously sustained petitions.¹¹² However, the failure to file a supplemental petition, as required by section 777,¹¹³

108. 91 Cal. App. 3d at 971, 155 Cal. Rptr. at 19.

109. *Id.* at 975, 155 Cal. Rptr. at 22; Richard relies on section 700 of the Welfare and Institutions Code which provides in pertinent part:

At the beginning of the hearing on a petition filed pursuant to Article 16 (commencing with Section 650) of this chapter, the judge or clerk shall first read the petition to those present and upon request of the minor upon whose behalf the petition has been brought or upon the request of any parent, relative or guardian, the judge shall explain any term of allegation contained therein and the nature of the hearing, its procedures, and possible consequences. . . .

CAL. WELF. & INST. CODE § 700 (West Supp. 1979).

110. Welfare and Institutions Code § 656 reads in pertinent part:

A petition to commence proceedings in the juvenile court to declare a minor a ward of the court shall be verified and must contain:
(c) The code section or sections and subdivision or subdivisions under which the proceedings are instituted.

CAL. WELF. & INST. CODE § 656 (West Supp. 1979).

111. Section 726 provides in pertinent part:

. . . If the court elects to aggregate the period of physical confinement on multiple counts, or multiple petitions, including previously sustained petitions adjudging the minor a ward within Section 602, the "maximum term or imprisonment" shall be specified in accordance with subdivision (a) of Section 1170.1 of the Penal Code.

CAL. WELF. & INST. CODE § 726 (West Supp. 1979).

112. 91 Cal. App. at 975, 155 Cal. Rptr. at 22.

113. Welfare and Institutions Code section 777 provides in pertinent part:

An order changing or modifying a previous order by removing a minor from the physical custody of a parent, guardian, relative or friend and di-

required reversal of the holding for the maximum period of confinement insofar as it utilizes periods from previously sustained petitions to aggregate the term beyond that specified for new offenses. The court held that in the absence of a supplemental petition under section 777 to formally bring before the court the ineffectiveness of the previous dispositions in light of the new offense: "the court is limited to fixing a maximum period of confinement based on the new offenses."¹¹⁴ It is implicit that if a supplemental petition for modification is not filed under section 777, the minor's entire record of petitions adjudicated as true may be utilized in determining an appropriate disposition for the most recent offense, but not in aggregating the period of confinement. The court stated that to hold otherwise; "would lead to the remarkable conclusion that a minor who comes before the court charged with a misdemeanor or with a 90-day or six-month period of confinement, but having previously adjudicated felony violations, being exposed to the potential of multiple years in confinement without previous notice until at or shortly before the dispositional hearing."¹¹⁵

15. *IN RE* ROBERT S.

92 Cal. App. 3d 355, 154 Cal. Rptr. 832 (1979)

Robert was a ward of the court pursuant to Welfare and Institutions Code section 602.¹¹⁶ The juvenile court had sustained a peti-

recting placement in a foster home, or commitment to a private institution or commitment to a county or commitment to a county institution, or an order changing or modifying a previous order by directing commitment to the Youth Authority shall be made only after noticed hearing upon a supplemental petition.

(a) The supplemental petition shall be filed by the probation officer, where a minor has been declared a ward of the court under Section 601, and by the prosecuting attorney at the request of the probation officer where a minor has been declared a ward under Section 602, in the original matter and shall contain a concise statement of the previous disposition has not been effective in the rehabilitation or protection of the minor. . . .

CAL. WELF. & INST. CODE § 777 (West Supp. 1979).

114. 91 Cal. App. 3d at 978, 155 Cal. Rptr. at 24.

115. *Id.* at 979, 155 Cal. Rptr. at 24.

116. Section 602 states:

Any person who is under the age of 18 years when he violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

CAL. WELF. & INST. CODE § 602 (West Supp. 1979).

tion on two counts of receiving stolen property. A few months later, a juvenile commitment petition charged Robert with two misdemeanor counts of tampering with a vehicle¹¹⁷ and the petition was sustained. The trial court fixed the term of commitment at three years and eight months respectively on the two previous findings of receiving stolen property and at six months for each of the two counts of vehicle tampering. Robert appealed contending that the court erred in considering previously sustained section 602 petitions in setting the maximum permissible term of confinement under the CYA commitment. The question presented is whether for purposes of fixing a maximum period of physical confinement, the court may consider previously sustained petitions.

Robert contended that the juvenile court was not authorized to consider previously sustained 602 petitions in setting the maximum period of physical confinement and relied on section 726¹¹⁸ of the Welfare and Institutions Code as support. The appellate court disagreed with the contention by stating that section 726 contemplates "that previously sustained section 602 petitions may constitute the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court and that the maximum term of physical confinement may therefore be determined with reference to such previously sustained petitions."¹¹⁹

Robert then contended that his due process rights were violated because the court failed to inform him of its intention to take his prior records into account in determining the maximum term of confinement. The appellate court agreed with this contention. The court held that one must be given a meaningful opportunity to be heard regarding the use of past sustained petitions to increase the maximum allowable period of confinement.¹²⁰ In this case, such meaningful opportunity was not afforded the minor.

16. *IN RE* ISSAC G.

93 Cal. App. 3d 917, 156 Cal. Rptr. 123 (1979)

The juvenile court found that Issac G. came within the provi-

117. See CAL. VEH. CODE § 10852 (West 1971).

118. Section 726(c) provides in relevant part:

In any case in which the minor is removed from the physical custody of his parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the *offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.*

CAL. WELF. & INST. CODE § 726(c) (West Supp. 1979) (emphasis added).

119. *In re* Robert S., 92 Cal. App. 3d 355, 154 Cal. Rptr. 832, (1979).

120. *Id.* at 362, 154 Cal. Rptr. at 836; See also *In re* Aaron, 70 Cal. App. 3d 931, 139 Cal. Rptr. 258 (1977).

sions of Welfare and Institutions Code section 602 because of his commission of two burglary offenses. The referee found that one burglary was in the second degree and committed the minor to the Youth Authority for a period of confinement not to exceed three years. The other burglary was found to be a misdemeanor and its one year confinement was to be served concurrently with that for the other offense. Issac G. appealed contending that it was a denial of equal protection for a minor adjudged a ward of the juvenile court to be subject to the longest of the three time periods set forth in the Determinate Sentencing Act, without a showing of aggravated circumstances¹²¹ as is required for the imposition of such a term on an adult.

The court held that the difference was not a violation of equal protection because a juvenile processed as a juvenile in the juvenile court and confined to a Youth Authority is not similarly situated to an adult in criminal court sentenced to state prison.¹²² A minor under the Indeterminate Sentencing Law within the juvenile law system may be released earlier than the outside limits of his confinement if he becomes rehabilitated. Thus, the purpose of the juvenile system is rehabilitation. The Determinate Sentencing Act however, states in specific terms that the purpose of imprisonment for crime is punishment.¹²³ The court concluded that the different purposes of the adult Determinate Sentencing Act and of the indeterminate juvenile procedure prohibit the "facile" equal protection analysis for which the minor contended.¹²⁴

121. Penal Code section 1170, subd. (b) provides in pertinent part:

When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider . . . statements in aggravation or mitigation submitted by the prosecution or the defendant. . . .

CAL. PENAL CODE § 1170, subd. (b) (West Supp. 1979).

122. *In re Issac G.*, 93 Cal. App. 3d 917, 919, 156 Cal. Rptr. 123, 124, (1979). The court's holding was a direct response to the holding of *In re Eric J.*, ___ Cal. App. 3d ___, 150 Cal. Rptr. 299, 304, (1978), which held that a juvenile committed to the Youth Authority is similarly situated to an adult in criminal court sentenced to state prison.

123. The California Penal Code section 1170 (a)(1) states in pertinent part:

The legislature finds and declares that the purpose of imprisonment for crime is punishment

CAL. PENAL CODE § 1170 (a)(1) (West Supp. 1979).

124. *In re Issac G.*, 93 Cal. App. 3d 917, 921, 156 Cal. Rptr. 123, 125 (1979).

17. *IN RE JOHN R.*
94 Cal. App. 3d 566, 155 Cal Rptr. 78 (1979)

John R. was involved in a fight involving several other boys. The minor was found to have committed assault. The minor was declared a ward and placed on probation. The court did not specify the length of the probation. John asserted that his probation could theoretically "continue as long as the juvenile court had jurisdiction, that is, to age 21 in this case August 4, 1981."¹²⁵ The disposition was announced on June 30, 1978, therefore jurisdiction could continue for slightly over three years. The minor contended that he was deprived of equal protection¹²⁶ in that an adult convicted of a misdemeanor assault could be placed on probation for no more than three years if the court expressly so provided,¹²⁷ and only for six months if the court did not specify a time period.¹²⁸

The court of appeal concluded that it was reasonable to provide a longer period of probation for juveniles than for adults because a minor's attitudes may be molded permanently for the better, given a sufficient period of time under the beneficial influence of the probation officer, whereas an adult's attitudes may already be well formed and will respond to or fail on probation within a short time.¹²⁹ This greater potential for rehabilitation of minors justifies the disparity.

18. *PEOPLE V. CARL B.*
24 Cal. 3d 212, 594 P.2d 14, 155 Cal. Rptr. 189 (1979)

A minor, 17 years of age, was charged with robbery and assault with a deadly weapon. The minor was found not a fit and proper subject to deal with under the Juvenile Court Law.¹³⁰ Under adult criminal proceedings, the minor plead guilty to the robbery charge. The California Youth Authority (CYA), following a ninety day commitment, filed its own report to the court finding

125. *In re John R.*, 92 Cal. App. 3d 566, 568, 155 Cal. Rptr. 78, 79 (1979). Welfare and Institutions Code § 607 (a) states in pertinent part: "(a) The court may retain jurisdiction over any person who is found to be a ward or dependent child of the juvenile court until such ward or dependent child attains the age of 21 years" CAL. WELF. & INST. CODE § 607 (a) (West Supp. 1979).

126. The minor relied on *People v. Olivas*, 17 Cal. 3d 236, 551 P.2d 375, 131 Cal. Rptr. 55 (1976), as have many appellants when arguing equal protection. However, the court is always quick to note that *Olivas* involved a fundamental liberty interest which required strict scrutiny. This case did not involve a fundamental right and therefore a lower level of review was properly utilized by the court.

127. See CAL. PENAL CODE § 1203(a) (West 1970).

128. 92 Cal. App. 3d at 568, 155 Cal. Rptr. at 79.

129. *Id.* at 569, 155 Cal. Rptr. at 80.

130. See CAL. WELF. & INST. CODE § 707 (West Supp. 1979).

the minor amenable to their programs. The minor's probation officer agreed with the CYA's evaluation. Nevertheless, the court ordered the minor committed to state prison, reasoning that the CYA's report offered no assurance of the minor's rehabilitation. The court also felt that the prison term was appropriate for the offenses that the minor had committed. The issue presented was to determine the scope of a sentencing court's discretion, under section 707.2 of the Welfare and Institutions Code,¹³¹ to accept or reject the recommendation of the CYA that a minor be committed to a CYA facility rather than to a state prison.

The California Supreme Court examined section 707.2 and concluded that before the sentencing court may order a minor to state prison the court must: "(1) remand the minor to YA for its evaluation and report, (2) read and consider the YA report, and (3) find that the minor is not a suitable subject for commitment to YA."¹³² The court stated that a reasonable reading of section 707.2 does not suggest that the court must accept the CYA's recommendation.¹³³

The court examined the purpose of section 707.2 and found it analogous to Welfare and Institution Code section 707 which determines whether a minor is a fit and proper subject to be dealt with under Juvenile Court Law.¹³⁴ Case law was cited holding that there must be substantial evidence adduced at the hearing, finding the minor not a fit and proper subject, before the court may certify him to the superior court for prosecution.¹³⁵ The

131. Section 707.2 provides that:

Prior to sentence, the court of criminal jurisdiction may remand the minor to the custody of the California Youth Authority for not to exceed 90 days for the purpose of evaluation and report concerning his amenability to training and treatment offered by the Youth Authority. No minor who was under the age of 18 years when he committed any criminal offense and who has been found not a fit and proper subject to be dealt with under the juvenile court law shall be sentenced to the state prison unless he has first been remanded to the custody of the California Youth Authority for evaluation and report pursuant to this section and the court finds after having read and considered the report submitted by the Youth Authority that the minor is not a suitable subject for commitment to the Youth Authority.

CAL. WELF. & INST. CODE § 707.2 (West Supp. 1979).

132. *People v. Carl B.*, 24 Cal. 3d 212, 217, 594 P.2d 14, 19, 155 Cal. Rptr. 189, 192 (1979).

133. *Id.* at 217, 594 P.2d at 17, 155 Cal. Rptr. at 192.

134. *Id.* at 218, 594 P.2d at 17, 155 Cal. Rptr. at 192.

135. *People v. Chi Ko Wong*, 18 Cal. 3d 698, 557 P.2d 976, 135 Cal. Rptr. 392 (1976); *Jimmy H. v. Superior Court*, 3 Cal. 3d 709, 478 P.2d 32, 91 Cal. Rptr. 600

court reasoned that the record in the case at bar had to be examined to determine whether there was substantial evidence to support the trial court's finding. The court also noted that the unanimous opinion of the YA and the probation officer must be given great weight.¹³⁶ After a review of the record, it was determined that the trial court failed to give proper weight to the YA report and recommendation and thus reversed.

The California Supreme Court held that although the trial court need not follow the YA's recommendations under section 707.2, the trial court's sentencing discretion under the statute is not absolute.¹³⁷ There must be substantial evidence to support the trial court's implied finding of the defendant's unsuitability to training and treatment offered by the YA. The court concluded that because the business of the YA is to deal with serious offenders and because a substantial period of confinement for society's protection could have been fulfilled by YA commitment, the trial court had no legally sufficient ground for rejecting the YA's recommendation.¹³⁸

19. *IN RE ROBERT D.*

95 Cal. App. 3d 767, 157 Cal. Rptr. 339 (1979)

A juvenile court referee found that Robert D. had unlawfully driven another person's vehicle in violation of Vehicle Code section 10851.¹³⁹ Robert was committed to the California Youth Authority for the maximum term of three years. Robert appealed urging that his motion for suppression of evidence was improperly denied.

Robert was seen driving an automobile around a turn at approximately 50 to 55 miles per hour. A policeman turned on his siren and a high speed chase ensued. The chase terminated when the automobile Robert was driving crashed into a fence. The police officer testified that when he first observed the automobile, he intended only to make a speeding citation: the speed limit on the road was 55 miles per hour. Hence, Robert contended that the police officer's observations were the product of an illegal detention.

The juvenile court referee found that although the police officer

(1970). See also *People v. Allgood*, 54 Cal. App. 3d 434, 126 Cal. Rptr. 660 (1976); *People v. Browning*, 45 Cal. App. 3d 125, 119 Cal. Rptr. 420 (1975).

136. 24 Cal. 3d at 218-19, 594 P.2d at 17, 155 Cal. Rptr. at 192-93. *Jimmy H. v. Superior Court*, 3 Cal. 3d 709, 478 P.2d 32, 91 Cal. Rptr. 600 (1970). Expert testimony that the minor can be treated by facilities available to the juvenile court is entitled to great weight.

137. 24 Cal. 3d at 218, 594 P.2d at 18, 155 Cal. Rptr. at 192.

138. *Id.* at 220, 594 P.2d at 18, 155 Cal. Rptr. at 193.

139. Section 10851 pertains to theft and unlawful driving or taking of a vehicle. CAL. VEH. CODE § 10851 (West 1971).

had no lawful right to stop Robert initially, his numerous subsequent illegal acts (speeding, failure to yield to a red light, swerving, and a traffic accident) justified apprehension and detention by the officer. The appellate court cited *People v. Prendez*,¹⁴⁰ as stating a fundamental rule that "there is no right to a flight from unlawful arrest . . ." The court of appeal concluded that while the initial pursuit may have been an unjustified attempt at detention, Robert had no right to commit the subsequent unlawful acts.¹⁴¹ The subsequent acts dissipated any taint caused by the initial pursuit and thereby provided a lawful basis justifying the police officer's arrest of Robert.

Robert then contended that he was entitled to twenty-seven days credit for precommitment time spent at juvenile hall. The court granted the credit, persuaded by the reasoning of *In re Harm R.*¹⁴² over that of *In re Leonard R.*¹⁴³

Robert's last contention was that his commitment for the "maximum term" was a denial of equal protection of the laws. It was quickly noted that Robert, as a minor, does not have all of the rights and obligations as does an adult.¹⁴⁴ The appellate court took notice of the different purposes between juvenile and adult court. The purpose of the juvenile justice system is rehabilitation¹⁴⁵ while the purpose of adult court is punishment.¹⁴⁶ The juvenile, when committed for a maximum period, is being

140. 15 Cal. App. 3d 486, 489, 93 Cal. Rptr. 180, 181 (1971). In *Prendez* police unlawfully entered a motel room. The defendant fled from the room and, while pursued by an officer who had remained outside, dropped some narcotics. The defendant was arrested and the discarded contraband recovered. The court held that the defendant's flight dissipated the taint and the officer's recovery and examination of the discarded contraband did not constitute a search and seizure. The court stated that the test to be utilized in such a situation is whether an independent, intervening act of the defendant has broken the causal chain between the illegal police conduct and the seizure of evidence.

141. *In re Robert D.*, 95 Cal. App. 3d 767, 772, 157 Cal. Rptr. 339, 341 (1979).

142. 88 Cal. App. 3d 438, 152 Cal. Rptr. 167 (1979). The court in this case addressed itself to Welfare and Institutions Code section 726 and held that this section mandates that no minor be confined for a period longer than the underlying crime and that detention in juvenile hall is physical confinement. Therefore, the court credited the time spent by the minor in juvenile hall.

143. 76 Cal. App. 3d 78, 140 Cal. Rptr. 632 (1977).

144. 76 Cal. App. 3d 100, 142 Cal. Rptr. 632 (1977). The court addressed itself to Penal Code section 2900.5 and held that this section was not applicable to juvenile commitments because it concerns convictions and sentencing which do not occur in juvenile commitments. Hence, credit was denied.

145. CAL WELF. & INST. CODE § 202 (West Supp. 1979).

146. CAL. PENAL CODE § 1170 (a)(1) (West Supp. 1979).

committed for an indeterminate period. The maximum term is only an outside time limit. Once the youth is rehabilitated, he is released, even if this is well before the time prescribed in the maximum term.¹⁴⁷ In contrast, an adult sent to prison for the upper term prescribed is committed for that period less any credits.¹⁴⁸

The court concluded that the imposition of the "maximum term" did not violate equal protection of the laws. The court specifically noted:

The youthful offender sent to CYA and the adult sentenced to prison have only one point in common—the crime committed. The fact of *youth*, in and of itself, mandates a differential approach. The whole concept of *equal* treatment for juvenile and adults is, has long been regarded as, barbarous. The very thought [sic] of an eight-year-old burglar receiving like treatment as an adult felon with similar record carries its own refutation. The distinctions made are not only rational but absolutely essential to avoid a charge of cruel and inhuman punishment.¹⁴⁹

20. *IN RE JOHNNY G.*

96 Cal. App. 3d 289, 158 Cal. Rptr. 68 (1979)

Johnny Wayne G. was arrested for burglary. He admitted to second degree burglary, and was declared a ward of the court and ordered placed in a Camp Community Placement Program. His physical confinement to the camp was ordered not to exceed three years. Since Johnny G. had been in custody since the time of his arrest, his counsel made a motion pursuant to section 2900.5¹⁵⁰ of the Penal Code for credit for the time Johnny had already served while in custody. The court denied the credit and Johnny claimed that this was a violation of equal protection because an adult criminal would have been entitled to a credit.¹⁵¹

The court of appeal noted that *In re Leonard R.*¹⁵² was in direct contradiction to the contention of appellant.¹⁵³ Leonard, a juvenile, was committed to the California Youth Authority upon a finding that he had participated in a robbery. Leonard asserted that he was entitled to credit for time spent in juvenile hall during

147. See CAL. WELF. & INST. CODE § 1766(a), (c)-(f) (West Supp. 1979).

148. See CAL. PENAL CODE § 2930-2931 (West Supp. 1979).

149. 95 Cal. App. 3d at 777, 157 Cal. Rptr. at 345.

150. Penal Code § 2900.5 reads in pertinent part that "In all felony and misdemeanor convictions, either by plea or by verdict, when the defendant has been in custody, . . . all days of custody of the defendant, including days served as a condition of probation in compliance with a court order . . . shall be credited upon his term of imprisonment" CAL. PENAL CODE § 2900.5 (West Supp. 1979).

151. *Id.*

152. 76 Cal. App. 3d 100, 142 Cal. Rptr. 632 (1977).

153. *In re Johnny G.*, 96 Cal. App. 3d 289, 291, 158 Cal. Rptr. 68, 69 (1979) (emphasis added).

the pendency of the juvenile court proceedings. The *Leonard* court stated:

Penal Code section 2900.5 by its very terms is not applicable to juvenile commitments. The statute refers to felony and misdemeanor *convictions* and provides for precommitment custody time to be credited only against the defendant's sentence. A declaration of wardship is not a 'conviction' and a dispositional order of the juvenile court is not a "sentence."¹⁵⁴

The *Leonard* court also rejected an equal protection argument based on *People v. Olivas*,¹⁵⁵ on the ground that *Olivas* didn't apply to juvenile court commitments.¹⁵⁶ The *Leonard* court noted:

The distinction between juveniles and adults which permits different legislative treatment in terms of confinement and disposition is to be found in the fundamental and conceptual difference between criminal prosecution and juvenile proceedings. Such a distinction is not arbitrary and clearly bears a substantial relation to a legitimate legislative objective.¹⁵⁷

The *Leonard* court also distinguished *People v. Sandoval*¹⁵⁸ on the basis of the juvenile/adult court dichotomy.¹⁵⁹ In *Sandoval*, the minor was tried as an adult in adult court on an original offense. The minor served one year in jail and was placed on probation. Upon a subsequent offense, the minor was sentenced to the California Youth Authority and was given credit for the one year in jail and 90 days spent in custody while awaiting trial and revocation proceedings.

The *Johnny G.* court next turned its attention to *In re Maurice S.*¹⁶⁰ which was in direct conflict with *In re Leonard R.*¹⁶¹ The court found that the holding of *Maurice S.* was based on the assumption that the length of terms of confinement are the same for minors and adults for a similar offense and similar sentence. The court noted that a thirty-six month term under the Determinate Sentencing Act is quite different from a thirty-six month maximum commitment to the California Youth Authority. The court stated:

Subject to certain specific credits—*e.g.*, Penal Code section 4019—the adult is sentenced to prison for a definite time from which any credit

154. 76 Cal. App. 3d at 103-04, 142 Cal. Rptr. at 634.

155. 17 Cal. 3d 236, 551 P.2d 375, 131 Cal. Rptr. 55 (1976).

156. In *Olivas*, defendant was 19 years of age at the time of arrest and tried as an *adult*.

157. 76 Cal. App. 3d at 104-05, 142 Cal. Rptr. at 635.

158. 70 Cal. App. 3d 73, 138 Cal. Rptr. 609 (1977).

159. 76 Cal. App. 3d at 103, 142 Cal. Rptr. at 634. The *Leonard* court reconciles the allowance of credit in both *Sandoval* and *Olivas* since the defendants were tried as adults.

160. 90 Cal. App. 3d 190, 153 Cal. Rptr. 317 (1979).

161. *Leonard* denied precommitment credit to a juvenile, while *Maurice* specifically mandated credit.

under section 1900.5 to which he may be entitled is subtracted—an easy mathematical problem. In the minor's case, however, the minuend—the period of confinement from which this credit is to be subtracted—is unknown at the outset of the confinement. When, however, the actual length of confinement does become known, the minor is already on his way home and would not know what to do with section 2900.5 credits.¹⁶²

The court reasoned that if the juvenile is confined to the California Youth Authority, he will be released under Welfare and Institutions Code section 1766, subdivision (f)¹⁶³ whenever the California Youth Authority is satisfied; “that such discharge is consistent with the protection of the public.”¹⁶⁴ If the juvenile is confined to a camp, he will be released under Welfare and Institutions Code section 778¹⁶⁵ if it appears that the best interests of the child may thereby be promoted. A credit in such a procedure would be nonsense. Therefore, the court denied the credit and rejected the equal protection argument.¹⁶⁶

21. *IN RE TODD W.*

96 Cal. App. 3d 408, 157 Cal. Rptr. 802 (1979)

A 13-year-old minor admitted the allegations charging him with auto theft. Todd was committed to the Youth Authority for a maximum term of three years. In ordering the commitment, the trial court indicated its concern with protection of the community and with the minor's need for discipline, remedial education, and treatment of emotional problems.¹⁶⁷ The trial court rejected a less restrictive and less punitive placement because it was not a locked, secure facility.

The court of appeal reversed that part of the judgment ordering commitment to the Youth Authority. The court determined that

162. 96 Cal. App. 3d at 292, 158 Cal. Rptr. at 70.

163. Section 1766, subdivision (f) provides that “When a person has been committed to the authority, it may (f) Discharge him from its control when it is satisfied that such discharge is consistent with the protection of the public.” CAL. WELF. & INST. CODE § 1766(f) (West Supp. 1979).

164. 96 Cal. App. 3d at 292, 158 Cal. Rptr. at 70.

165. Section 778 provides in pertinent part:

Any parent or other person having an interest in a child who is a ward of the juvenile court or the child himself through a properly appointed guardian may, upon grounds of change of circumstances or new evidence, petition the court in the same action in which the child was found to be a ward of the juvenile court for a hearing If it appears that the best interests of the child may be promoted by the proposed change of order or termination of jurisdiction, the court shall order that a hearing be held. . . .

CAL. WELF. & INST. CODE § 778 (West Supp. 1979).

166. The court ended the case with the following statement that “[t]o use a tired metaphor just once more: we are being asked to hold that a pruning operation which the Legislature has decreed for apple trees must also be performed for the benefit of oranges.” 96 Cal. App. 3d. at 293, 158 Cal. Rptr. at 70.

167. *In re Todd W.*, 96 Cal. App. 3d 408, 416, 154 Cal. Rptr. 802, 806 (1979).

commitment to the CYA should only be made in more serious cases.¹⁶⁸ Todd's criminal conduct of auto theft falls within the category of inappropriate cases for commitment,¹⁶⁹ thus the trial court was not justified in bypassing a less restrictive and less punitive placement just because prior placements were unsuccessful.¹⁷⁰

In light of the general purpose of juvenile commitments expressed in Welfare and Institutions Code section 202, commitment to the Youth Authority is generally viewed as the final treatment resource available to the juvenile court.¹⁷¹ Todd had not reached that stage.

168. *Id.* at 417, 157 Cal. Rptr. at 807. *E.g., In re Carrie W.*, 89 Cal. App. 3d 642, 152 Cal. Rptr. 690 (1979). The court listed examples of serious offenses: (1) robbery with great bodily harm coupled with a lengthy history of gang involvement and several prior violent crimes, *In re John H.*, 21 Cal. 3d 18, 577 P.2d 177, 145 Cal. Rptr. 357 (1978); (2) 22 prior arrests, six of which were violent offenses, coupled with numerous prior ineffective placements, *In re Robert W.*, 68 Cal. App. 3d 705, 137 Cal. Rptr. 558 (1977); (3) yelling at a teacher and being disruptive in school coupled with a prior record of grand theft and burglary, *In re Zardies B.*, 64 Cal. App. 3d 11, 134 Cal. Rptr. 181 (1976); (4) criminally sophisticated pattern of delinquent behavior coupled with burglary and drug offenses, *In re Willie L.*, 56 Cal. App. 3d 256, 128 Cal. Rptr. 592 (1976); and (5) two rapes and oral copulation coupled with shoplifting, joy riding and possession of marijuana, *In re Clarence B.*, 37 Cal. App. 3d 676, 112 Cal. Rptr. 474 (1974).

169. CALIFORNIA YOUTH AUTHORITY, CRITERIA AND PROCEDURE FOR REFERRAL OF JUVENILE COURT CASES TO THE YOUTH AUTHORITY (1971), lists several inappropriate cases for commitment including:

(1) *Youth who are dependent or primarily placement problems*—'For these youths in need of a home and peer acceptance, as well as accepting adults, life in an institution might be totally fulfilling, resulting in an orientation to an institutional existence; (2) *unsophisticated, mildly delinquent youths*, 'for whom commingling with serious delinquents who make up the bulk of the Youth Authority population might result in negative learning experience and serious loss of self-esteem'; and (3) *mentally retarded or mentally disturbed youths*, 'for whom the probable benefits of treatment within the mental health system exceed those programs within the Youth Authority . . . ' (emphasis in original).

96 Cal. App. 3d at 418, 157 Cal. Rptr. at 807.

170. 96 Cal. App. 3d at 419, 157 Cal. Rptr. at 808.

171. The general statutory purpose of juvenile court law can be found in Welfare and Institution Code section 202.

(a) The purpose of this chapter is to secure for each minor under the jurisdiction of the juvenile court such care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental, and physical welfare of the minor and the best interests of the state; to protect the public from criminal conduct by minors; to impose on the minor a sense of responsibility for his own acts; to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when necessary for his welfare or for the safety and protection of the public; and, when the minor is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that

22. *IN RE* RUBEN M.

96 Cal App. 3d 690, 158 Cal. Rptr. 197 (1979)

Ruben M. was charged with malicious mischief while he was on probation for three previously adjudicated charges of burglary. The juvenile court declared Ruben M. to be a ward of the court and committed him to the Youth Authority. There was no petition or hearing filed pursuant to Welfare and Institutions Code section 777¹⁷² which requires a noticed hearing on an order changing a previous order of commitment to the Youth Authority. Even though it included no petition, the probation report contained a full and complete recitation of Ruben M.'s prior cases and the minor's past conduct under supervision.

One of the issues the Second District Court of Appeal considered was if a minor is declared a ward of the court, under Welfare and Institutions Code section 602,¹⁷³ may all the prior cases for which the minor is presently on probation, be considered in determining the maximum period of confinement. The court held that "when a new section 602 petition is filed no additional petition under section 777 is required in order to include the prior cases in the [aggregate] maximum term of commitment."¹⁷⁴ The court further held that, assuming a petition under section 777 was required, that the minor had received all the protections that a hearing under 777 would have accorded and "no prejudicial error nor miscarriage of justice resulted. (Art. VI, § 13, Cal. Const.)."¹⁷⁵

which should have been given by his parents. This chapter shall be liberally construed to carry out these purposes.

CAL. WELF. & INST. CODE § 202 (West Supp. 1979).

172. Welfare and Institutions Code section 777 reads in pertinent part:

An order changing or modifying a previous order by removing a minor from the physical custody of a parent, guardian, relative or friend and directing placement in a foster home, or commitment to a private institution or commitment to a county institution, or an order changing or modifying a previous order by directing commitment to the Youth Authority shall be made only after noticed hearing upon a supplemental petition.

CAL. WELF. & INST. CODE § 777 (West Supp. 1979).

173. Welfare and Institutions Code section 602 deals with the juvenile court's jurisdiction involving minors who have violated the law. The section, in its entirety provides:

Any person who is under the age of 18 years when he violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the court, which may adjudge such person to be a ward of the court.

CAL. WELF. & INST. CODE § 602 (West Supp. 1979).

174. *In re* Ruben M., 96 Cal. App. 3d 690, 698, 158 Cal. Rptr. 197, 201 (1979).

175. *Id.* The probation report recited at length the prior cases and their status along with the minor's conduct under supervision. The probation report gave notice based upon the minor's past cases. The minor and his counsel have all the notice of the facts of the present and past cases and the possible consequences of a new petition under section 777.

The court reached this result because of the full and complete recitation of present and past cases contained in the probation report.

Another issue was whether the fourteenth amendment has been violated with respect to the equal protection of the law because of the use of the prior charges in determining the sentence to be imposed. Welfare and Institutions Code section 726¹⁷⁶ authorizes a juvenile court to commit a minor adjudged a ward of the court to a potential physical confinement in Youth Authority for the longest of the three time periods specified for adults under paragraph 2 of subdivision (a) of Penal Code section 1170.1.¹⁷⁷ The period for which Ruben M. was confined was within the legal limit for which an adult could have been confined under similar circumstances under the Determinate Sentence Law.¹⁷⁸

The court of appeal also considered commitment of a minor based on several offenses. "The most serious offense in terms of length of confinement may be used as a measurement of the basic term and not as the exclusive of total period for which the minor may be committed."¹⁷⁹

The final contentions by Ruben M. were that: (a) he was entitled to credit for predisposition time spent in custody and (b) he was entitled to good time-work time credit for time spent in camp confinement. These contentions are now before the California Supreme Court¹⁸⁰ and the appellate court expressed no views on

176. Welfare and Institutions Code section 726 reads in pertinent part:

In any case in which the minor is removed from the physical custody of his parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.

CAL. WELF. & INST. CODE § 726 (West Supp. 1979).

177. Under Penal Code section 1170.1(a), made applicable to juvenile commitments by Welfare and Institutions Code section 726, where the court finds aggravating circumstances, the maximum consecutive term to which an adult can be sentenced is 3 years for the principle term (either the forgery or the battery) plus 1/3 of the middle term of the subordinate felony (*i.e.*, eight months). The misdemeanor normally would be ordered to be served concurrently with the felony sentences, although the law is by no means certain on this point. *In re Dennis C.*, 86 Cal. App. 603, 606 n.2, 150 Cal. Rptr. 356, 357 n.2 (1978). *See also* CAL. PENAL CODE § 1170.1(a) (West Supp. 1979).

178. 96 Cal. App. 3d at 701-02, 15 Cal. Rptr. at 203.

179. *Id.* at 702-03, 158 Cal. Rptr. at 204.

180. *In re Eric J.*, 25 Cal. 3d 522, 601 P.2d 549, 159 Cal. Rptr. 317 (1979). Other

the subject.

23. *IN RE ERIC J.*

25 Cal. 3d 522, 601 P.2d 549, 159 Cal. Rptr. 317 (1979)

Eric was found to have committed burglary and was declared a ward of the juvenile court. After the jurisdictional hearing, Eric was committed to the California Youth Authority for the maximum term of confinement permitted by law. This term of confinement would be less, absent aggravating circumstances, if an adult or juvenile was convicted in the criminal courts for the identical unlawful act. Eric, relying on *People v. Olivas*,¹⁸¹ argued that Welfare and Institutions Code section 726¹⁸² denies him equal protection of the laws by providing that the maximum term of confinement for a juvenile is the longest term imposable upon an adult for the same offense, without the necessity of finding aggravating circumstances justifying imposition of the outside term as is required in adult criminal procedure by Penal Code section 1170,¹⁸³ subdivision (b)."¹⁸⁴

cases of like interest now pending before the Supreme Court involving adults are *People v. Sage* (Crim. 20997) hearing granted May 30, 1979; *People v. Brown* (Crim. 20998) hearing granted May 30, 1979; *In re Davis* (Crim. 20999) (Cal. App.) hearing granted May 30, 1979.

181. 17 Cal. 3d 236, 551 P.2d 375, 131 Cal. Rptr. 55 (1976). In this case the court held that the time spent in California Youth Authority could not exceed the maximum term which could have been imposed had the defendant been sentenced to county jail. Any excessive confinement would violate the constitutional requirement of equal protection of the law.

182. Section 726(c) provides in relevant part:

In any case in which the minor is removed from the physical custody of his parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.

CAL. WELF. & INST. CODE § 726(c) (West Supp. 1979).

183. Section 1170, subdivision (b) provides in pertinent part:

When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment either party may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports including reports received pursuant to Section 1203.03 and statements in aggravation or mitigation submitted by the prosecution or the defendant, and any further evidence introduced at the sentencing hearing

CAL. PENAL CODE § 1170(b) (West Supp. 1979).

184. *In re Eric J.*, 25 Cal. 3d 522, 528, 601 P.2d 549, 551, 159 Cal. Rptr. 317, 319 (1979).

The California Supreme Court stated that *People v. Olivas* held section 1770 of the Welfare and Institutions Code as violative of the equal protection clause because it permitted youthful offenders to be committed to the Youth Authority for a term potentially longer than the maximum jail term which might have been imposed on an adult for the same offense.¹⁸⁵ Under section 1731.5,¹⁸⁶ youthful offenders were prosecuted and tried as adults in adult court.¹⁸⁷ The situation in *Olivas* is not present in this case in that the minor was adjudged under the juvenile court law as a juvenile.

The California Supreme Court noted the disparity in the maximum confinement terms between juvenile court¹⁸⁸ and criminal court.¹⁸⁹ Despite the disparity, the court held that Eric was not denied equal protection of the laws.¹⁹⁰ Minors and adults are not similarly situated with respect to their interest in liberty. Because minors are adjudged wards of the juvenile courts and are committed to the Youth Authority for rehabilitation and adults convicted in the criminal courts are sentenced to prison for punishment, they are not confined for the same purposes,¹⁹¹ therefore, section 726 does not deny minors equal protection of the laws.¹⁹²

Eric also contended that he is entitled to credit for the nineteen days he was detained in juvenile hall pending adjudication of a contempt charge and credit for another twenty-seven days that he was detained pending resolution of a burglary charge.¹⁹³ Eric re-

185. *Id.* at 529, 601 P.2d at 552, 159 Cal. Rptr. at 320.

186. Welfare and Institutions Code section 1731.5 provides in relevant part that "[a]fter certification to the Governor as provided in this article a court may commit to the authority any person convicted of a public offense who comes within subdivisions (a), (b), and (c), or subdivisions (a), (b), and (d), below: (a) Is found to be less than 21 years of age at the time of apprehension." CAL. WELF. & INST. CODE § 1731.5 (West 1972).

187. 25 Cal. 3d at 529, 601 P.2d at 552, 159 Cal. Rptr. at 320; *People v. Olivas*, 17 Cal. 3d 236, 242-43, 551 P.2d 375, 379, 131 Cal. Rptr. 55, 59 (1976).

188. CAL. WELF. & INST. CODE § 726(c) (West Supp. 1979).

189. CAL. PENAL CODE § 1170(b) (West Supp. 1979).

190. 25 Cal. 3d at 530, 601 P.2d at 553, 159 Cal. Rptr. at 321.

191. Juvenile commitment proceedings are designed for purposes of rehabilitation and treatment, not punishment. CAL. WELF. & INST. CODE § 202 (West Supp. 1979); *In re Aline D.*, 14 Cal. 3d 557, 536 P.2d 65, 121 Cal. Rptr. 816 (1975). The legislature finds and declares that the purpose of imprisonment for crime is punishment. CAL. PENAL CODE § 1170(a) (1) (West Supp. 1979).

192. 25 Cal. 3d at 530, 601 P.2d at 553, 159 Cal. Rptr. at 321.

193. *Id.* at 533, 601 P.2d at 555, 159 Cal. Rptr. at 323.

lied on section 2900.5 of the Penal Code¹⁹⁴ and section 726 of the Welfare and Institutions Code¹⁹⁵ as mandating such precommitment credit.

The court investigated the legislative intent behind section 2900.5¹⁹⁶ and the specific language of section 726(c).¹⁹⁷ The court held that in order to carry out the mandate of section 726, the minor must be given credit for the forty-six days he was detained.¹⁹⁸

24. *IN RE JEANICE D.*

98 Cal. App. 3d 965, 159 Cal. Rptr. 788 (1979)

Jeanice, a minor, was tried as an adult and found guilty of first degree murder. The sentence was for a term of 25 years to life.¹⁹⁹ She contends that the superior court exceeded its jurisdiction in sentencing her to state prison without first complying with the requirements of Welfare and Institutions Code section 7072.²⁰⁰ That section requires the sentencing court to remand a minor to the Youth Authority for evaluation and a report prior to sentencing the minor to state prison.²⁰¹

In deciding the case, the court of appeal examined Welfare and Institutions Code section 1731.5. The section provides that "a court may commit to the [Youth Authority] any person convicted of a public offense who . . . [i]s found to be less than 21 years of age at the time of apprehension [and is] not sentenced to death, imprisonment for life" ²⁰²

194. Section 2900.5 reads in pertinent part that "[i]n plea or by verdict, when the defendant has been in custody, . . . all days of custody of the defendant, including days served as a condition of probation in compliance with a court order . . . shall be credited upon his term of imprisonment" CAL. PENAL CODE § 2900.5 (West Supp. 1979).

195. See note 2 *infra*.

196. 25 Cal. 3d at 534-35, 601 P.2d at 556, 159 Cal. Rptr. at 324. The court considered the comments from the author of § 2900.5 and the amendment at 534-35. The author stated that the amendment adding the phrase "juvenile detention facility," was designed to reverse the interpretation of *In re Leonard*, 76 Cal. App. 3d 100, 142 Cal. Rptr. 632 (1977), holding § 2900.5 inapplicable to juvenile commitments, so as to insure that a minor could not be put in jeopardy of serving more time than the adult counterpart. However, the author also stated that section 2900.5 could be interpreted as not affecting *In re Leonard* in that a dispositional order of the juvenile court is not a "sentence."

197. The court noted that the specific language of this section would have expressly excluded precommitment credit if it was the intent of the legislature. 25 Cal. 3d at 536, 601 P.2d at 556-57, 159 Cal. Rptr. at 324-25.

198. *Id.* at 537-38, 601 P.2d at 558, 159 Cal. Rptr. at 326.

199. CAL. PENAL CODE § 190 states in pertinent part: "Every person guilty of murder in the first degree shall suffer death, confinement in state prison for life without possibility of parole, or confinement in the state prison for a term of 25 years to life" CAL. PENAL CODE § 190 (West Supp. 1979).

200. CAL. WELF. & INST. CODE § 707.2 (West Supp. 1979).

201. *In re Jeanice D.*, 98 Cal. App. 3d 965, 967, 159 Cal. Rptr. 788, 789 (1979).

202. CAL. WELF. & INST. CODE § 1731.5 (West 1972).

The court had to decide whether a term of 25 years to life constitutes a life term within the meaning of Welfare and Institutions Code section 1731.5.²⁰³

The court relied heavily on *People v. Ralph*.²⁰⁴ There the California Supreme Court ruled that "for the purposes of the Youth Authority Act, [a defendant] could not be held to have been 'sentenced to . . . imprisonment for life' unless the sentence prescribed by law carried a minimum or fixed punishment of life imprisonment."²⁰⁵ In discussing Penal Code section 190 the court held it "is clear on [the statute's] face that it establishes an *indeterminate* sentence of from 25 years to life imprisonment for first degree murder. Such a sentence obviously does not require imprisonment for life."²⁰⁶

The court went on to say that it is up to the legislature to amend Penal Code section 190, for without amendment it is necessary to refer the minor to the Youth Authority for evaluation.²⁰⁷

III. PROCEDURE

25. *IN RE JOHNATHAN S.*

88 Cal. App. 3d 468, 151 Cal. Rptr. 810 (1979)

Following an admission by Johnathan S. to the robbery of victims in a single incident, the minor was declared a ward of the juvenile court and committed to the Youth Authority.²⁰⁸ In the period between the referee's disposition continuing the juvenile as a ward of the court and ordering the youth to participate in a work project, there were *ex parte* contacts between the court and opposing counsel.

Johnathan S. appeals the judgment ordering him committed to the California Youth Authority because the *ex parte* contacts constituted improper conduct on the part of the district attorney and vitiated the commitment order.

The court denied the appeal without ever considering the impropriety of these *ex parte* contacts²⁰⁹ and determined that the

203. 98 Cal. App. 3d at 967, 159 Cal. Rptr. at 789 (emphasis in original).

204. 24 Cal. 2d 575, 150 P.2d 401 (1944).

205. *Id.* at 580, 150 P.2d at 403.

206. 98 Cal. App. 3d at 968, 159 Cal. Rptr. 789 (emphasis in original).

207. *Id.* at 970, 159 Cal. Rptr. at 791.

208. *In re Johnathan S.*, 88 Cal. App. 3d 468, 470, 151 Cal. Rptr. 810, 811 (1979).

209. *Id.* at 472, 151 Cal. Rptr. at 812. ABA RULES OF PROFESSIONAL CONDUCT 7-108(b), holding that unless expressly authorized by law, *ex parte* contacts be-

minor was not prejudiced in this case. The “*ex parte* contacts with the judge involved the *power* to grant a rehearing, not the exercise of the court’s discretion to do so in circumstances where the judge was certain of his authority.”²¹⁰ The minor was not prejudiced, since the subsequent disposition was fully and fairly heard *de novo* by a judge other than the one who ordered the rehearing.²¹¹

26. *IN RE RICHARD C.*

89 Cal. App. 3d 477, 152 Cal. Rptr. 787 (1979)

Richard C. was charged with various criminal offenses, including carrying a concealed firearm and buying, concealing, and receiving stolen property. Richard was found to be within the jurisdiction of the juvenile court under the provisions of Welfare and Institutions Code section 602.²¹²

One of the issues considered was whether the People, as complainant, have a right of direct appeal. The court held that, while appeal by the People was precluded, review by writ was proper.²¹³ The court was also concerned with the possibility of double jeopardy, which is applicable to juvenile proceedings.²¹⁴ In the instant case, because only the jurisdictional hearing took place, there was no danger of retrial in contravention of the prohibition against double jeopardy.²¹⁵

Therefore, the court held that review by writ is possible if the trial court acts in excess of jurisdiction and there is no danger of retrial.²¹⁶ The court pointed out that proceeding by writ is not absolute; “it requires a delicate balancing of the complicated considerations of preventing harassment of the accused as against

tween the court and counsel are not allowed, where such contacts deal with the merits of a pending, contested matter.

210. 88 Cal. App. 3d at 472, 151 Cal. Rptr. at 812.

211. *Id.* at 471, 151 Cal. Rptr. at 812.

212. *In re Richard C.*, 89 Cal. App. 3d 477, 480, 152 Cal. Rptr. 787, 789 (1979). Welfare and Institutions Code section 602 reads:

Any person who is under the age of 18 years when he violates any law of this state or the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

CAL. WELF. & INST. CODE § 602 (West Supp. 1979).

213. 89 Cal. App. 3d at 482, 152 Cal. Rptr. at 790.

214. *Id.* at 485, 152 Cal. Rptr. at 792 (citing *Richard M. v. Superior Court*, 4 Cal. 3d 370, 375, 482 P. 2d 664, 93 Cal. Rptr. 752 (1971)).

215. 89 Cal. App. 3d at 487, 152 Cal. Rptr. at 793-94.

216. *Id.* at 484, 152 Cal. Rptr. at 791 (citing *People v. Superior Court (Edmond’s)* 4 Cal. 3d 605, 483 P.2d 1202, 94 Cal. Rptr. 250 (1971); *People v. Superior Court (Brodie)* 48 Cal. App. 3d 195, 121 Cal. Rptr. 732 (1975); *see also Jesse W. v. Superior Court*, 20 Cal. 3d 893, 576 P.2d 963, 145 Cal. Rptr. 1 (1978); *In re Raymond P.*, 86 Cal. App. 3d 797, 150 Cal. Rptr. 537 (1978)).

correcting possible errors.”²¹⁷

27. *IN RE FRANK F.*

90 Cal. App. 3d 383, 153 Cal. Rptr. 375 (1979)

Frank F., while intoxicated, drove a car which collided with the center divider of a freeway, thereby obstructing traffic. After the minor fled the scene, a vehicle hit the car head on, killing the driver of the second vehicle.²¹⁸

The sole issue which confronted the court on appeal was that the juvenile court petition should not have proceeded by reference to the vehicular manslaughter statute,²¹⁹ but should have been based on the felony drunk driving statute.²²⁰

The Second District Court of Appeal reiterated that, “[i]n an inquiry whether a special criminal statute supplants a general criminal statute, our prime, if not only, consideration is whether the Legislature so intended”²²¹ Finding the legislative intent to the contrary in this case, the court affirmed the juvenile court’s conviction of Frank F. for committing vehicular manslaughter.²²²

217. 89 Cal. App. 3d at 484, 152 Cal. Rptr. at 791 (citing *People v. Superior Court (Howard)* 69 Cal. 2d 491, 501, 446 P.2d 138, 146, 72 Cal. Rptr. 330, 338 (1968)). The Supreme Court in *Howard* also pointed out that an extraordinary writ should not be granted where the appeal is one in which the legislature has previously denied them.

218. *In re Frank F.*, 90 Cal. App. 3d 383, 385, 153 Cal. Rptr. 375, 376 (1979).

219. California Penal Code section 192 provides in pertinent part:

Manslaughter is the unlawful killing of a human being, without malice. It is of three kinds:

3. In the driving of a vehicle—

(b) In the commission of an unlawful act, not amounting to felony, with gross negligence; or in commission of a lawful act which might produce death, in an unlawful manner, but without gross negligence.

CAL. PENAL CODE § 192 (West 1970).

220. 90 Cal. App. 3d at 385, 153 Cal. Rptr. at 376. California Vehicle Code section 23101 provided:

(a) It is unlawful for any person, while under the influence of intoxicating liquor, or under the combined influence of intoxicating liquor and any drug, to drive a vehicle upon a highway and when so driving do any act forbidden by law or neglect any duty imposed by law in the driving of such vehicle, which act or neglect proximately causes death or bodily injury to any person other than himself.

CAL. VEH. CODE § 23101 (West 1979).

221. 90 Cal. App. 3d at 386, 153 Cal. Rptr. at 377.

222. *Id.* at 386-87, 153 Cal. Rptr. at 377.

A minor was declared a ward of the juvenile court when it was found the minor had killed his father. The minor was committed to the California Youth Authority (CYA) facility. Two years after the minor's commitment he petitioned the CYA for parole. The CYA denied the petition because in its view the minor had not yet accepted the responsibility for his actions resulting in his commitment and did not fully appreciate his obligations to society. The minor's mother then petitioned the juvenile court to vacate the commitment. The juvenile court examined the same matters deemed by CYA to necessitate a denial parole and concluded that the minor's rehabilitative needs would best be satisfied if he were released from custody. The court vacated its original order and placed the minor on probation. Appeal of the release order was then taken by the director of CYA.²²³ The issue presented was whether the juvenile court has superior authority to reconsider and overrule a discretionary determination made by the CYA.

The minor contended that the juvenile court's authority to vacate the CYA commitment is derived from Welfare & Institutions Code section 779.²²⁴ This minor argued that the juvenile court judge under section 779 "need only take CYA determinations into account, and that it had a right to 'second guess' the CYA."²²⁵ The director contended that the juvenile court can set aside a CYA determination only upon a clear showing of abuse of discretion on the part of the Authority.²²⁶

The California Supreme Court noted that, "the Legislature has

223. *In re Owen E.*, 23 Cal. 3d 398, 400-01, 592 P.2d 720, 720-21, 154 Cal. Rptr. 204, 204-05 (1979).

224. *Id.* at 402, 592 P.2d at 722, 154 Cal. Rptr. at 206. *See also* Welfare and Institutions Code section 779 provides in pertinent part:

The court committing a ward to the Youth Authority may thereafter change, modify, or set aside the order of commitment. Ten days' notice of the hearing of the application therefor shall be served by United States mail upon the Director of the Youth Authority. In changing, modifying, or setting aside such order of commitment, the court shall give due consideration to the effect thereof upon the discipline and parole system of the Youth Authority or of the correctional school in which the ward may have been placed by the Youth Authority. Except as in this section provided, nothing in this chapter shall be deemed to interfere with the system of parole and discharge now or hereafter established by law, or by rule of the Youth Authority, for the parole and discharge of wards of the juvenile court committed to the Youth Authority, or with the management of any school, institution, or facility under the jurisdiction of the Youth Authority.

CAL. WELF. & INST. CODE § 779 (West 1972).

225. 23 Cal. 3d at 403, 542 P.2d at 724, 154 Cal. Rptr. at 208.

226. *Id.*

not clearly defined the circumstances under which a juvenile court may intervene in a matter concerning the rehabilitative needs of a ward it has committed to the CYA."²²⁷ The court considered the cases of *In re Ronald E.*,²²⁸ *Breed v. Superior Court*,²²⁹ and *In re Arthur N.*,²³⁰ and concluded that section 779 did not grant authority for a juvenile court to set aside an order committing a ward to CYA merely because its views of the rehabilitative needs and progress differed from those of the CYA.²³¹

The California Supreme Court held that "a juvenile court may not act to vacate a proper commitment to the CYA unless it appears the Authority has failed to comply with the law or has abused its discretion in dealing with a ward in its custody."²³² The court further stated that section 779 does not authorize judicial intervention into the routine parole function of the CYA.

29. *IN RE JIMMY M.*

93 Cal. App. 3d 369, 155 Cal. Rptr. 534 (1979)

For various violations of the Penal Code, Jimmy M. was found to be a ward of the court and was committed to the California Youth Authority. At the jurisdictional and dispositional hearings, which had been consolidated, the probation officer recommended that Jimmy be committed to a county facility. The juvenile waived his rights and admitted to the allegations. The juvenile court did not include in its recital of the minor's rights any reference to the fact that his admission could allow for his commitment to the California Youth Authority; nor was it clear as to whether the juvenile's attorney informed the minor that such a commitment was possible. The minor claimed that the court's failure to inform him of the possible consequences constituted reversible error.²³³

227. *Id.*

228. 19 Cal. 3d 315, 562 P.2d 684, 137 Cal. Rptr. 781 (1977). This case dealt with parole revocation and stated that the juvenile court is not authorized to act essentially in the role of a Youth Authority parole revocation hearing officer.

229. 63 Cal. App. 3d 773, 134 Cal. Rptr. 228 (1976). The court held that the juvenile court is without jurisdiction to release a ward on parole from the CYA.

230. 16 Cal. 3d 226, 545 P.2d 345, 127 Cal. Rptr. 641 (1976). The court stated that once a minor is committed to the CYA, the juvenile court ceases to have direct supervision and it becomes the proper function of the Authority to determine the length of its jurisdiction over a ward.

231. 23 Cal. 3d at 406, 592 P.2d at 724, 154 Cal. Rptr. at 208.

232. *Id.*

233. *In re Jimmy M.*, 93 Cal. App. 3d 369, 372, 155 Cal. Rptr. 534, 535 (1979) (cit-

The court found that the juvenile court's failure to inform the juvenile of the possible consequences of his admission was in error.²³⁴ However, the court noted that the error did not command reversal unless the minor could show he was prejudiced thereby.²³⁵ "The record on appeal, evidenced nothing in this regard"²³⁶ and thus the order was affirmed.

30. *IN RE MARY JO D.*

95 Cal. App. 3d 34, 156 Cal. Rptr. 829 (1979)

Mary D. was made a ward of the juvenile court after finding her guilty of vandalizing property worth less than \$1,000. This offense is considered a misdemeanor which carries a maximum six months custodial punishment. Mary was placed on probation in the home of her parents. Mary violated the terms of probation by leaving home without the consent of her parents. The court found Mary in criminal contempt and ordered her confined for the maximum term of six months in a rehabilitation facility.²³⁷ The issue was whether the use of criminal contempt under such circumstances was appropriate.

The appellate court did not question the propriety of the court's ability to punish one for a violation of probation and to continue the wardship for the second offense committed. However, the court did hold that the use of criminal contempt to elevate what would be a Welfare & Institutions Code section 601²³⁸ offense to a section 602²³⁹ offense was inappropriate.²⁴⁰ The court noted that before 1976, section 602 included language authorizing jurisdiction

ing *Boykin v. Alabama*, 395 U.S. 238 (1969); *In re Tahl*, 1 Cal. 3d 122, 460 P.2d 449, 81 Cal. Rptr. 577 (1969). The record must contain on its face direct evidence that the accused was aware, or made aware, of his rights as well as the nature of the charge and the consequences of his plea.)

234. 93 Cal. App. 3d at 373, 155 Cal. Rptr. at 536 (1979) (citing *In re Ronald E.*, 19 Cal. 3d 315, 562 P.2d 684, 137 Cal. Rptr. 781 (1977). Minor admitted to a charge and was not advised as to the consequences of such an admission by the court. This failure was error but was not set aside because it was not deemed prejudicial to the minor.)

235. 93 Cal. App. 3d at 373, 155 Cal. Rptr. at 536.

236. *Id.*

237. *In re Mary D.*, 95 Cal. App. 3d 34, 36, 156 Cal. Rptr. 829, 830 (1979).

238. Welfare and Institutions Code section 601 reads in pertinent part: Any person under the age of 18 years who persistently or habitually refuses to obey the reasonable and proper orders or directions of his parents, guardian, or custodian, or who is beyond the control of such person, or who is under the age of 18 when he violated any ordinance of any city or county of this state establishing a curfew based solely on age is within the jurisdiction of the juvenile court . . .

CAL. WELF. & INST. CODE § 601 (West Supp. 1979).

239. Welfare and Institutions Code section 602 provides: Any person who is under the age of 18 years when he violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age,

where there was a prior section 601 finding and a failure "to obey any lawful order of the juvenile court."²⁴¹ In 1976 the section was amended²⁴² to delete this language.²⁴³ The court stated that the amendment was a clear showing of legislative intent to change the then existing law.²⁴⁴ The court proclaimed that, "failure to obey a lawful order of the juvenile court, *i.e.*, a criminal contempt after a 601 finding, is no longer a part of that section," and therefore, "criminal contempt should not be included as a basis for the section 602 finding."²⁴⁵

The court went on to note that when the section 602 confinement for the first offense had ended, Mary was being held solely on section 601 grounds as a runaway. It was the technical violation of the court's order to obey the terms of probation which will elevate it to make it a more serious offense. The juvenile court used criminal contempt to contravene legislative intent and attempted to do indirectly what it could not do directly.²⁴⁶

31. CRAIG S. V. SUPERIOR COURT OF LOS ANGELES COUNTY
95 Cal. App. 3d 568, 157 Cal. Rptr. 285 (1979)

On arraignment in a juvenile court proceeding charging Craig S. with grand theft, the presiding referee declared that the public defender, who was already representing the minor on another matter, was unavailable, so the referee appointed private counsel to represent him.²⁴⁷ Both the minor and his mother were of the impression that the public defender who was representing the minor in the first matter would continue to be his lawyer on the grand theft charges.²⁴⁸

The public defender had a conflicting appearance in another

is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

CAL. WELF. & INST. CODE § 602 (West Supp. 1979).

240. 95 Cal. App. 3d at 37, 156 Cal. Rptr. at 831.

241. *Id.*

242. 1976 Cal. Stats. ch. 1071, § 12.

243. The 1976 amendment deleted "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" and inserted thereat "other than an ordinance establishing a curfew based solely on age."

244. 95 Cal. App. 3d at 37, 156 Cal. Rptr. at 831.

245. *Id.*

246. *Id.* at 38, 156 Cal. Rptr. at 831-32.

247. Craig S. v. Superior Court of Los Angeles, 95 Cal. App. 3d 568, 570, 157 Cal. Rptr. 285, 286 (1979).

248. *Id.* at 574, 157 Cal. Rptr. at 288.

court but informed the court she would be there as soon as possible. The public defender appeared only 35 minutes after the referee appointed private counsel.²⁴⁹

This appeal presented the Second District Court of Appeal with the narrow issue of abuse of discretion by the juvenile court in refusing to honor the minor's preference for appointment of the public defender.

A trial court must exercise sound discretion in the appointment of counsel to represent an indigent defendant.²⁵⁰ "It is generally recognized that in counties where a public defender's office exists the court will normally appoint that office to represent the indigent defendant."²⁵¹ The appointment of private counsel is reserved for situations where there is no public defender, there is a conflict in representation, or where he otherwise properly refuses to represent the indigent.²⁵²

Given this standard, the court concluded that the decision to appoint private counsel to represent the minor, rather than the public defender, constituted an abuse of judicial discretion.²⁵³ The court cannot avoid appointment of a public defender simply by calling a case when the public defender is not present. "The concept of 'unavailability' requires more than the absence of the public defender at the instant the case is called, and more than an additional delay of some 40 minutes."²⁵⁴

249. *Id.*

250. *Id.* at 573, 157 Cal. Rptr. at 287-88 (citing *Drungo v. Superior Court*, 8 Cal. 3d 930, 506 P.2d 1007, 106 Cal. Rptr. 631 (1973)).

251. *Id.* at 572, 157 Cal. Rptr. at 287.

252. *Id.* Subdivision (a) of Penal Code section 987.2 provides:

In any case in which a person, including a person who is a minor, desires but is unable to employ counsel and in which counsel is assigned in the superior court, municipal court, or justice court to represent such a person in a criminal trial, proceeding or appeal, such counsel, in a county or city and county in which there is no public defender, or in a case in which the court finds that because of conflict of interest or other reasons the public defender has properly refused to represent the person accused, shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the general fund of the county.

CAL. PENAL CODE § 987.2 (West Supp. 1979).

253. 95 Cal. App. 3d at 575, 577, 157 Cal. Rptr. at 289 (1979) (citing *Harris v. Superior Court*, 19 Cal. 3d 786, 567 P.2d 750, 140 Cal. Rptr. 318 (1977). Judicial discretion is decisions based upon reason and law. Discretion implies that in absence of positive law or a fixed rule, the judge is to decide a question by his view of expediary or in the demand of equity and justice. Discretion is a cool mind, free from partiality.)

254. 95 Cal. App. 3d at 575, 157 Cal. Rptr. at 289.

32. *IN RE STEVEN B.*

25 Cal. 3d 1, 598 P.2d 480, 157 Cal. Rptr. 510 (1979)

Steven B. was charged with violating Vehicle Code section 20001 and 20003 (hit and run). During the jurisdictional hearing, Steven moved for acquittal on the ground that the prosecution had failed to prove every element of the hit and run offense. The court denied the motion and sustained the charges, placing Steven on probation without making him a ward of the court. After an appeal was filed, the court reporter who had recorded the proceeding, discovered that his notes of the second day of the hearing had been inadvertently destroyed. Steven moved to set aside the judgment and requested a new jurisdictional hearing.²⁵⁵

The Welfare and Institutions Code section 677,²⁵⁶ provides that the court reporter "shall" take down all the testimony and all of the statements and remarks of the judge and all persons appearing at the hearing. The proceedings "must" be transcribed by the court reporter upon the request of the court, the minor, or the minor's parent or attorney.²⁵⁷

The court cited *In re David T.*²⁵⁸ and *In re Andrew M.*²⁵⁹ as being analogous to the case at bar wherein the court reporter breached the duty imposed by Welfare and Institutions Code section 677.²⁶⁰ It was found that through no fault of their own, the

255. *In re Steven B.*, 25 Cal. 3d 1, 3-4, 598 P.2d 480, 481, 157 Cal. Rptr. 510, 511 (1979). See also CAL. CIV. PROC. CODE § 914 (West Supp. 1979).

256. Section 677 states:

At any juvenile court hearing conducted by a juvenile court judge, an official court reporter shall, and at any such hearing conducted by a juvenile court referee, the official reporter, as directed by the court, may take down in shorthand all the testimony and all of the statements and remarks of the judge and all persons appearing at the hearings; and, if directed by the judge, or requested by the person on whose behalf the petition was brought, or by his parent or legal guardian, or the attorneys of such persons, he must, within such reasonable time after the hearing of the petition as the court may designate, write out the same or such specific portions thereof as may be requested in plain and legible longhand or by typewriter or other printing machine and certify to the same as being correctly reported and transcribed. . . .

CAL. WELF. & INST. CODE § 677 (West 1972).

257. 25 Cal. 3d at 4, 598 P.2d at 482, 157 Cal. Rptr. at 512.

258. 55 Cal. App. 3d 798, 127 Cal. Rptr. 729 (1976). Failure by the court to appoint an officially licensed court reporter constituted reversible error as the minor was thereby denied the certified transcript to which he was entitled and which was a prerequisite to perfecting an appeal.

259. 74 Cal. App. 3d 295, 141 Cal. Rptr. 350 (1977). The court reporter neglected to take down all arguments of counsel.

260. 25 Cal. 3d at 7, 598 P.2d at 483, 157 Cal. Rptr. at 513.

minor in each case was deprived of a record of the proceeding to which he was entitled.²⁶¹

The court held that Steven was entitled to a new jurisdictional hearing and noted that on appeal there must be an adequate record upon which to refer in order to render judgments on subsequent questions, especially where the sufficiency of evidence is challenged.²⁶² A substantial portion of the original hearing was missing and there was no adequate substitute for the complete record. The court further reasoned that the burden of requiring a new hearing was minimal in comparison to the importance of ensuring that justice was done with an adequate record on appeal.²⁶³

33. *IN RE ADOLPHUS T.*

96 Cal. App. 3d 642, 158 Cal. Rptr. 186 (1979)

The 17-year-old minor appeared with his counsel, admitted to one count of armed robbery, and obtained a dismissal of two other counts of armed robbery. Adolphus T. was committed to the Youth Authority. In warning the minor of his rights, the referee did not specifically tell Adolphus T. that anything he said could be used against him. Also, it was not ascertained whether the minor's mother consented to the admission.

The minor claims that his "admission must be vacated because the referee: (a) did not adequately inform him of his rights against selfincrimination, (b) did not adequately inform him of his rights to have consulted with his parents prior to the admission, (c) did not ascertain whether the minor's mother consented to the admission, and (d) did not ascertain whether the minor's counsel consented. The court of appeal found all these claims to be entirely without merit."²⁶⁴

The court held that Welfare and Institutions Code section 248, and California Rules of Court, rule 1317,²⁶⁵ requiring advise of the juvenile of his right to seek review of a referee's order by a juvenile court judge were not applicable in the case at bar. The only orders of the referee were to dismiss two counts of burglary and continue the case for dispositional hearing on the other count of

261. *Id.* at 7, 598 P.2d at 483-84, 157 Cal. Rptr. at 514.

262. *Id.* at 8, 598 P.2d at 484, 157 Cal. Rptr. at 514.

263. *Id.* at 9, 598 P.2d at 485, 157 Cal. Rptr. at 515.

264. *In re Adolphus T.*, 96 Cal. App. 3d 642, 645, 158 Cal. Rptr. 186, 188 (1979).

265. California's Welfare and Institutions Code, section 248 and rule 1317 of the California Rules of Court require that a minor be advised that he has a right to seek review by a juvenile court judge of a referee's order. This is necessary to avoid unfairness and unlawful discrimination, and is mandatory.

armed robbery.²⁶⁶

The court also held that the referee's failure to advise the minor that anything he said could be used against him is a technical error,²⁶⁷ but not of constitutional import and was thus harmless.²⁶⁸

The minor's counsel had apparently consented to the admission,²⁶⁹ as did as his mother.²⁷⁰ Five weeks had elapsed between the jurisdictional hearing and the dispositional hearing, during which the minor, his counsel, and his parents were aware of the alleged deficiencies in the jurisdictional hearing and made no objection.

34. *IN RE* FREDDIE R.

96 Cal. App. 3d 829, 158 Cal. Rptr. 260 (1979)

The juvenile court entered an order sustaining a petition charging Freddie R. with assault with a deadly weapon and committed him to the Youth Authority. The minor filed a timely application for rehearing and the court found good cause for extending time for ruling.

The sole issue was whether the juvenile court must articulate its reasons for "good cause" recited in its order extending time under section 252 of the Welfare and Institutions Code.

The statute in pertinent part provides:

If an application for rehearing is not granted within 20 days following the date of its receipt, it shall be deemed denied. However, the court, for good cause, may extend such period beyond 20 days, but not in any event beyond 45 days, following the date of receipt of the application²⁷¹

*In re Danny T.*²⁷² is controlling in this case. The court found in *Danny T.* that it was the legislature's intent to require articulated

266. 96 Cal. App. 3d at 645, 158 Cal. Rptr. at 188.

267. CAL. RULES OF COURT 1354(a).

268. 96 Cal. App. 3d at 646, 158 Cal. Rptr. at 188.

269. CAL. RULES OF COURT 1354(a). Counsel with a minor at a jurisdictional hearing, and voicing no opposition to juvenile's admission, evidences counsel's consent to the admission, because no admission shall be accepted unless counsel consents.

270. CAL. RULES OF COURT 1354(c)(2). A juvenile court referee has no duty to seek or obtain the consent of a minor's parents before accepting a minor's admission to a charge.

271. CAL. WELF. & INST. CODE § 252 (West Supp. 1979). See also *In re Edgar M.*, 14 Cal. 3d 727, 537 P.2d 406, 122 Cal. Rptr. 574 (1975).

272. 22 Cal. 3d 918, 587 P.2d 712, 150 Cal. Rptr. 918 (1978). A request for rehearing that was neither denied nor extended for good cause within 20 days and was deemed granted.

reasons to support a given decision.²⁷³ This operates as a guard against careless decisions and automatic extensions.²⁷⁴ This insures that the judge will engage in a careful decision making process that is essential to appellate review of the decision.²⁷⁵

The appellate court reversed and the juvenile court was directed to enter an order granting the minor's application for a hearing de novo because the court did not articulate its reasons for good cause.

35. *IN RE RAY O.*

97 Cal. App. 3d 136, 158 Cal. Rptr. 550 (1979)

A minor pled guilty to two counts of burglary and the trial court dismissed the third count pursuant to a plea bargain. The judge at the dispositional hearing committed the minor to the Youth Authority. The judge who presided over the dispositional hearing did not preside at the jurisdictional hearing. Furthermore, a court reporter was not present at the dispositional hearing to preserve the oral proceedings.

The court held that failure to provide a reporter's transcript at the dispositional hearing constituted error²⁷⁶ under Welfare and Institutions Code section 677.²⁷⁷ Without a record, the appellate court was "unable to determine whether or not the juvenile court abused its discretion in sending Ray O. to CYA."²⁷⁸

The issue also arose as to whether a juvenile is entitled to have the same judge preside at both jurisdictional and dispositional hearings when there is a plea bargain.²⁷⁹ "In the absence of a clear waiver,²⁸⁰ whenever a juvenile enters a plea bargain before a judge he has the right to be sentenced by the same judge."²⁸¹ If

273. *Id.* at 921, 587 P.2d at 713-14, 150 Cal. Rptr. at 917-18.

274. *In re Freddie R.*, 96 Cal. App. 3d 829, 832, 158 Cal. Rptr. 260, 262 (1979).

275. *In re Podesto*, 15 Cal. 3d 921, 937, 544 P.2d 1297, 1311, 127 Cal. Rptr. 97, 111 (1976). The court was required to give a statement of reasons for denying bail on appeal.

276. *In re Ray O.*, 97 Cal. App. 3d 136, 138, 158 Cal. Rptr. 550, 550-51 (1979).

277. CAL. WELF. & INST. CODE § 677 (West Supp. 1979). A juvenile is entitled to complete reporter's transcript. Without the transcript, the record is simply inadequate to enable an appellate court to pass upon the issue of proper disposition. *See People v. Apalatequi*, 82 Cal. App. 3d 970, 147 Cal. Rptr. 473 (1978).

278. 97 Cal. App. 3d at 138, 158 Cal. Rptr. at 551. *See also In re David T.*, 55 Cal. App. 3d 798, 802, 127 Cal. Rptr. 729 (1976).

279. Where an adult is the defendant, the supreme court, in *People v. Arbuckle*, 22 Cal. 3d 749, 587 P.2d 220, 150 Cal. Rptr. 778 (1978) held that an implicit term of the plea bargain is that the trial judge will be the sentencing judge.

280. 97 Cal. App. 3d 136, 158 Cal. Rptr. 550 (1979). Counsel for a juvenile who enters a plea bargain before one judge and finds another judge presiding at the dispositional hearing, should seek transfer of the matter to the original judge. Otherwise the juvenile may be precluded from raising the issue on appeal.

281. *Id.* at 139-40, 158 Cal. Rptr. 551-52.

the internal court administrative procedures render that impossible, then, in the alternative, "the minor should be permitted to withdraw his admission of burglary."²⁸² With the withdrawal of admission, "the prosecution shall have the right to reinstate the dismissed count."²⁸³

36. *IN RE GLEN J.*

97 Cal. App. 3d 981, 159 Cal. Rptr. 148 (1979)

Glen J., age 15, was found to be a person coming within Welfare and Institutions Code section 602²⁸⁴, following his admission of crimes of burglary and vandalism. The minor was committed to a boys ranch for ninety days. The probation officer later applied for a modification of this dispositional order to provide for an indefinite time of commitment. The probation officer recited that the minor "'failed' the ninety day program but 'could be helped' in the indefinite program."²⁸⁵ The juvenile court so modified the order.

On appeal, the minor asserts that a supplemental petition is required to order the modification. The applicable part of California Welfare and Institutions Code, section 777, states: "An order changing . . . a previous order . . . by directing commitment to the Youth Authority shall be made only after noticed hearing."²⁸⁶

The Third District Court of Appeal decided that the "modification did not come within the literal terms of section 777."²⁸⁷ The ensuing modification did not remove the minor from his parents or commit him to a county institution. That had already been done by the original disposition. "The modification merely maintained the status quo established by the original order in respect to responsibility for the minor's custody but changed the place and duration of the commitment."²⁸⁸

The court of appeal also found that the minor was not placed in double jeopardy by these proceedings. Modification of a disposi-

282. *Id.* at 140, 158 Cal. Rptr. at 552.

283. *Id.*

284. Welfare and Institutions Code section 602 provides that any minor under the age of 18 is within the jurisdiction of the juvenile court and can be declared a ward of the court when he violates any criminal law or ordinance. CAL. WELF. & INST. CODE § 602 (West Supp. 1979).

285. *In re Glen J.*, 97 Cal. App. 3d 981, 984, 159 Cal. Rptr. 148, 149 (1979).

286. CAL. WELF. & INST. CODE § 777 (West Supp. 1979).

287. 97 Cal. App. 3d at 985, 159 Cal. Rptr. at 150.

288. *Id.*

tional order does not constitute double jeopardy.²⁸⁹ There was but one jurisdictional hearing and as such; "he was subject to the court's continuing jurisdiction."²⁹⁰

37. *IN RE MICHAEL C.*
98 Cal. App. 3d 117, 159 Cal. Rptr. 306 (1979)

Michael C. was declared a ward of the court on the basis of commission of burglary. The juvenile filed a petition for a rehearing, however the juvenile court extended its time to rule on the petitions for rehearing twenty five days beyond the twenty day time limitation set out in Welfare and Institutions Code section 252.²⁹¹ The reason for the extension was that there was a delay in the preparation of the transcripts.

At issue was whether the extension of the time period stated reasons adequate to establish good cause. The Second District Court of Appeal, citing *In re Danny T.*,²⁹² held that "[i]t is doubtful" that a delay in the preparation of a transcript should constitute good cause.²⁹³ There was no indication of any extraordinary circumstances which necessitated the delay.

The court pointed out that there may be some unique circumstances which may be deemed good cause for an extension, but the court would not "permit an exception to be made for transcripts which appear to require routinely or extended period of time for preparation,"²⁹⁴ especially since delay in transcript preparation is probably the most common reason for extension.²⁹⁵

IV. JURISDICTION

38. *IN RE DONALD B.*
89 Cal. App. 3d 804, 152 Cal. Rptr. 868 (1979)

Between the time Donald was found to be a juvenile within the meaning of Welfare and Institutions Code section 602²⁹⁶ (which

289. *Id.* at 197, 159 Cal. Rptr. at 151.

290. *Id.*

291. Welfare and Institutions Code section 352 requires the court to rule on the petition within 20 days. This period may be extended to 45 days for good cause. CAL. WELF. & INST. CODE § 352 (West Supp. 1979).

292. 22 Cal. 3d 918, 587 P. 2d 712, 150 Cal. Rptr. 916 (1978).

293. *Id.* at 921 n.3, 587 P.2d at 713 n.3, 150 Cal. Rptr. at 917 n.3.

294. *In re Michael C.*, 98 Cal. App. 3d 117, 123, 159 Cal. Rptr. 306, 309 (1979).

295. *Id.*

296. Section 602 of the Welfare and Institutions Code reads as follows:

Any person who is under the age of 18 years when he violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

established juvenile court jurisdiction), and the date set for disposition, defendant reached his 18th birthday and committed a crime for which he was sentenced as an adult.

The sole issue considered by the Second District Court of Appeal was whether the commission of an adult crime while juvenile offenses remained unsentenced served to strip the juvenile court of jurisdiction to sentence for the juvenile offenses.

Citing *In re Larry T.*,²⁹⁷ the court of appeal "refused to allow the commission of an adult crime by one just having reached 18 years of age, who has as yet unsentenced offenses as a juvenile, to use the adult crime as a means by which to entirely escape punishment for the juvenile offenses."²⁹⁸

The court concluded that when the record reveals that the juvenile court has not acted due to dissatisfaction with the sentence imposed by the superior court, the juvenile court retains jurisdiction over the juvenile offenses.²⁹⁹

39. *IN RE CARLO S.*

94 Cal. App. 3d 377, 156 Cal. Rptr. 442 (1979)

The juvenile court found that Carlo S. obstructed a police officer in the discharge of his duties in violation of Penal Code section 148; the court granted Carlo probation. The record disclosed that the minor was accused by petition of committing assault likely to produce great bodily injury in violation of Penal Code section 245. The section 148 offense was not charged in the original petition and was not raised by amendment. The minor was never given previous notice of the section 148 offense. At the proceedings, the minor remained silent, neither consenting nor objecting to the juvenile court's determination of his offense.

The question presented is whether a juvenile court may, without appropriate amendment to the charging petition or previous notice to the minor, find him "guilty" of an uncharged and unincorporated lesser offense, in cases where the minor remains silent and made no objections to the procedure. The answer was a succinct no.

The court of appeal noted that due process requires that a mi-

CAL. WELF. & INST. CODE § 602 (West 1972).

297. 77 Cal. App. 3d 969, 144 Cal. Rptr. 43 (1978).

298. *In re Donald B.*, 89 Cal. App. 3d 804, 807, 152 Cal. Rptr. 868, 870 (1979).

299. *Id.*

nor and his parents or guardian be notified, in writing, of the specific charge or factual allegations to be considered at the hearing. The written notice must be given at the earliest practicable time, at least sufficiently in advance of the hearing to permit preparation.³⁰⁰

The court went on to state that a person cannot be convicted of an offense not officially charged, other than a necessarily included offense, whether or not there was evidence at his trial to show that he had committed that offense.³⁰¹ The court in such a situation lacks jurisdiction to so convict the accused.³⁰² “[W]here the court is without *jurisdiction*, an accused, by his ‘silence’ or ‘acquiescence,’ may not confer it. Lack of jurisdiction may not be waived or stipulated.³⁰³

40. PEOPLE V. SUPERIOR COURT OF HUMBOLDT COUNTY (JOHN D.)
95 Cal App. 3d 380, 157 Cal. Rptr. 157 (1979)

A juvenile court found that John D. had committed second degree murder. The original petition alleged that the minor was within the juvenile court’s jurisdiction under section 602,³⁰⁴ which provides for wardship of juvenile criminal offenders. The court also considered the minor’s sanity at the time of the offense. During the proceedings, the minor’s parents filed a petition under section 300, subdivision (c),³⁰⁵ to have him declared a dependent child of the court in that because of his mental disorders, John D.

300. *In re Carlo S.*, 94 Cal. App. 3d 377, 380, 156 Cal. Rptr. 442, 443 (1979). Constitutional guarantee of due process applies to proceedings in which juveniles are charged as delinquents. *In re Gault*, 387 U.S. 1 (1966).

301. 94 Cal. App. 3d at 380, 156 Cal. Rptr. at 443. See *In re Hess*, 45 Cal. 2d 171, 288 P.2d 5 (1955). A minor was charged with the crime of rape. A verdict was returned finding the minor guilty of contributing to the delinquency of a minor. The court reasoned that since rape can be committed without contributing to the delinquency of a minor, the offense of contributing to the delinquency of a minor is not necessarily included in rape. The court held that due process requires notice of the charges and since notice of the delinquency charge was not given, the court acted in excess of its jurisdiction in entering a judgment of conviction for the delinquency offense.

302. 94 Cal. App. 3d at 380, 156 Cal. Rptr. at 443.

303. *People v. Blakeman*, 170 Cal. App. 2d 596, 598-99, 339 P.2d 202, 203 (1959).

304. Welfare and Institutions Code section 602 provides:

Any person who is under the age of 18 years when he violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

CAL. WELF. & INST. CODE § 602 (West Supp. 1979).

305. Welfare and Institutions Code section 300 (c) states:

Any person under the age of 18 years who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge such person to be a dependent child of the court:

.....

“presented a danger to society.”³⁰⁶

The court found the minor to be legally insane both at the time of the offense and at the time of hearing. The court sustained the dependency petition, ordered the minor placed in a hospital pursuant to Welfare and Institutions Code section 702.3,³⁰⁷ and dismissed the wardship petition under section 602 on grounds that the allegations were untrue because of the minor's insanity.

Petitioner asserted that the section 702.3 commitment must be based on the court's jurisdiction over the minor as a ward rather than as a dependent child. Petitioner claimed that by ordering the 702.3 commitment under section 300, subdivision (c), rather than section 602, the court exceeded its jurisdiction.

The appellate court declared that whether a section 602 petition, is viewed as sustained and in effect suspended when the minor is found not guilty by reason of insanity or declared 'not true' by reason of such finding, we hold that a finding of not guilty by reason of insanity on a 602 petition does not *per se* deprive the juvenile court of the power to make an otherwise valid commitment order under section 702.3, and that such petition carries with it continuing jurisdiction justifying disposition under the latter section.³⁰⁸

The court held that the juvenile court exceeded its jurisdiction by making an indefinite commitment pursuant to a finding of mere dependency.³⁰⁹

The court found that section 702.3 regarding indefinite commitment, makes no reference to section 300 dealing with dependent children of the court.³¹⁰ Section 702.3 addresses itself only to mi-

(c) Who is physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality.

CAL. WELF. & INST. CODE § 300 (c) (West Supp. 1979).

306. *People v. Superior Court of Humboldt County* (John D.), 95 Cal. App. 3d 380, 384, 157 Cal. Rptr. 157, 159 (1979). Although the petition was filed by the minor's parents rather than the probation officer, thereby violating the outlined procedure, this did not of itself deprive the court jurisdiction to consider the petition.

307. Welfare and Institutions Code section 702.3 provides in pertinent part: Notwithstanding any other provision of the law:

(a) When a minor denies, by a plea of not guilty by reason of insanity, the allegations of a petition filed pursuant to Section 602 of the Welfare and Institutions Code, and also joins with that denial a general denial of the conduct alleged in the petition, he shall first be subject to a hearing as if he had made no allegation of insanity. If the petition is sustained or if the minor denies the allegations only by reason of insanity, then a hearing shall be held on the question of whether the minor was insane at the time the offense was committed.

CAL. WELF. & INST. CODE § 702.3 (West Supp. 1979).

308. 95 Cal. App. 3d 380, 391, 157 Cal. Rptr. 157, 164 (1979).

309. *Id.*

310. *Id.* at 392, 157 Cal. Rptr. at 164.

nors found not guilty by reason of insanity after the establishment of an offense charged in a 602 petition. The court declared that if a "602 petition were properly dismissed, the 702.3 commitment was beyond the power of the court based upon any purported jurisdiction derived from section 300."³¹¹

41. *IN RE VICKI H.*

99 Cal. App. 3d 484, 160 Cal. Rptr. 294 (1979)

Vicki came within the provisions of Welfare and Institutions Code section 602³¹² because of the commission of an assault with a deadly weapon and battery. The court had adjudged the minor to be insane at the time of the offense and had her committed to the Youth Authority. The commitment was suspended upon her voluntary admission into a state hospital.

Vicki refused to remain voluntarily committed at the state hospital and the court modified its previous order and declared her a ward of the court. The court found she needed intensive long-term care for mental disorders, but was not so gravely disabled as to fit within the meaning of the Laterman-Petris-Short Act.³¹³ The act sets up provisions concerning a person with a mental disorder who is a danger to others, or to himself.

The Fifth District Court of Appeal reversed the juvenile court decision and ordered the minor to be discharged from any detention in a state hospital.

Citing *In re M.G.S.*,³¹⁴ the court held that "the insanity defense divests the juvenile court of jurisdiction once it is successfully proven."³¹⁵ Since the juvenile court found Vicki to be insane it lost its jurisdiction and thereby erred in ordering the minor committed to the state hospital.³¹⁶

The court concluded that the juvenile court did not have the inherent power to commit the minor to the state hospital because she did not fall within the provision of the Laterman-Petris-Short

311. *Id.* at 391, 157 Cal. Rptr. at 164.

312. Welfare and Institutions Code section 602 provides that any minor under the age of 18 is within the jurisdiction of the juvenile court and can be declared a ward of the court when he violates any criminal law or ordinance. CAL. WELF. & INST. CODE § 602 (West Supp. 1979).

313. The LPS Act provides that mentally disordered persons may be taken into custody for a 72-hour treatment and evaluation. Thereafter, the person may be detained for 14 days of intensive treatment under certain circumstances. After these periods, persons cannot be involuntarily committed for a longer span unless: (1) patients agree to voluntary commitment; (2) a temporary conservator has been appointed; (3) or the parties fall within article 6 of Welfare and Institutions Code §§ 5254, 5264. CAL. WELF. & INST. CODE § 5000 (West 1972).

314. 267 Cal. App. 2d 329, 72 Cal. Rptr. 524 (1978).

315. *In re Vicki H.*, 99 Cal. App. 3d 484, 491, 160 Cal. Rptr. 294, 297 (1979).

316. *Id.* at 492, 160 Cal. Rptr. at 298.

Act. Commitment under such circumstances, would result in a "denial of an individual's liberty."³¹⁷

V. EVIDENCE

42. *IN RE* DARREL T.

90 Cal. App. 3d 325, 153 Cal. Rptr. 261 (1979)

Darrel T. was committed to the California Youth Authority (CYA) upon a finding that he had committed murder on a conspiracy theory.³¹⁸ In this case, defendant was denied a transcript of a fitness hearing involving a codefendant whose trial had been severed. Defendant also argued that he was denied a fair trial because the trial court allowed the codefendant to invoke his privilege against self incrimination.

The Second District Court of Appeal examined the factual issues present in the codefendant fitness hearing and determined them to be remote from those in the instant case.³¹⁹ The court concluded there was nothing material to the ultimate adjudication of the minor's guilt or innocence that had transpired at the codefendant's fitness hearing.³²⁰

Another issue confronting the court was whether the testimony of the accomplices should have been excluded because they were not corroborated. The court concluded that Penal Code section 1111³²¹ did not apply to a juvenile court jurisdictional or adjudicatory hearing.³²² A member of a conspiracy to assault is liable for

317. *Id.* at 499, 160 Cal. Rptr. at 302.

318. CAL. PENAL CODE § 187 (West 1970).

319. In this case, defendant was denied a transcript, not of a prior trial, but of a fitness hearing involving a *codefendant* whose trial had been severed. The facts presented in McDaniels' [the codefendant] fitness hearing are remote from those in the instant case.

In re Darrel T., 90 Cal. App. 3d 325, 333, 153 Cal. Rptr. 261, 265 (1979).

320. *Id.* at 333, 153 Cal. Rptr. at 255.

321. Penal Code section 1111 provides in pertinent part:

A conviction can not be had upon the testimony of an accomplice unless it can be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

CAL. PENAL CODE § 1111 (West 1970).

322. Under Penal Code section 1111 accomplice testimony must be corroborated. However, it has repeatedly been held (most recently in *In re Mitchell P.*, 22 Cal. 3d 946, 949, 151 Cal. Rptr. 330, 587 P.2d 1144 (1978)) that this section does not apply to a juvenile court jurisdiction or adjudicatory hearing.

Id. at 333, 153 Cal. Rptr. at 265. In *In re Mitchell P.*, the California Supreme Court

all actions of his co-conspirators taken in furtherance of the conspiracy.³²³ The court allowed admission of uncorroborated statements of evidence, although circumstantial. They were found clearly sufficient to support the conspiracy finding.³²⁴

Finally, the court determined that the minor was not denied a fair trial in spite of the fact that the trial court allowed the codefendant to invoke his privilege against self-incrimination. Defendant was found to have failed

to cite any authority for his unique and unusual proposition that his right to produce witnesses outweighs a witness' right against self incrimination. Theoretically, McDaniels could have been granted immunity. However, defendant did not request that McDaniels be given immunity by the trial court.³²⁵

43. *IN RE* CLYDE H.

92 Cal. App. 3d 338, 154 Cal. Rptr. 727 (1979)

Clyde H. was declared a ward of the court when he committed assault in violation of Penal Code section 242, by throwing a brick at a young child. The record indicated that the eleven year old minor, had been involved in a similar incident. The minor later apologized to his guardian for his conduct, evidencing that he knew such conduct was wrong. The probation officer's report stated that the minor's mother, with whom the guardian lived, and the guardian, had been unsuccessful at disciplining the minor and recommended rehabilitation outside of the home. The minor contended the evidence was not sufficient to show that he knew his conduct was wrongful.

The court of appeal held that Penal Code section 26, subdivision 1,³²⁶ must be satisfied to sustain a finding that a minor under the age of fourteen is a ward of the court within the provisions of

determined that there is no due process violation where section 1111 of the Penal Code is not applied because the rule is not constitutionally based, but was created by the common law. *In re Mitchell P.*, 22 Cal. 3d 946, 587 P.2d 1144, 151 Cal. Rptr. 330 (1978).

323. *People v. Smith*, 63 Cal. 2d 779, 409 P.2d 222, 48 Cal. Rptr. 382 (1966). *See also People v. Steccone*, 36 Cal. 2d 234, 223 P.2d 17 (1950). The court there held that it is not necessary to show that the parties met and actually agreed to perform the unlawful acts nor that there was a detailed plan.

324. 90 Cal. App. 3d at 334, 153 Cal. Rptr. at 265 (1979).

325. *Id.* at 335, 153 Cal. Rptr. at 266.

326. California Penal Code section 26, Subdivision one provides:

All persons are capable of committing crimes except those belonging to the following classes:

(1) Children under the age of fourteen, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness.

CAL. PENAL CODE § 26(1) (West Supp. 1980).

Welfare & Institutions Code section 602.³²⁷ The court concluded that there was substantial evidence to indicate that Clyde H. knew the wrongfulness of his conduct and hence affirmed the conclusion of the trier of fact.³²⁸

44. *IN RE CHARLES G.*

95 Cal. App. 3d 62, 156 Cal. Rptr. 832 (1979)

A petition was filed in juvenile court alleging that Charles G. committed burglary of a vehicle. Charles was found in the seat of a truck in a parking lot and three tools which had been inside the glove compartment of the truck were found nearby. The owner testified that to the best of his knowledge the automobile was locked in accordance with his normal practice. The court found the allegation to be true and Charles appealed, contending that the substantial evidence rule violates federal due process and that there was no substantial evidence to sustain a finding that the automobile was locked.

The appellate court noted that the substantial evidence rule was the test on appeal³²⁹ and rejected the contention that the substantial evidence rule violates federal due process.³³⁰

The appellate court rejected the second contention on the basis of Evidence Code section 1105,³³¹ which clearly allows the victim's testimony concerning his habit of locking automobile doors. The court stated that from the circumstantial evidence of habit, and reasonable inferences therefrom, the judge could have properly concluded that the truck was locked.³³²

327. California Welfare and Institutions Code section 602 defines the jurisdiction of the juvenile court. This section provides:

Any person who is under the age of 18 years when he violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

CAL. WELF. & INST. CODE § 602 (West Supp. 1980).

328. *In re Clyde H.*, 92 Cal. App. 3d 343, 344, 154 Cal. Rptr. 727, 730 (1979).

329. *See In re Roderick P.*, 7 Cal. 3d 801, 500 P.2d 1, 103 Cal. Rptr. 425 (1972). The appellate court can give credit only to substantial evidence. Substantial evidence is evidence which reasonably inspires confidence.

330. *In re Charles G.*, 95 Cal. App. 3d 62, 65, 156 Cal. Rptr. 832, 834 (1979).

331. Section 1105 provides that "any otherwise admissible evidence of habit or custom is admissible to prove conduct on a specified occasion in conformity with the habit or custom."

CAL. EVID. CODE § 1105 (West 1966).

332. 95 Cal. App. at 67, 156 Cal. Rptr. at 835 (1979).

45. *IN RE* DAVID G.

93 Cal. App. 3d 247, 155 Cal. Rptr. 500 (1979)

A wardship petition alleged that David G. was within the jurisdiction of the juvenile court as a result of seven alleged violations of Penal Code section 459.³³³ The minor denied these allegations and moved to suppress the evidence pursuant to Penal Code section 1538.5.³³⁴ The motion was denied and the court subsequently found David G. to be a juvenile under the Welfare and Institutions Code section 602.³³⁵ The minor appealed the order denying his motion to suppress and the order declaring him a ward of the court. At a later dispositional hearing, a juvenile court referee entered a dispositional order continuing the minor as a ward of the juvenile court and placing him on probation.

Two questions are presented: (1) Does Penal Code section 1538.5 apply to juvenile proceedings so that a minor who admits the allegations of a wardship petition may obtain appellate review of the denial of his motion to suppress? (2) Do the equal protection clauses of the California Constitution article I, section 7 and the United States Constitution fourteenth amendment require that a minor be given the same right of appellate review following admission of the petition's allegations as is given to a defendant who pleads guilty to a criminal offense?

With regard to the first question, the appellate court held that

333. This section pertains to auto burglary.

334. This section pertains to motions for the return of property or for the suppression of evidence. The main concern of this case is subdivision (m) which allows one to test the unreasonableness of a search or seizure before trial. Penal Code section 1538.5, subdivision (m) reads as follows:

The proceedings provided for in this section, Section 995, Section 1238, and Section 1466 shall constitute the sole and exclusive remedies prior to conviction to test the reasonableness of a search or seizure where the person making the motion for the return of property or the suppression of evidence is a defendant in a criminal case and the property or thing has been offered or will be offered as evidence against him. A defendant may seek further review of the validity of a search or seizure on appeal from a conviction in a criminal case notwithstanding the fact that such judgment of conviction is predicated upon a plea of guilty. Such review on appeal may be obtained by the defendant providing that at some stage of the proceeding prior to conviction he has moved for the return of property or the suppression of the evidence.

CAL. PENAL CODE § 1538.5 (m) (West Supp. 1979).

335. Welfare and Institutions Code section 602 provides that a juvenile court will have jurisdiction over, and can declare minors who commit crimes wards of the court. The section reads:

Any person who is under the age of 18 years when he violates any law of this state or the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

CAL. WELF. & INST. CODE § 602 (West Supp. 1979).

Penal Code section 1538.5 is inapplicable to juvenile court proceedings.³³⁶ The minor relied on subdivision (m) of section 1538.5 as ground for a review of the ruling for suppression of evidence. The people argued that "section 1538 could not apply to juvenile proceedings because that section makes reference solely to criminal cases, whereas wardship proceedings under Welfare and Institutions Code section 602 are civil proceedings."³³⁷ The court's attention was to Welfare and Institutions Code section 203, which provides "an order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding."³³⁸

The appellate court analyzed the language of section 1538.5 concluded that such language precluded its application to juvenile wardship proceedings.³³⁹ "The statute provides that a 'defendant' may move to suppress as evidence anything obtained as a result of a search or seizure (Penal Code section 1538.5, subdivision [a]); and that the proceedings shall constitute the sole and exclusive remedies prior to 'conviction' where the person making the motion is a defendant in a 'criminal case' (Penal Code section 1538.5, subdivision [m])."³⁴⁰

As to the second question, the court acknowledged that the state had created a particular classification but determined that the classification was constitutional.³⁴¹ The court noted that the Constitution does not require that wardship procedures be identical to procedures utilized in criminal prosecutions against adults.³⁴² Disparities not directly affecting fundamental rights are permissible when reasonably related to a proper purpose.³⁴³

The appellate court held that the statute did not directly affect

336. *In re David G.*, 93 Cal. App. 3d 247, 252, 155 Cal. Rptr. 500, 502 (1979).

337. *Id.*

338. CAL. WELF. & INST. CODE § 203 (West Supp. 1979).

339. 93 Cal. App. 3d at 252, 155 Cal. Rptr. at 502 (1979).

340. *Id.*

341. *Id.* at 253, 155 Cal. Rptr. at 503.

342. The Constitution does not require that the procedures in wardship proceedings be identical to the procedures employed in criminal prosecutions against adults; disparities which do not directly affect a fundamental right are constitutionally permissible when reasonably related to a proper purpose.

Id.

343. *See In re Mitchell P.*, 22 Cal. 3d 946, 587 P.2d 1144, 151 Cal. Rptr. 330 (1978).

fundamental rights.³⁴⁴ Section 1538.5 was enacted to alleviate the large demand on jury time in hearing search and seizure objections. "There is no jury in juvenile court; therefore, litigation of search and seizure at an adjudication hearing would not waste jury time."³⁴⁵ Thus, the court concluded that the legislative classification could not be deemed wholly irrational.³⁴⁶ The appellate court commented in a footnote that it was not suggesting that a minor should not be given this right;³⁴⁷ it deferred this aspect for future legislative determination.

46. *IN RE* FREDERICK G.

96 Cal. App. 3d 353, 157 Cal. Rptr. 769 (1979)

A minor, age seventeen, was found guilty of murder in the second degree. During the trial, a witness who was present at the scene of the crime gave testimony that was somewhat contradictory of other statements she had made and of testimony by others. During the trial, the witness was granted immunity from prosecution only as to her admission of heroin use.

Appellant's main argument is that the rule requiring corroboration of an accomplice's testimony should be applicable in a juvenile court proceeding.³⁴⁸ The application of Penal Code § 1111 would require a reversal of appellant's conviction of murder, but the court has ruled in the case of *In re Mitchell P.*³⁴⁹ that the rule requiring corroboration of an accomplice's testimony is not applicable in a juvenile court proceeding. In essence, the court held that the witness "was not technically an accomplice" in this

344. 93 Cal. App. 3d at 254, 155 Cal. Rptr. at 503 (1979).

345. *Id.* at 255, 155 Cal. Rptr. at 504.

346. *Id.*

347. We do not by this comment suggest that the minor should not be given this right. This is a matter for legislative determination. It may well have been an oversight and, if so, it should be corrected promptly by the legislature.

Id. at 255 n.3, 155 Cal. Rptr. at 504 n.3.

348. Penal Code section 1111 deals with conviction on testimony of accomplice. The section in its entirety provides:

A conviction can not be had upon the testimony of an accomplice unless it be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

An accomplice is hereby defined as one who is liable to prosecution for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given.

CAL. PENAL CODE § 1111 (West 1970).

349. *In re Mitchell P.* involved a minor charged with burglary, grand theft and receiving stolen property. An accomplice was granted immunity. The California Supreme Court held that "a finding of wardship pursuant to section 602 does not constitute a 'conviction' within the meaning of Penal Code section 1111. . . ." *In re Mitchell P.*, 22 Cal. 3d 946, 949, 587 P.2d 1144, 1146, 151 Cal. Rptr. 330, 333 (1978).

case.³⁵⁰ "An accomplice is one 'who is liable to prosecution for the identical offense charged against the defendant. . . .'"³⁵¹

Next the court considered the contradictions in the witness' testimony. Contradictions in the record in connection with the witness' testimony do not render the testimony impossible or unbelievable, but only create a conflict that goes to the credibility of testimony.³⁵²

47. *IN RE JOHNNY G.*

25 Cal. 3d 543, 601 P.2d 196, 159 Cal. Rptr. 180 (1979)

A minor appeals from an order adjudging him a ward of the court upon a finding that he committed assault with a deadly weapon.³⁵³

The prosecution introduced an extrajudicial statement made by the victim to a police officer where the victim supposedly identified the minor as the person who attacked him. On cross-examination, the victim said he did not know who attacked him.

The minor challenged the decision, contending that the victim's prior inconsistent identification was insufficient to sustain an order adjudging him to be a ward of the juvenile court.

The California Supreme Court referred to its decision in *People v. Gould*³⁵⁴ where it held that "[a]n extra-judicial identification that cannot be confirmed by an identification at the trial is [in]sufficient [*sic*] to sustain a conviction in the absence of other evidence tending to connect the defendant with the crime."³⁵⁵ Since the only evidence connecting the minor with the charged assault was such an identification, the order appealed from cannot stand.³⁵⁶

The court also pointed out that further proceedings were barred by the double jeopardy clause.³⁵⁷ "Since the evidence was insufficient as a matter of law to support the finding that the minor committed the offense charged, further proceedings are barred by the

350. *In re Frederick Joseph G.*, 96 Cal. App. 3d 353, 367, 157 Cal. Rptr. 769, 778 (1979).

351. *Id.*

352. *Id.* at 369, 157 Cal. Rptr. at 779.

353. *In re Johnny G.*, 25 Cal. 3d 543, 601 P.2d 196, 159 Cal. Rptr. 180 (1979).

354. 54 Cal. 2d 621, 354 P. 2d 865, 7 Cal. Rptr. 273 (1960).

355. *Id.* at 631, 354 P. 2d at 870, 7 Cal. Rptr. at 278.

356. 25 Cal. 3d at 548, 601 P. 2d at 197, 159 Cal. Rptr. at 182.

357. *Id.* at 548, 601 P.2d at 199, 159 Cal. Rptr. at 183.

48. *IN RE JOSEPH H.*

98 Cal. App. 3d 627, 159 Cal. Rptr. 681 (1979)

Joseph was charged with leaving the scene of an accident.³⁵⁹ The minor was driving a neighbor’s car and struck two parked cars. A witness watched the driver leave the scene but was unable to identify him. A police officer observed the incident and saw the juvenile run into a house, found the juvenile, and returned to the scene with him. In the minor’s testimony, the boy admitted being involved in the accident but claimed he left the scene in order to get help.

After presentation of the prosecution’s case, Joseph moved for judgment of acquittal pursuant to Penal Code section 1118.³⁶⁰ He contends that “the denial of the motion was erroneous because at the close of the prosecution’s case there was no evidence that Joseph was the driver of the car.”³⁶¹

The First District Court of Appeal held Penal Code section 1118 inapplicable to juvenile court proceedings. The court pointed out that inasmuch as a juvenile has no right to a jury in a wardship proceeding, he cannot waive a jury.³⁶² Even if section 1118 applied, the purpose of the section was to terminate the case when evidence was insufficient to support a conviction, but the trial court held there was substantial evidence in the record to support the conclusions of the trial court.

358. *Id.*

359. 98 Cal. App. 3d 627, 630, 159 Cal. Rptr. 681, 682 (1979). *See also* CAL. VEH. CODE § 20002(a) (West 1971).

360. Penal Code section 1118 provides:

In a case tried by the court without a jury, a jury having been waived, the court on motion of the defendant or on its own motion shall order the entry of a judgment of acquittal of one or more of the offenses charged in the accusatory pleading after the evidence of the prosecution has been closed if the court, upon weighing the evidence then before it, finds the defendant not guilty of such offense or offenses. If such a motion for judgment of acquittal at the close of the evidence offered by the prosecution is not granted, the defendant may offer evidence without first having reserved that right.

CAL. PENAL CODE § 1118 (West 1970).

361. 98 Cal. App. 3d at 631, 159 Cal. Rptr. at 683 (1979).

362. *Id.* *See also* *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971); *In re Mitchell P.*, 22 Cal. 3d 946, 953, 587 P.2d 1144, 1149, 151 Cal. Rptr. 330, 336 (1978); *In re Gladys R.*, 1 Cal. 3d 855, 866 n.21, 464 P.2d 127, 135 n.21, 83 Cal. Rptr. 671, 679 n.21 (1970).

VI. CONSTITUTIONAL

49. *IN RE* SCOTT K.

24 Cal. 3d 395, 595 P.2d 105, 155 Cal. Rptr. 671 (1979)

The mother of Scott K. found marijuana in the minor's desk drawer and informed police. A police officer telephoned Scott's father to tell him that he was about to arrest Scott. The father told the police that Scott could be found in the garage. Police officers arrested the minor without a warrant, took him into the house, and received permission to search his room. In the room was a locked toolbox belonging to Scott and with the father's consent the officers, using a key obtained from the minor, opened the box and found marijuana inside. Scott never consented to the search. The arrest was ruled illegal,³⁶³ but the court denied a motion to suppress the evidence found in the toolbox. The court determined the search of the box was independent of the arrest and was conducted pursuant to a valid consent.³⁶⁴ Scott K. appealed contending that the denial of his motion to suppress was erroneous. The question presented was whether a warrantless, parent-approved, police search of a minor's personal property was permissible.³⁶⁵

The California Supreme Court immediately noted that the rights of juveniles are not as exhaustive as those of adults. The reason generally being that the state has a legitimate interest in promoting the health and growth of children.³⁶⁶ The court was

363. The arrest was illegal because no exigent circumstances existed and there was adequate time to secure an arrest warrant. *See People v. Ramey*, 16 Cal. 3d 263, 545 P. 2d 1333, 127 Cal. Rptr. 629 (1976). Although the information supplied was sufficient to constitute probable cause, there were no exigent circumstances justifying defendant's arrest in his home without a warrant.

364. These comments of the trial judge are pertinent:

I find that the father . . . because of the evidence elicited as relates the relationship vis-a-vis the father, the minor and the home, had the right to conduct a search through whatever means were efficacious of the entirety of his own home and anything therein contained, whether placed there by his son or any other person; that it is not an overextension of the father's rights to use the instrumentality of the Narcotics Division of the Los Angeles Police Department to assist him in so doing.

[T]he possessory rights to the contents of the entirety of the home . . . are at least joint possessory rights residing equally with the father and the minor. . . .

In re Scott K., 24 Cal. 3d 395, 399, n.1, 595 P.2d 105, 107, n.1, 155 Cal. Rptr. 671, 673 n.1 (1979).

365. *Id.* at 398, 595 P.2d at 106, 155 Cal. Rptr. at 672.

366. *Id.* at 401, 595 P.2d at 108, 155 Cal. Rptr. 674. *See also* *Ginsberg v. New York*, 390 U.S. 629 (1968); *Prince v. Massachusetts*, 321 U.S. 158, 168-70 (1944).

also quick to point out that the search and seizure laws do not appear to be inconsistent with the state's interest in the child's welfare. The court also noted that the California Court of Appeal was correct in assuming that juveniles do enjoy the protective rights encompassed in search and seizure.³⁶⁷ The California Supreme Court concluded that a minor's due process right must be protected even when the right imposes a burden on parents or limits parental control.³⁶⁸ Therefore, it would be incongruous to permit parents to summarily waive their child's right to search and seizure protections.

The court also addressed the question of whether the toolbox search was reasonable because the father's consent qualified under the third-party-consent exception to warrant requirements. The court agreed with the fact that "[a] warrantless search is reasonable when consent is granted by one who has a protectable interest in the property,"³⁶⁹ but held that the People failed to establish that Scott's father had such an interest in the toolbox. The court stated that while parents may have a protectable interest in the property of their children, that fact may not be assumed, instead, it is incumbent for the people to establish that a warrantless search is reasonable.³⁷⁰

50. *IN RE EDWARD B.*

94 Cal. App. 3d 362, 156 Cal. Rptr. 405 (1979)

Edward B. was charged with being a juvenile coming under Section 602 of the Welfare and Institutions Code in that he had committed robbery, burglary, and attempted burglary. After receiving his Miranda warnings, Edward admitted to the charges. Adjudication and dispositional hearings were held before a referee of the juvenile court, and Edward was declared a ward of the court and committed to the Youth Authority. A petition for rehearing was denied. Edward contended that it was unconstitutional to deny his request for an adjudication hearing before a judge.

367. *Id.* at 402, 595 P.2d at 110, 155 Cal. Rptr. at 675 (1979). *See also In re Tony C.*, 21 Cal. 3d 888, 582 P.2d 957, 148 Cal. Rptr. 366 (1978). The court did not permit evidence detrimental to a minor when the minor's detention by a police officer was based entirely on hunch and curiosity.

368. 24 Cal. 3d at 403, 595 P.2d at 109, 155 Cal. Rptr. at 675 (1979). *See also In re Ricky H.*, 2 Cal. 3d 513, 468 P. 2d 204, 86 Cal. Rptr. 76 (1970). Minor waived right to counsel when he discovered his father would have to reimburse the county for the costs of such representation. At the time, the father was already indebted to the county. The court held that a minor should not be permitted to waive the right to counsel for the purpose of avoiding the reimbursement requirement.

369. *Id.* at 404, 595 P.2d at 110, 155 Cal. Rptr. at 676.

370. *Id.* at 405, 595 P.2d at 111, 155 Cal. Rptr. at 677.

The court held that an adjudication hearing before a juvenile court referee who declares a minor to be a ward of the court is not unconstitutional when, as in this instance,³⁷¹ the minor's petition for rehearing was denied by a superior court judge.

51. *IN RE KATHY P.*

25 Cal. 3d 91, 599 P.2d 65, 157 Cal. Rptr. 876 (1979)

Kathy P. was cited for violating Vehicle Code section 21804 (failure to yield right-of-way when entering a highway). She appeared in the juvenile court traffic division of the superior court and plead not guilty. At a later hearing, a traffic hearing officer heard testimony from the citing police officer and argument from Kathy's father.³⁷² The traffic hearing officer concluded that Kathy had committed the offense and imposed a \$10 fine plus a \$5 penalty assessment. A juvenile court judge denied Kathy's motion for rehearing. A transcript of the hearing was not available to the juvenile court judge, although other documents were available.³⁷³

Kathy contended that the juvenile traffic hearing officer was not constitutionally authorized to adjudicate contested cases. Under the Welfare and Institutions Code, a juvenile court judge may appoint as traffic hearing officers one or more persons of suitable experience who need not be judges.³⁷⁴ Such hearing officers are

371. 94 Cal. App. 3d 362, 365, 156 Cal. Rptr. 405, 407 (1979). See also *In re Edgar M.*, 14 Cal. 3d 727, 537 P.2d 406, 122 Cal. Rptr. 574 (1975). The referee's findings and orders are only advisory. It is the duty of the judge to deny or accept the referee's determinations as those of the court.

372. Kathy was represented by her father, and not by counsel.

373. These documents consisted of a notice to appear, the deposition and hearing forms, the hearing officer's notes of the testimony, and the summarizing memo of a juvenile traffic court supervisor. 25 Cal. 3d 91, 97, 599 P.2d 65, 69, 157 Cal. Rptr. 874, 877 (1979).

Welfare and Institutions Code section 255 provides in relevant part:

The judge of the juvenile court, or in counties having more than one judge of the juvenile court the presiding judge of the juvenile court or the senior judge if there is no presiding judge, may appoint one or more persons of suitable experience, who may be judges of the municipal court or justices of the justice court or a probation officer or assistant or deputy probation officer or assistant or deputy probation officers, to serve as traffic hearing officers on a full-time or part-time basis. A hearing officer shall serve at the pleasure of the appointing judge

CAL. WELF. & INST. CODE § 255 (West Supp. 1979).

374. Welfare and Institutions Code section 256 reads in pertinent part:

Subject to the orders of the juvenile court, a traffic hearing officer may hear and dispose of any and all cases wherein a minor under the age of 18 years as of the date of the alleged offense is charged with any violation of the Vehicle Code not declared to be a felony

authorized to hear and decide charges against a minor of any violation of the Vehicle Code not declared to be a felony.³⁷⁵ A further constitutional restraint limits the hearing officer's function to subordinate judicial duties.³⁷⁶

In this case, the hearing officer was not a judge, but was a person of suitable experience. The issue then became whether the contested traffic infraction constituted a subordinate judicial duty.

The court cited *People v. Lucas*³⁷⁷ as authority for the proposition that traffic infractions are "subordinate" in nature. *Lucas* noted that punishments for infractions are considerably lighter than for other offenses. The *Lucas* court stated:

The Legislature had valid reasons to conclude that the unique and specialized function of trying infraction cases was something which constituted a separate class of judicial service, which could properly be ranked as "subordinate" in relation to the diversity and complexity of the other duties of a municipal court judge.³⁷⁸

The California Supreme Court also stated that the differing dispositional provisions available to minors as compared to adults were not of sufficient magnitude to make the hearing officer's adjudication of Kathy's case more than a subordinate judicial duty. Hence, the court concluded that the traffic hearing officers' functions were subordinate judicial duties. Also, the court apparently determined that a hearing officer's authority extends to uncontested matters but not to contested adjudications when serious juvenile misconduct is charged.³⁷⁹ The adjudication in the present case was not of a serious enough nature to remove the case from the hearing officer.

Kathy next claimed denial of equal protection. The court quickly dismissed this claim by examining the similarity between the functions of officers in juvenile infraction cases to those of municipal court commissioners in adult infraction cases and by noting that the differences in qualifications of hearing officers and commissioners were justified by the differing characteristics and needs of juvenile and adult offenders.

CAL. WELF. & INST. CODE § 256 (West Supp. 1979).

375. CAL. CONST. art. VI, § 22 provides: "The Legislature may provide for the appointment by trial courts of record of officers such as commissioners to perform subordinate judicial duties."

376. 82 Cal. App. 3d 47, 147 Cal. Rptr. 235 (1978).

377. 25 Cal. 3d at 98, 599 P.2d at 70, 157 Cal. Rptr. at 877-78 (1979) (citing 82 Cal. App. at 54, 147 Cal. Rptr. at 239).

378. *Id.* See note 5 *supra*. See also *Rooney v. Vermont Investment Corporation*, 10 Cal. 3d 351, 515 P.2d 297, 110 Cal. Rptr. 353 (1973); *In re Edgar M.*, 14 Cal. 3d 727, 537 P. 2d 406, 122 Cal. Rptr. 574 (1975).

379. Cal. Rules of Court, rule 1301 (a). The rules in this division apply to every action and proceeding to which the juvenile court law applies and, unless they are elsewhere explicitly made applicable, do not apply to any other action or proceeding.

Finally, Kathy contended that reversal was required because of the record's silence on whether she waived counsel and consented to informal adjudication. She was not claiming that counsel should have been appointed, but was relying simply on the record's silence on whether she was advised of her right to be represented.

The California Supreme Court stated that while Kathy had a right to counsel retained at her own expense, no statute or rule requires that the minor be advised of that right.³⁸⁰ The court held that absent entitlement to court-appointed counsel, due process does not require advice of the right to appear by retained counsel where there are no unique circumstances. The court noted that such advice may be necessary in connection with a section 257 traffic proceeding, however, this necessity, by itself, was not enough to require reversal simply because the record was silent on whether the advice was given.

52. MICHAEL M. V. SUPERIOR COURT
25 Cal. 3d 608, 601 P.2d 572, 159 Cal. Rptr. 340 (1979)

Michael M., seventeen and one-half years old, engaged in unlawful intercourse with a 16 year old female.³⁸¹ At issue was whether "statutory rape"³⁸² violates the equal protection clauses of both the United States and California Constitutions,³⁸³ because only females are protected and only males may be prosecuted under California law.

The supreme court found that the statute did classify both victims and defendants by sex and did protect only females while prosecuting only the males. However, the court found that there was a compelling state interest in this classification.³⁸⁴ The court pointed out that unwed teenage pregnancies constitute a major contemporary problem along with the increased medical risks which justify this classification.³⁸⁵ The court went on to say that since males are the only persons who may physiologically cause

380. See CAL. VEH. CODE § 40901(c) (West Supp. 1979).

381. Defendant was found not to be a proper subject for juvenile adjudication, under CAL. WELF. & INST. CODE § 707 (West Supp. 1978), and was charged as an adult. 25 Cal. 3d at 610, 601 P.2d at 573, 159 Cal. Rptr. at 341.

382. CAL. PENAL CODE § 261.5 (West Supp. 1979).

383. U.S. CONST. amend. XIV; CAL. CONST. art. 1, §§ 11 & 21.

384. 25 Cal. 3d at 610, 601 P.2d at 573, 159 Cal. Rptr. at 341.

385. *Id.* at 611, 601 P.2d at 574, 159 Cal. Rptr. at 342-43.

the pregnancy, criminal sanctions can be imposed.³⁸⁶

53. *IN RE WAYNE J.*

97 Cal. App. 3d 776, 159 Cal. Rptr. 106 (1979)

Wayne J., seventeen years old, was charged with possession of not more than one ounce of marijuana. The trial court declared the minor a ward of the court and placed him on home probation. Wayne challenges the constitutionality of a home placement whereas an adult violator would be placed on probation with a \$100 fine.³⁸⁷

The court held the distinction between placement of a juvenile in the home and the imposition of probation or a fine on an adult who violates the same statute, is a reasonable one that is necessary to facilitate the purposes of the juvenile court.³⁸⁸ Citing *In re Harm R.*,³⁸⁹ the court stated that “[u]ntil such time as we are to impose on the entire juvenile court system all the procedures prescribed in the adult criminal code, some distinctions between the juvenile court and the adult criminal court must exist. We find the current situation to come within that category.”³⁹⁰

In determining this distinction, the court considered the involvement of the probation officer, the court’s authority to impose home placement and the primary purpose of minority adjudication. “Thus, while an adult may be given summary probation, there is no room in the Juvenile Court Law for such disposition;”³⁹¹

54. *IN RE JESSE W.*

26 Cal. 3d 41, 603 P.2d 1296, 160 Cal. Rptr. 700 (1979)

A juvenile court referee absolved the minor, Jesse W., of charged misconduct necessary to the determination of wardship. A rehearing was ordered by a juvenile court judge: the rehearing before the judge would be conducted de novo.³⁹² Jesse claimed that the de novo hearing would expose him to double jeopardy. The question presented was whether the minor is exposed to jeopardy a second time, contrary to fifth amendment prohibi-

386. *Id.* at 612, 601 P.2d at 575, 159 Cal. Rptr. at 343.

387. CAL. HEALTH & SAFETY CODE § 11,357(b) (West Supp. 1978); CAL. PENAL CODE § 1203(c) (West 1970).

388. *In re Wayne J.*, 97 Cal. App. 3d 776, 783, 159 Cal. Rptr. 106, 110 (1979).

389. 88 Cal. App. 3d 438, 152 Cal. Rptr. 167 (1979).

390. *Id.* at 445, 152 Cal. Rptr. at 171.

391. *In re Wayne J.*, 97 Cal. App. 3d 776, 782, 159 Cal. Rptr. 106, 110 (1979).

392. Welfare and Institutions Code section 254 states that “all rehearings of matters heard before a referee shall be before a judge of the juvenile court and shall be conducted de novo.” CAL. WELF. & INST. CODE § 254 (West Supp. 1979).

tions,³⁹³ if a juvenile court judge conducts a de novo rehearing subsequent to the referee's initial findings.

The California Supreme Court unanimously answered the question in the affirmative.³⁹⁴ The court noted an earlier opinion³⁹⁵ that a referee's findings and orders are advisory in nature and that when such findings and orders are merely "reviewed" and acted upon by a juvenile court judge³⁹⁶ there was no exposure to double jeopardy. The court stated however, that "a rehearing de novo" is in no way a review of the previous proceeding. It is a complete new trial of the matter; the judge is no longer reviewing and acting on the referee's recommended findings and orders. The court held that double jeopardy existed if, after a referee had acquitted or dismissed the petition against a minor at a jurisdictional hearing, the juvenile court judge then orders a de novo hearing. The court left the matter of determining what new procedures to adopt for the legislature.

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393. U.S. CONST. amend. V, reads in pertinent part: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb

394. This case was remanded by the United States Supreme Court to be considered in the light of *Swisher v. Brady*, 438 U.S. 204 (1978). 26 Cal. 3d at 43, 160 Cal. Rptr. at 702.

395. *Jesse W. v. Superior Court*, 20 Cal. 3d 893, 576 P. 2d 963, 145 Cal. Rptr. 1 (1978).

396. Welfare and Institutions Code section 250 reads in pertinent part:

Except as provided in Section 251, all orders of a referee other than those specified in Section 249 shall become immediately effective, subject also to the right of review as hereinafter provided, and shall continue in full force and effect until vacated or modified upon rehearing by order of the judge of the juvenile court.

CAL. WELF. & INST. CODE § 250 (West Supp. 1979).

