

5-15-1979

## A Compendium of Major California Juvenile Law Decisions 1977-79 with Brief Analyses

John W. Teets

Follow this and additional works at: <http://digitalcommons.pepperdine.edu/plr>



Part of the [Other Law Commons](#)

---

### Recommended Citation

John W. Teets *A Compendium of Major California Juvenile Law Decisions 1977-79 with Brief Analyses*, 6 Pepp. L. Rev. 3 (1979)  
Available at: <http://digitalcommons.pepperdine.edu/plr/vol6/iss3/11>

This Survey is brought to you for free and open access by the School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Pepperdine Law Review by an authorized administrator of Pepperdine Digital Commons. For more information, please contact [Kevin.Miller3@pepperdine.edu](mailto:Kevin.Miller3@pepperdine.edu).

# A COMPENDIUM OF MAJOR CALIFORNIA JUVENILE LAW DECISIONS 1977-79 WITH BRIEF ANALYSES

It is the purpose of this composition to supply a compilation of recent juvenile case law in California and to highlight some of the more significant decisions. The following compendium contains most of the juvenile law decisions of 1978 as well as several rendered in 1977 and 1979. Thirty cases of particular import are selected and dealt with in much greater detail.

## A COMPENDIUM OF RECENT CALIFORNIA JUVENILE LAW CASES\*

CASE NAME	CITATION	HOLDING
1. In re Hurlic	20 Cal.3d 317, 572 P.2d 57, 142 Cal. Rptr. 443 (1977).	Jeopardy does not attach in a hearing where the sole issue is fitness.
2. In re Lionel P.	20 Cal. 3d 260, 572 P.2d 25, 142 Cal. Rptr. 411 (1977).	A rehearing not denied within 20 days is deemed granted. A 90 day C.Y.A. diagnostic study does not extend time.
3. In re Leonard R.	76 Cal. App.3d 100, 142 Cal. Rptr. 632 (1977).	Case deals with credit for time served. Issue is before California Supreme Court.

\* This compendium was compiled with the assistance of Commissioner Reuben A. Ortega and Commissioner Victor I. Reichman. The Compendium was presented at the 1979 Juvenile Court Judges Institute Panel in San Diego by Commissioners Ortega and Reichman.

Commissioner Ortega received his undergraduate education at the University of New Mexico. He attended the Georgetown University Law Center and was appointed a commissioner of the Los Angeles Superior Court in 1977.

Commissioner Reichman received his undergraduate education at the University of California, Los Angeles. He attended the University of Southern California Law Center and was appointed a commissioner of the Los Angeles Superior Court in 1977.

A COMPENDIUM OF RECENT CALIFORNIA JUVENILE LAW  
CASES—Continued

CASE NAME	CITATION	HOLDING
4. In re Tanya L.	76 Cal. App. 3d 725, 143 Cal. Rptr. 31 (1977).	<i>Gladys R.</i> awareness issue regarding twelve year-old charged with credit card offense.
5. Matter of Michael G.	76 Cal. App. 3d 872, 143 Cal. Rptr. 163 (1977).	Court can impose conditions of probation without declaring minor a ward.
6. James H. v. Superior Court	77 Cal. App. 3d 169, 143 Cal. Rptr. 398 (1978).	Court of Appeal set procedures for determining minor's competency.
7. In re Norma M.	77 Cal. App. 396, 143 Cal. Rptr. 561 (1978).	"Foster home" under county jurisdiction may not be liberally construed.
8. In re Kelvin M.	77 Cal. App. 396, 143 Cal. Rptr. 561 (1978).	Father had a right to show he was capable of exercising control over minor and to deny him opportunity was a denial of due process.
9. Brian W. v. Superior Court	20 Cal. 3d 618, 574 P.2d 788, 143 Cal. Rptr. 717 (1978).	Court has discretion to allow media to attend juvenile court proceedings.
10. In re Larry T.	77 Cal. App. 3d 969, 144 Cal. Rptr. 43 (1978).	An adult conviction does not deprive a juvenile court of jurisdiction absent a finding of fitness.
11. In re Jose S.	78 Cal. App. 3d 619, 144 Cal. Rptr. 309 (1978).	Improper denial of motion to disqualify a judge deprives that judge of jurisdiction.
12. Matter of Antonio F.	78 Cal. App. 3d 440, 144 Cal. Rptr. 466 (1978).	Where no notice sent to mother's last known address and no publication of citation, due process was denied.
13. In re Carrie W.	78 Cal. App. 3d 866, 144 Cal. Rptr. 427 (1978).	An express finding of detriment can be implied when detriment to child is only issue presented.
14. In re Robert H.	78 Cal. App. 3d 894, 144 Cal. Rptr. 565 (1978).	A minor can consent to a search of his parents' home.
15. In re Harold M.	78 Cal. App. 3d 380, 144 Cal. Rptr. 744 (1978).	Prior juvenile proceedings are admissible to show minor appreciated wrongfulness of his action.

A COMPENDIUM OF RECENT CALIFORNIA JUVENILE LAW  
CASES—Continued

CASE NAME	CITATION	HOLDING
16. In re Kathy P.	79 Cal. App. 2d 416, 144 Cal. Rptr. 868 (1978).	Juvenile traffic court must provide an adequate record for rehearing.
17. In re Richard T.	79 Cal. App. 3d 382, 144 Cal. Rptr. 856 (1978).	A minor is not entitled to <i>Miranda</i> warnings from his parole officer during an investigation of possible parole violations.
18. In re James L.	79 Cal. App. 3d 577, 145 Cal. Rptr. 104 (1978).	Drawing, exhibiting deadly weapon is not a necessarily lesser included offense of robbery.
19. In re S.W.	79 Cal. App. 3d 719, 145 Cal. Rptr. 143 (1978).	Psychotherapist-patient privilege upheld over CAL. WELF. INST. CODE § 5328.
20. Jessie W. v. Superior Court	20 Cal. 3d 893, 576 P.2d 963, 145 Cal. Rptr. 1 (1978).	Jeopardy attached when minor was acquitted by referee.
21. In re John C.	79 Cal. App. 3d 807, 145 Cal. Rptr. 228 (1978).	Search of cigarette package in minor's hand was unlawful.
22. In re David K.	79 Cal. App. 3d 992, 145 Cal. Rptr. 349 (1978).	Evidence was insufficient to sustain the petition.
23. In re John H.	21 Cal. 3d 18, 577 P.2d 683, 145 Cal. Rptr. 548 (1978).	Reviewing court presumes that judge's approval of C.Y.A. order is based on same reasons as referee.
24. In re Jacqueline H.	21 Cal. 3d 170, 577 P.2d 683, 145 Cal. Rptr. 357 (1978).	Relief will be given to indigent parent for failure to file if not informed of right to appointed counsel.
25. In re Wayne H.	80 Cal. App. 840, 146 Cal. Rptr. 19 (1978).	Unnecessary delay before taking minor before probation officer.
26. In re Lisa D.	81 Cal. App. 3d 192, 146 Cal. Rptr. 178 (1978).	Standard of proof used to support a dependency order is a preponderance of the evidence test, not a clear and convincing standard.

A COMPENDIUM OF RECENT CALIFORNIA JUVENILE LAW  
CASES—Continued

CASE NAME	CITATION	HOLDING
27. In re Christopher S.	80 Cal. App. 3d 198, 144 Cal. Rptr. 893 (1978).	Evidence was insufficient to sustain loitering offense.
28. Matter of James S.	81 Cal. App. 3d 198, 144 Cal. Rptr. 893 (1978).	Section 777 modification can be sustained on sole ground that minor was not placeable.
29. In re Robin M.	21 Cal. 3d 337, 579 P.2d 1, 146 Cal. Rptr. 352 (1978).	A detained minor must be released if adjudication hearing is not commenced within 15 court days even if petition is refiled.
30. In re Michael C.	21 Cal. 3d 471, 579 P.2d 7, 146 Cal. Rptr. 358 (1978).	A minor's request to see his probation officer invokes his fifth amendment privilege.
31. In re Carmaleta B.	21 Cal. 3d 482, 579 P.2d 574, 146 Cal. Rptr. 623 (1978).	An order to free a child from parental custody and control must rest on present circumstances as well as past facts.
32. In re Richard E.	21 Cal. 3d 349, 579 P.2d 495, 146 Cal. Rptr. 604 (1978).	In a proceeding to free child from parental custody, failure to appoint counsel for child is not error absent a miscarriage of justice.
33. In re Donald L.	81 Cal. App. 3d 770, 146 Cal. Rptr. 720 (1978).	No jeopardy with rehearing when referee grants motion to suppress evidence.
34. In re Darryl T.	81 Cal. App. 3d 874, 146 Cal. Rptr. 771 (1978).	C.Y.A. commitment cannot be for punishment, nor can it be based solely on the gravity of the offense.
35. In re David B.	81 Cal. App. 3d 806, 146 Cal. Rptr. 815 (1978).	Co-conspirator's statement was admissible.
36. In re John W.	81 Cal. App. 3d 994, 146 Cal. Rptr. 826 (1978).	Case dealt with disposition computation.
37. In re Ricky B.	82 Cal. App. 3d 106, 146 Cal. Rptr. 828 (1978).	Minor is entitled to discovery of minor witness' rap sheet.
38. In re D.C.L.	82 Cal. App. 3d 123, 147 Cal. Rptr. 54 (1978).	Court found insufficient evidence to sustain trespass.
39. In re Roland K.	82 Cal. App. 3d 295, 147 Cal. Rptr. 96 (1978).	Minor's fifth amendment privilege asserted when he asked for parent.

A COMPENDIUM OF RECENT CALIFORNIA JUVENILE LAW  
CASES—Continued

CASE NAME	CITATION	HOLDING
40. <i>In re Carl L.</i>	82 Cal. App. 3d 423, 147 Cal. Rptr. 125 (1978).	Sufficient evidence was presented to show minor appreciated wrongfulness of his action.
41. <i>In re Christopher B.</i>	82 Cal. App. 3d 608, 147 Cal. Rptr. 390 (1978).	The exclusionary rule does not apply to § 300 proceedings.
42. <i>In re Cindy E.</i>	83 Cal. App.3d 393, 147 Cal. Rptr. 812 (1978).	Removal of minor requires finding that continued custody by parents is detrimental to minor.
43. <i>In re John S.</i>	83 Cal. App. 3d 285, 147 Cal. Rptr. 771 (1978).	Evidence supported <i>Ricardo M. time</i> .
44. <i>In re James R.</i>	83 Cal. App. 977, 148 Cal. Rptr. 145 (1978).	Minor waived right to complain of lack of transcript on appeal when no rehearing was sought.
45. <i>In re Eleanor A.</i>	84 Cal. App. 3d 184, 148 Cal. Rptr. 315 (1978).	Placement out of county does not change minor's residence.
46. <i>In re Gary O.</i>	84 Cal. App. 3d 38, 148 Cal. Rptr. 276 (1978).	Minor is allowed to withdraw an admission when not advised until after his plea that probation on earlier charges could be revoked.
47. <i>In re Tony C.</i>	21 Cal. 3d 888, 582 P.2d 957, 148 Cal. Rptr. 366 (1978).	Possibility of innocent explanation does not preclude investigative stop.
48. <i>In re Jon D.</i>	84 Cal. App. 3d 337, 148 Cal. Rptr. 677 (1978).	A juvenile who has been declared a ward pursuant to § 602 is not also subject to a fine.
49. <i>Matter of Peter B.</i>	84 Cal. App. 3d 583, 148 Cal. Rptr. 762 (1978).	An inadmissible confession from a prior case is admissible in disposition hearing.
50. <i>In re Patrick W.</i>	84 Cal. App. 3d 520, 148 Cal. Rptr. 735 (1978).	Failure to inform minor that responsible adult relative was available violated <i>Miranda</i> .

A COMPENDIUM OF RECENT CALIFORNIA JUVENILE LAW  
CASES—Continued

CASE NAME	CITATION	HOLDING
51. In re Donald R.	85 Cal. App. 3d 29, 149 Cal. Rptr. 152 (1978).	Nighttime service of search warrant upheld.
52. In re Gregory S.	85 Cal. App. 3d 206, 149 Cal. Rptr. 216 (1978).	C.Y.A. commitment for 13-year-old regarding robbery upheld.
53. In re Terry D.	83 Cal. App. 3d 890, 148 Cal. Rptr. 221 (1978).	Two different standards of review for cases involving neglected children and children in foster homes is not a denial of equal protection.
54. In re Michael T.	14 Cal. App. 3d 907, 149 Cal. Rptr. 87 (1978).	Insufficient evidence to sustain child as aider and abettor but substantial evidence to support intimidation charge.
55. In re Ferdinand R.	85 Cal. App. 3d 303, 149 Cal. Rptr. 342 (1978).	Application for rehearing can be made no earlier than order to which it is directed.
56. In re Ramon M.	22 Cal. 3d 388, 584 P.2d 512, 149 Cal. Rptr. 387 (1978).	The A.L.I. test for insanity governs the defense of idiocy.
57. In re Louis F.	85 Cal. App. 3d 611, 149 Cal. Rptr. 642 (1978).	Court found sufficient evidence to sustain delinquency adjudication.
58. Matter of Leonard M.	85 Cal. App. 3d 887, 149 Cal. Rptr. 791 (1978).	Incompetency of counsel is not established by failure to seek psychiatric examination of five-year-old rape victim.
59. In re Johnny V.	85 Cal. App. 3d 120, 149 Cal. Rptr. 180 (1978).	Trial court lacked jurisdiction to find minor had committed assault by force to produce great bodily injury, offense was not a lesser included in crime of murder.
60. In re Renaldo R.	86 Cal. App. 3d 250, 150 Cal. Rptr. 71 (1978).	To sustain a modification in disposition must find that disposition was not effective in rehabilitation.
61. Matter of Anthony J.	86 Cal. App. 3d 164, 150 Cal. Rptr. 183 (1978).	Beyond a reasonable doubt standard regarding voluntariness of confession is required.

A COMPENDIUM OF RECENT CALIFORNIA JUVENILE LAW  
CASES—Continued

CASE NAME	CITATION	HOLDING
62. In re Amott M.	86 Cal. App. 3d 338, 150 Cal. Rptr. 205 (1978).	Notification that court will consider entire record is not necessary prior to adjudication hearing.
63. In re Stanley F.	86 Cal. App. 3d 568, 152 Cal. Rptr. 5 (1978).	Judge may examine minor in chambers without parents.
64. In re David E.	85 Cal. App. 3d 632, 150 Cal. Rptr. 718 (1978).	Only clear and convincing evidence is required to sever parent-child relationship.
65. In re Eric Craig J.	86 Cal. App. 3d 573, 150 Cal. Rptr. 299 (1978).	Court must consider instances of aggravation before maximum time can be imposed.
66. In re Dennis C.	86 Cal. App. 3d 603, 150 Cal. Rptr. 356 (1978) <i>hearing granted.</i>	CAL. WELF. & INST. CODE § 726 declared unconstitutional: cannot confine minor longer than an adult.
67. In re Raymond P.	86 Cal. App. 3d 797, 150 Cal. Rptr. 537 (1978) <i>hearing denied.</i>	CAL. CIV. CODE § 232(a) is not unconstitutionally vague.
68. In re Beatrice T.	87 Cal. App. 3d 151, 150 Cal. Rptr. 754 (1978).	Court has no discretion other than to order estate to pay for support and maintenance of minor declared dependent.
69. In re Kenneth T.	87 Cal. App. 3d 143, 150 Cal. Rptr. 737 (1978).	CAL. WELF. & INST. CODE § 253 permits judge to order a rehearing on his own motion for disposition.
70. In re Danny T.	22 Cal. 3d 902, 587 P.2d 714, 150 Cal. Rptr. 918 (1978).	Request for rehearing not denied or extended for <i>good cause</i> within 20 days is deemed granted.
71. In re Heidi T.	87 Cal. App. 3d 864, 151 Cal. Rptr. 263, (1978).	Standard of evidence in a free custody proceeding is clear and convincing evidence.



A COMPENDIUM OF RECENT CALIFORNIA JUVENILE LAW  
CASES—Continued

CASE NAME	CITATION	HOLDING
72. In re Alonzo C.	87 Cal. App. 3d 707, 151 Cal. Rptr. 192 (1978).	Motion to suppress granted because act was not committed in officer's presence.
73. In re Mitchell P.	22 Cal. 3d 946, 587 P.2d 1144, 151 Cal. Rptr. 330 (1978).	Uncorroborated accomplice testimony can sustain a petition.
74. In re Tony S.	87 Cal. App. 3d 429, 151 Cal. Rptr. 84 (1979) <i>hearing denied</i> .	CAL. WELF. & INST. CODE § 1737 applies only to commitment from adult court.
75. In re Louis F.	85 Cal. App. 3d 611, 149 Cal. Rptr. 642 (1978).	Search and seizure upheld, when minor requests any contact with parents burden is on people to show he did not invoke fifth amendment.
76. In re Davis	87 Cal. App. 3d 919, 151 Cal. Rptr. 29 (1978).	Trial court granted habeas corpus to compel C.Y.A. to advance parole consideration dates by precommitment time, court of appeal reversed holding regulations are within powers of C.Y.A.
77. In re Joaquin S.	88 Cal. App. 3d 80, 151 Cal. Rptr. 508 (1978).	Polygraph evidence is not admissible in a CAL. WELF. & INST. CODE § 778 proceeding.
78. In re Jonathan S.	88 Cal. App. 3d 468, 151 Cal. Rptr. 810 (1979).	Ex parte contacts between court and counsel although a violation of rules of professional conduct, did not prejudice minor in this case.
79. In re Steven B.	88 Cal. App. 3d 866, 152 Cal. Rptr. 116 (1979).	Lack of record allows substitute when court is able to pass on questions raised.
80. In re W.O.	88 Cal. App. 3d 906, 152 Cal. Rptr. 130 (1979).	Marijuana and cocaine do not necessarily make home unfit for children.
81. In re Fred J.	89 Cal. App. 3d 168, 152 Cal. Rptr. 327 (1979).	Juvenile court has inherent power to entertain prehearing challenge to petition's sufficiency by motion alien to demurrer.
82. In re Carrie W.	89 Cal. App. 3d 642, 152 Cal. Rptr. 690 (1979).	Discretion is abused if commitment is unnecessary to accomplish purpose of rehabilitation and is punitive in nature.

A COMPENDIUM OF RECENT CALIFORNIA JUVENILE LAW  
CASES—Continued

CASE NAME	CITATION	HOLDING
83. In re Owen E.	23 Cal. 3d 398, — P.2d —, — Cal. Rptr. — (1979).	A motion under CAL. WELF. & INST. CODE § 779 is not proper for recalling a C.Y.A. commitment after a denial of parole.
84. In re Donald B.	89 Cal. App. 3d 804, 152 Cal. Rptr. 868 (1979).	Juvenile court may hold disposition on adult defendant for a crime committed as a minor.
85. In re Perrone C.	90 Cal. App. 3d 97, 153 Cal. Rptr. 275 (1979).	A referee may not hear an adjudication absent a stipulation.
86. In re Frank F.	90 Cal. App. 3d 383, 153 Cal. Rptr. 375 (1979).	Evidence supported a finding under CAL. PENAL CODE § 192(3) rather than CAL. VEHICLE CODE § 23101.
87. In re James V.	90 Cal. App. 3d 300, 153 Cal. Rptr. 334 (1979).	Imposition of upper term without showing of aggravation is proper.

BRIAN W. v. SUPERIOR COURT OF LOS ANGELES COUNTY  
20 Cal. 3d 618, 574 P.2d 788, 143 Cal. Rptr. 717 (1978)

Brian, a seventeen year old juvenile, was charged with murder, kidnapping for the purpose of robbery, grand theft and receiving stolen property. Because the petitioner was a minor he was arraigned in juvenile court pursuant to Welfare and Institutions Code Section 602.<sup>1</sup> The prosecution moved for a fitness hearing under Welfare and Institutions Code Section 707.<sup>2</sup> The purpose of

1. CAL. WELF. & INST. CODE § 602 (West Supp. 1978) provides that a minor under the age of 18 years who violates any law or ordinance is within the jurisdiction of the juvenile court and may be adjudged a ward of the court.

2. The applicable part of Welfare and Institutions Code § 707 subdivision (b) provides:

(b) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he was 16 years of age or older, of one of the following offenses:

(1) Murder;

(6) Kidnapping for purpose of robbery;

(12) Any offense described in Section 1203.09 of the Penal Code, upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report

a fitness hearing is to determine whether a minor over the age of sixteen should be tried as an adult based on his past behavior.

The minor moved for a closed hearing. The court granted the request with regard to the general public but ruled that members of the recognized news media may attend a juvenile fitness hearing.

Counsel for Brian argued that under Section 676 of the Welfare and Institutions Code, the statute dealing with persons who may be admitted to juvenile hearings, press attendance at a closed fitness hearing is inconsistent with the confidentiality assured by law. Section 676 provides:

Unless requested by the minor concerning whom the petition has been filed and any parent or guardian present, the public shall not be admitted to a juvenile court hearing. The judge or referee may nevertheless admit such persons as he deems to have a direct and legitimate interest in the particular case or the work of the court.<sup>3</sup>

In holding that recognized media representatives may attend juvenile proceedings the California Supreme Court referred to the Report of the Governor's Special Study Commission on Juvenile Justice. "Section 676 was taken verbatim from the draft statute proposed by the study commission and added as a new code section."<sup>4</sup> The court quoted from the Report of the Governor's Special Study Commission:

We believe the press can assist juvenile courts in becoming more effective instruments of social rehabilitation by providing the public with greater knowledge of juvenile court processes, procedures, and unmet needs. We, therefore, urge juvenile courts to *actively encourage greater participation by the press*. It is the feeling of the Commission that *proceedings of the juvenile court should be confidential, not secret*.<sup>5</sup>

---

on the behavioral patterns and social history of the minor being considered for unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit the juvenile court shall find that the minor is not a fit and proper subject to be dealt with under the juvenile court law unless it concludes that the minor would be amenable to the case, treatment and training program available through the facilities of the juvenile court based upon an evaluation of the following criteria:

- (i) The degree of criminal sophistication exhibited by the minor, and
- (ii) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction, and
- (iii) The minor's previous delinquent history, and
- (iv) Success of previous attempts by the juvenile court to rehabilitate the minor, and
- (v) The circumstances and gravity of the offenses alleged to have been committed by the minor.

CAL. WELF. & INST. CODE § 707 (West Supp. 1978).

3. CAL. WELF. & INST. CODE § 676 (West 1972).

4. Brian W. v. Superior Court of Los Angeles County, 20 Cal. 3d 618, 622, 574 P.2d 788, 790, 143 Cal. Rptr. 717, 719 (1978).

5. REPORT OF THE GOVERNOR'S SPECIAL STUDY COMMISSION ON JUVENILE JUSTICE, Part I—*Recommendation for Changes in California's Juvenile Court Law*, 24 (1960).

The California Supreme Court concluded "that in vesting the judge with discretion to admit to juvenile court proceedings persons having a 'direct and legitimate interest in the particular case or the work of the court,' it was the purpose of the Legislature to allow press attendance at juvenile hearings."<sup>6</sup> The court determined that allowing the press to attend juvenile proceedings under Section 676 did not interfere with the rehabilitative philosophy and did not unduly stigmatize a juvenile offender because the judge exercises control over the disclosure of a minor's identity.

## IN RE JOSE S.

78 Cal. App. 3d 619, 144 Cal. Rptr. 309 (1978)

A seventeen-year-old was granted one year probation for committing an act of oral copulation on a minor girl. Judge Kirk, one of several judges who review juvenile matters in the Superior Court of Imperial County, released the minor to his parent's custody and re-scheduled the jurisdictional hearing. Judge Kirk permitted the filing of a polygraph examination exonerating the minor. The deputy district attorney stated that the victim would also submit to a polygraph. This prompted Judge Kirk to direct a second continuance of the hearing for July 14, but informed them that he would not be present. Judge Gillespie sat before the July 14 hearing; however, this too was continued until September 15. The counsel for the minor, on August 31, filed a motion under Code of Civil Procedure section 170.6, to disqualify Judge Kirk.<sup>1</sup> The juvenile court judge summarily denied the motion. The grounds for the dismissal were not known since no reporter was present at the disqualification hearing.

Code of Civil Procedure section 170.6 provides any party or attorney involved in juvenile proceedings may make an oral or written motion to disqualify the assigned judge, commissioner or referee. Such a motion must be supported by an affidavit to the effect that the judge is prejudiced against such party or attorney so that the client cannot obtain an impartial trial. "If the motion

---

6. 20 Cal. 3d at 623, 574 P.2d at 791, 143 Cal. Rptr. at 720 (1978).

1. California Code of Civil Procedure § 170.6 provides that no judge, court commissioner, or referee shall hear any matter when it is established that the judge or court commissioner is prejudiced against any party or attorney. CAL. CIV. PROC. CODE § 170.6 (West Supp. 1978).

is timely and is in proper form immediate disqualification is mandatory. The judge must recuse himself without further proof and the case must be reassigned to another judge.”<sup>2</sup>

The Second District Court of Appeal’s main concern in this case was the timeliness of Jose Luis’ motion. The Code of Civil Procedure section 170.6 subdivision (2) states the general rule. The disqualification of the judge is permitted at any time prior to the commencement of the trial. That time is defined as:

the drawing of the name of the first juror, or if there be no jury, after the making of an opening statement by counsel for plaintiff, or if there be no such statement, then after swearing in the first witness or the giving of any evidence or after trial of the cause has otherwise commenced.<sup>3</sup>

The court noted there are two exceptions to the primary right to challenge the judge at any time before the cause has otherwise commenced. The first exception to the general rule is the “ten day-five day” provision: “Where the judge . . . assigned to or who is scheduled to try the cause or hear the matter is known *at least 10 days before the date set for trial of hearing*, the motion shall be made at least five days before that date.”<sup>4</sup> The second exception is the “master calendar” exception.<sup>5</sup> The court did not find this exception factually applicable.

The court of appeal determined that the applicable rule was the “ten day-five day” rule subject to a 1965 amendment to the Code of Civil Procedure section 170.6.<sup>6</sup> “Jose Luis’ August 31 motion to disqualify Judge Kirk from hearing the jurisdictional proceeding

---

2. The Code of Civil Procedure § 170.6 subdivision (2) provides in critical part:

Where the judge, court commissioner, or referee assigned to or who is scheduled to try the cause or hear the matter is known at least 10 days before the date set for trial or hearing, the motion shall be made at least five days before that date. If directed to the trial of a cause where there is a master calendar, the motion shall be made to the judge supervising the master calendar, not later than the time the cause is assigned for trial. In no event shall any judge, court commissioner, or referee entertain such motion if it be made after the drawing of the name of the first juror, or if there be no jury, after the making of an opening statement by counsel for plaintiff, or if there be no such statement, then after swearing in the first witness or the giving of any evidence or after trial of the cause has otherwise commenced. If the motion is directed to a hearing (other than the trial of a cause), the motion must be made not later than the commencement of the hearing. In the case of trials or hearings not herein specifically provided for, the procedure herein specified shall be followed as nearly as may be. The fact that a judge, court commissioner, or referee has presided at or acted in connection with a pretrial conference or other hearing, proceeding or motion prior to trial and not involving a determination of contested fact issues relating to the merits shall not preclude the later making of the motion provided for at the time and in the manner hereinbefore provided.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

was made more than ten days before September 15; therefore the motion was timely under the ten day-five day rule . . . ."<sup>7</sup>

The court's decision turned upon the fact that a juvenile case is assigned to a particular department and not to a specific judge. Therefore, the court found that the motion was timely although it was brought against the same judge who presided over the minor's jurisdictional hearing before several continuances had been given.

A consequent and undue hardship on the litigant flows which negates the underlying thrust of Code of Civil Procedure section 170.6—to grant to the litigant a single reasonable opportunity to disqualify a *known* trial judge. To effectuate this legislative intent, the cases have evolved this rule: Where the hearing date is set, but postponed, a disqualification motion filed five days before the postponed date is timely.<sup>8</sup>

The court held that the effect of the juvenile court judge's improper refusal to recuse himself resulted in his loss of jurisdiction. Therefore, the order and judgment he made were void.

IN RE CARRIE W.  
78 Cal. App. 3d 866, 144 Cal. Rptr. 427 (1978)

Carrie W. and her brother were removed from the custody of their mother because of the mother's extreme emotional instability. The evidence showed that the financial and physical needs of the children were well met and that the children were not physically abused.

The juvenile court found under the California Welfare and Institutions Code Section 726(a)<sup>1</sup> that the parent was incapable of

7. *In re Jose S.*, 78 Cal. App. 3d 619, 626, 144 Cal. Rptr. 309, 312 (1978).

8. *Id.* at 627, 144 Cal. Rptr. at 312.

1. California Welfare and Institutions Code § 726 provides in part:

In all cases wherein a minor is adjudged a ward or dependent child of the court, the court may limit the control to be exercised over such ward or dependent child by any parent or guardian and shall by its order clearly and specifically set forth all such limitations, but no ward or dependent child shall be taken from the physical custody of a parent or guardian unless upon the hearing the court finds one of the following facts:

- (a) That the parent or guardian is incapable of providing or has failed or neglected to provide proper maintenance, training and education for the minor.
- (b) That the minor has been tried on probation in such custody and has failed to reform.
- (c) That the welfare of the minor requires that his custody be taken from his parent or guardian. . . .

CAL. WELF. & INST. CODE § 726 (West Supp. 1978).

providing maintenance, training and education for the minors. The mother on appeal claimed there was insufficient evidence to support a finding of dependency pursuant to Welfare and Institutions Code Section 300(a)<sup>2</sup> and that the court failed to find that it would be detrimental to return the children to the mother. "Section 300 permits the juvenile court to assert jurisdiction over children and declare them dependents of the court."<sup>3</sup>

At issue was whether the juvenile court had made an express finding of detriment required by Welfare and Institutions Code Section 726. The court of appeal examined two cases dealing with an analogous finding requirement for Section 4600 of the Civil Code. In *In re B.G.*<sup>4</sup> the supreme court said:

We conclude that section 4600 permits the juvenile court to award custody to a nonparent 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 interest" of the "welfare" of the child will not suffice.<sup>5</sup>

Although, here there was no express finding of detriment the court reasoned that the finding can be implied from the words of the juvenile court:

I . . . find that the parent or guardian is incapable of providing, or has failed and neglected to provide proper maintenance, training, education, for the minor, and the welfare of the minor requires that custody be taken from the parent or guardian.<sup>6</sup>

The court also relied on *Chaffin v. Frye*.<sup>7</sup> There, minor children were taken from their parents' custody without making an express finding of detriment pursuant to section 4600. The judgment was upheld because the pleadings and the evidence presented at the hearing disclosed that the only question presented to the trial

---

2. The applicable part of Welfare and Institutions Code § 300, dealing with the jurisdiction of the court, 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. 1978).

3. *In re Carrie W.*, 78 Cal. App. 3d 866, 870, 144 Cal. Rptr. 427, 429 (1978).

4. 11 Cal. 3d 679, 523 P.2d 244, 114 Cal. Rptr. 444 (1974).

5. 11 Cal. 3d 679, 698-99, 523 P.2d 244, 257, 114 Cal. Rptr. 444, 457 (1974). The applicable parts of California Civil Code § 4600 state:

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 Supp. 1978).

6. 78 Cal. App. 3d at 873, 144 Cal. Rptr. at 430.

7. 45 Cal. App. 3d 39, 119 Cal. Rptr. 22 (1975).

court was whether an award of custody to the mother would be detrimental to the children. The court felt that whenever the proceeding is predicated entirely upon "specific instances of detriment" an implied finding of detriment is made which will satisfy the requirement of an express finding.

The court of appeal followed this rationale developed in the two civil code cases and determined that an implied finding of a detriment was sufficient under Welfare and Institutions Code section 726.

MATTER OF ANTONIO F.

78 Cal. App.3d 440, 144 Cal. Rptr. 466 (1978)

Antonio and his brothers and sisters were left in the care of their aunt when their mother, Maria Nunez F., was notified by the United States Department of Immigration that she would have to leave the country. The children remained with their aunt, Mrs. Salazar, for five years. During this time the court found that Mrs. Salazar was receiving money regularly from the mother for the support of these children. Mrs. Salazar applied for and obtained welfare aid for the children. The Department of Public Welfare referred the case to the probation department and a petition was filed in the juvenile court asking that all the children be declared "dependent children" pursuant to section 600(a) of the Welfare and Institutions Code.<sup>1</sup>

Maria Nunez F. did not receive notice as to any of the California Welfare and Institutions Code section 600(a) proceedings or annual review proceedings. It was only after the filing of a free from custody petition by the San Diego County Department of Public Welfare that the mother received notice.

The court examined the statutory requirements of notice appli-

---

1. Former California Welfare and Institutions Code § 600 provided in part:

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 § 600 (West 1972). Repealed by Stats. 1976, c. 1068, p. —, § 20.



cable to Welfare and Institutions Code section 600. They are found in Welfare and Institutions Code section 656, which stated prior to amendment in 1978:

A petition to commence proceedings in the juvenile court to declare a minor a ward or a dependent child of the court shall be verified and must contain:

. . .  
(e) The name or names and residence address, if known to petitioner, of all parents and guardians of such minor. If there is no parent or guardian residing within the state, or if his place of residence is not known to petitioner, the petition must also contain the name and residence address, if known, of any adult relative residing within the county, or, if there be none, the adult relative residing nearest to the location of the court.<sup>2</sup>

Also, the Welfare and Institutions Code section 658 provided:

Upon the filing of the petition, the clerk of the juvenile court shall issue a notice, to which shall be attached a copy of the petition, and he shall cause the same to be served upon the minor, if the minor is 14 or more years of age or, in a case in which the minor is alleged to be a person described in Section 601<sup>3</sup> or 602<sup>4</sup>, if the minor is eight or more years of age, and upon each of the persons described in subdivision (e) of Section 656 whose residence addresses are set forth in said petition and thereafter before the hearing upon all such persons whose residence addresses become known to the clerk. If the petition alleges that the minor is a person described in Section 601 or 602 the clerk shall issue a copy of the petition, to the minor's attorney and to the district attorney if the district attorney has notified the clerk of the court that he wishes to receive such petition, containing the time, date, and place of the hearing.<sup>5</sup>

---

2. CAL. WELF. & INST. CODE § 656(e) (West 1972). This section was amended in 1976, deleting reference to "dependent child" status. (1976 Cal. Stats. ch. 1068, p. —, 537.

3. The applicable part of section 601 states:

- (a) 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 years 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 which may adjudge such person to be a ward of the court.

CAL. WELF. & INST. CODE § 601 (West Supp. 1978).

4. Section 602 also deals with the jurisdiction of the juvenile court. It 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. 1978).

5. CAL. WELF. & INST. CODE § 658 (West 1972). The section has been subsequently amended to read as follows:

Upon the filing of the petition, the clerk of the juvenile court shall issue a notice, to which shall be attached a copy of the petition, and he shall cause the same to be served upon the minor, if the minor is . . . eight or more years of age, and upon each of the persons described in subdivision (e) of Section 656 whose residence addresses are set forth in said petition and thereafter before the hearing upon all such persons whose residence addresses become known to the clerk. . . . The clerk shall issue a copy of the petition, to the minor's attorney and to the district attorney, if the dis-

The court of appeal found that no notice was in fact ever sent to Maria Nunez F. because it was "impossible" to determine her residence address. Moreover, no letter or notice of the proceedings was sent to the mother at her last known address.

The court determined that "The statutory duties . . . imposed upon the clerk of the juvenile court to give notices to 'each of the persons described in subdivision (e) of Section 656 whose residence addresses are set forth in said petition' does not set forth the full measure of the due process where a Welfare and Institutions Code section 600(a) proceeding is undertaken."<sup>6</sup> The court of appeal, cited *Lois R. v. Superior Court of Los Angeles County*,<sup>7</sup> which held that a section 600 petition deprives the parents of a valued right. "The parental right to have children and to the custody of those children is included among the liberties protected by the due process clause."<sup>8</sup>

The appellate court decided that notice is such a fundamental ingredient of due process that it cannot be left to the inadequate notice requirements of Welfare and Institutions Code sections 656 and 658. The court then examined for analogy the free from custody proceeding under Civil Code section 232.<sup>9</sup> Section 235 of the

strict attorney has notified the clerk of the court that he wishes to receive such petition, containing the time, date and place of the hearing.

(Amended by 1972 Cal. Stats. ch. 906, p. 1610, § 3 and 1976 Cal. Stats., ch. 1068, p. —, § 38).

6. *Matter of Antonio F.*, 78 Cal. App. 3d 440, 447, 144 Cal. Rptr. 466, 470 (1978).

7. 19 Cal. App. 3d 895, 97 Cal. Rptr. 158 (1971).

8. *Id.* at 901, 97 Cal. Rptr. at 163.

9. California Civil Code § 232 (a)(2) and (a)(7) provide:

(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:

(2) Who has been cruelly treated or neglected by either or both of his parents, if such person has been a dependent child of the juvenile court, and such parent or parents deprived of his custody for the period of one year prior to the filing of a petition praying that he be declared free from the custody and control of such cruel or neglectful parent or parents.

(7) Who has been cared for in one or more foster homes under the supervision of the juvenile court, the county welfare department or other public or private licensed child-placing agency 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

Civil Code permits the issuance of a citation upon the filing of the Civil Code section 232 petition. Civil Code section 235(a) provides:

Such citation shall be served in the manner provided by law for the service of a summons in a civil action, other than by publication.<sup>10</sup>

Section (b) provides:

If the father or mother of such minor person . . . cannot, with *reasonable diligence*, be served as provided for in subdivision (a), or if his or her place of residence is not known to petitioner . . . [an affidavit to that effect shall be filed and] [t]hereupon the court shall make an order that the service be made by the publication . . .<sup>11</sup>

The court also looked to *In re Beebe*.<sup>12</sup> The *Beebe* court said “[i]t is difficult to conceive of ‘reasonable diligence’ in attempting service without some diligence in seeking [an] address.”<sup>13</sup> The court concluded that the efforts made to locate Maria Nunez F. were not reasonably calculated to locate her and to appraise her of the pending section 600(a) proceeding. As a result, the juvenile court did not acquire jurisdiction over the children in the section 600(a) proceedings without service of process or notice to her.

Another issue was raised on appeal regarding the action of the trial court declaring the minors free from their mother’s custody and control on the grounds that they were cared for in a “foster home . . . for two or more consecutive years. . . .”<sup>14</sup> The court said that “Civil Code section 232(a)(7) must be read and interpreted in the light of statutes dealing in the same subject matter [citations omitted] and harmonized with the whole system of law of which it is a part [citations omitted].”<sup>15</sup> The court then examined Welfare and Institutions Code section 11251<sup>16</sup> which authorizes aid and services for children placed in foster homes pursuant to § 232(a)(7).<sup>17</sup> This section defines foster care as “care

- 
- (i) Provide a home for said child;
  - (ii) Provide care and control for the child;
  - (iii) Maintain an adequate parental relationship with the child; and
  - (iv) Maintain continuous contact with the child, unless unable to do so.

Physical custody of the child by the parent or parents for insubstantial periods of time during the required two-year period will not serve to interrupt the running of such period.

CAL. CIV. CODE § 232 (a)(2), (a)(7) (West Supp. 1978).

10. CAL. CIV. CODE § 235 (a) (West Supp. 1978).

11. CAL. CIV. CODE § 235 (b) (West Supp. 1978) (emphasis added).

12. 40 Cal. App. 3d 643, 115 Cal. Rptr. 322 (1974).

13. *Id.* at 645, 115 Cal. Rptr. at 324.

14. CAL. CIV. CODE § 232 (a)(7) *supra* note 9.

15. 78 Cal. App. 3d at 453, 144 Cal. Rptr. at 474 (1978).

16. California Welfare and Institutions Code § 11251 explicitly states that “foster care’ means care other than in the home of his parent or relative.” CAL. WELF. & INST. CODE § 11251 (West Supp. 1978).

17. CAL. CIV. CODE § 232(a)(7) *supra* note 9.

other than in the home of his parent or relative. . . ."<sup>18</sup>

Because Welfare and Institutions Code section 11251 specifically excludes a child residing with a relative from the definition of a foster home the court concluded that Civil Code section 232(a)(7) did not factually apply here since the children had remained with their aunt. The court stated that Civil Code section 232(a)(7) "does not authorize a free from custody order where the placement has been in a home not within the definition of Welfare and Institutions Code § 11251(b)."<sup>19</sup>

IN RE ROBERT H.

78 Cal. App. 3d 894, 144 Cal. Rptr. 565 (1978)

Having received information that Robert H. had been involved in the theft of two motorcycles, two police officers went to his residence to talk to him. Upon learning that Robert H. was not at home, they then inspected the neighborhood and found a stolen motorcycle within one-half block of the defendant's home. The officers then returned to Robert H.'s home and found him present.

After responding in the negative to whether a stolen motorcycle was being concealed in the garage, Robert H. was asked by the officers if they could search the garage. The officers informed the thirteen year old that he could refuse to consent to such a search; however, consent was granted. The search produced no evidence. The officers then requested permission to search the backyard, again informing Robert H. of his right to refuse consent. Robert H. again consented and the police found a stolen motorcycle partially concealed.

Robert H. was declared a ward of the court pursuant to Welfare and Institutions Code section 602.<sup>1</sup> At issue was whether a minor

---

18. CAL. WELF. & INST. CODE § 11251 (West Supp. 1978).

19. 78 Cal. App. 3d at 453, 144 Cal. Rptr. at 474 (1978).

1. California Welfare and Institutions Code § 602 defines the jurisdiction of the juvenile court. This section 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. 1978).

can validly consent to a search of the premises in which he and his parents reside when his parents are absent from the premises.

In deciding that a minor can validly agree to a consent search, the Third District Court of Appeal relied upon *People v. Lara*.<sup>2</sup> That case held that a minor, like an adult, may waive rights extrajudicially, if the waiver is knowing and intelligent. Whether a minor has knowingly and intelligently waived them depends upon his age, education and degree of intelligence as well as upon his experience and familiarity with the law, or upon the "totality of circumstances."<sup>3</sup> The court found that Robert's consent was knowingly and voluntarily given. The police officers who conducted the search informed him that he had a right to refuse permission. The court also determined there was no basis upon which the minor could assert that his parents' constitutional rights were violated.

There is . . . no valid reason why a minor residing with his parents should not have the authority to consent to a premises search when neither parent is present and the search is motivated by conduct of the minor, not of the parents.<sup>4</sup>

The court of appeal determined that the constitutional right and the corollary right to waive the permission to search were in Robert H. alone.

The holding was limited to the narrow issue presented in this case and the question of whether a minor can consent to a search of the premises for evidence to be used against any other member of the household was not considered.

IN RE HAROLD M.

78 Cal. App. 3d 380, 144 Cal. Rptr. 744 (1978)

This appeal involved a minor, under fourteen years of age, who was tried in the Los Angeles Superior Court on a petition alleging conspiracy to commit burglary and commission of overt acts in furtherance of the conspiracy. The minor was subsequently declared a ward of the court pursuant to Welfare and Institutions Code section 602.

Penal Code section 26<sup>1</sup> creates a rebuttable presumption which excludes children under the age of fourteen from criminal liability

---

2. 67 Cal. 2d 365, 432 P.2d 202, 62 Cal. Rptr. 586 (1967).

3. 78 Cal. App. 3d 894, 899, 144 Cal. Rptr. 565, 567 (1978).

4. *Id.* at 899, 144 Cal. Rptr. at 567.

1. California Penal Code § 26 reads in part:

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

One—Children under the age of fourteen, in the absence of clear proof

because of the minor's lack of capacity. This presumption must be overcome by "clear proof"<sup>2</sup> that the minor knew of his act's wrongfulness before he can be declared a ward of the court under the California Welfare and Institutions Code section 602.<sup>3</sup>

In this case, the lower court permitted the prosecution to introduce into evidence prior sustained petitions against the minor for similar offenses in order to satisfy the "clear proof" requirement of Penal Code section 26.<sup>4</sup> The lower court allowed this evidence to be admitted for the limited purpose of determining if the minor understood the wrongfulness of his act.

The minor challenged this act, contending that it violated the Welfare and Institutions Code section 203 which bars the use of prior convictions of crimes alleged in previous petitions.<sup>5</sup>

The Second District Court of Appeal decided against the minor, stating that the use of the prior sustained petitions did not involve factual guilt. Their use was specifically limited to the issue of whether the minor knew it was wrong to break into an automobile.

---

that at the time of committing the act charged against them, they knew its wrongfulness . . . .

CAL. PENAL CODE § 26 (West Supp. 1978).

2. "A juvenile court must . . . consider a child's age, experience, and understanding in determining whether he would be capable of committing conduct proscribed by section 602." *In re Gladys R.*, 1 Cal. 3d 855, 864, 464 P.2d 127, 134, 83 Cal. Rptr. 671, 678 (1970).

3. California Welfare and Institutions Code § 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 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. 1978).

4. The sustained petitions were for theft and burglary. The burglary charge was actually for auto tampering. *In re Harold M.*, 78 Cal. App. 3d 380, 384 n.3, 144 Cal. Rptr. 744, 746 n.3 (1978).

5. California Welfare and Institutions Code § 203 states:

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.

CAL. WELF. & INST. CODE § 203 (West Supp. 1978).

IN RE RICHARD T.  
79 Cal. App. 3d 382, 144 Cal. Rptr. 856 (1978)

Under the order of the Superior Court of Los Angeles County, Richard T., a minor, was committed on a charge of having received stolen property. The court of appeal affirmed, holding that the evidence was sufficient to sustain the finding that the minor had possession of a gun which he knew to be stolen, and his parole officer was not required to give a *Miranda*<sup>1</sup> warning during the investigative process.

The Second District Court of Appeal stated that the procedural safeguards in *Miranda* come into play only where "custodial interrogation" is involved. The court used the Supreme Court's language in *Miranda v. Arizona* to define what "custodial interrogation" meant. By "custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."<sup>2</sup>

After examining the parolee-parole officer relationship, the court stated that parolees are entitled to the protection afforded by the *Miranda* warnings.<sup>3</sup> However, not every contact arising out of the parole relationship requires such a warning. The court of appeal found that here the contact was made solely to *investigate* the possibility that the minor might have violated a condition of his parole.

The court also said that "to hold that a parolee is entitled to *Miranda* warnings every time he is interviewed or questioned by his parole officer concerning his parole would materially hamper, if not destroy, the entire purpose of parole."<sup>4</sup> The court of appeal cited *People v. Denne*<sup>5</sup> for support. There the court said, "Because the public is entitled to maximum protection in the administration of the parole system, the process of rehabilitation takes place under the vigilant and tutelary eye of the parole officer."<sup>6</sup>

---

1. *Miranda v. Arizona*, 384 U.S. 436 (1966).

2. *Id.* at 444.

3. See *In re Martinez*, 1 Cal. 3d 641, 463 P.2d 734, 83 Cal. Rptr. 382 (1970). See also *People v. Gastelum*, 237 Cal. App. 2d 205, 46 Cal. Rptr. 743 (1965).

4. *In re Richard T.*, 79 Cal. App. 3d 382, 391, 144 Cal. Rptr. 856, 861 (1978).

5. 141 Cal. App. 2d 499, 297 P.2d 451 (1956).

6. *Id.* at 508, 297 P.2d at 457.

IN RE KATHY P.  
79 Cal. App. 3d 416, 144 Cal. Rptr. 868 (1978)

Kathy P. was issued a traffic citation for failure to yield the right-of-way.<sup>1</sup> The minor pleaded not guilty at the juvenile court traffic division. The record did not show that the minor had consented to have the matter heard upon a copy of the Vehicle Code citation instead of a formal petition filed under California Welfare and Institutions Code section 650.<sup>2</sup> The minor's consent is required by Welfare and Institutions Code section 257 before the matter can be heard upon a copy of the Vehicle Code citation.<sup>3</sup>

Following an adverse determination by a juvenile court traffic hearing officer, Kathy P. made a motion for a rehearing which was denied.

One of the issues confronting the court was whether the decision of the hearing officer improperly became a judicial act by a subordinate judicial officer when the request for a hearing was denied.

The Second District Court of Appeal examined the authority for the appointment of juvenile court traffic hearing officers acting pursuant to Welfare and Institutions Code section 255.<sup>4</sup> This authority is found in Article VI, sections 21 and 22 of the California Constitution. Section 22 provides: "The Legislature may provide for the appointment by the trial courts of record of officers such as commissioners to perform *subordinate judicial duties*."<sup>5</sup> Sec-

1. At the time of the alleged violation, Vehicle Code § 21804 provided: "The driver of a vehicle about to enter or cross a highway from any public or private property, or from an alley, shall yield the right-of-way to all vehicles approaching on the highway." CAL. VEH. CODE § 21804 (West 1971).

2. The applicable part of Welfare and Institutions Code § 650 reads: "A proceeding in the juvenile court to declare a minor a ward under Section 602 of the court if commenced by the filing with the court, by the prosecuting attorney as petitioner, of a petition, in conformity with the requirements of this article." CAL. WELF. & INST. CODE § 650 (West Supp. 1978).

3. Welfare and Institutions Code § 257 provides in pertinent part:  
*With the consent of the minor*, a hearing before a traffic hearing officer . . . wherein such minor is charged with such traffic offense may be conducted upon an exact legible copy of a written notice given pursuant to . . . Section 41103 of the Vehicle Code . . . in lieu of a petition as provided in Article 16 (commencing with Section 650) of this chapter.  
CAL. WELF. & INST. CODE § 257 (West Supp. 1978) (emphasis added).

4. Welfare and Institutions Code § 255 provides that a "judge of the juvenile court . . . may appoint one or more persons of suitable experience . . . to serve as traffic hearing officers . . ." CAL. WELF. & INST. CODE § 255 (West Supp. 1978).

5. Cal. Const. art. VI, § 22 (emphasis added).



tion 21 states: "On stipulation of the parties litigant the court may order a cause to be tried by a temporary judge who is a member of the State Bar, sworn and empowered to act until final determination of the cause."<sup>6</sup> Under these provisions a juvenile court traffic hearing officer may perform only *subordinate judicial duties* in the absence of a stipulation by the parties.

To determine the validity of a hearing officer acting without a stipulation by the parties the court relied on *In re Edgar M.*<sup>7</sup> There the California Supreme Court said, "It is clear that without the availability of any review procedures the contested adjudication and disposition of a minor as a ward of the juvenile court by a referee acting without the parties' consent would violate the constitutional limitation upon his functions to 'subordinate judicial duties' (art. VI, § 22)."<sup>8</sup>

The court of appeal also found that "no provision has been made to insure a constitutionally adequate system of review of traffic hearing officers' findings as is provided by Welfare and Institutions Code section 252, as construed by *In re Edgar M.* in cases wherein the initial hearing has been conducted by a juvenile court referee."<sup>9</sup> As proof of this inadequacy, the court emphasized the information made available to the reviewing juvenile court judge. This consisted of only a summary memo prepared by the supervisor of the traffic division and the handwritten notes of the hearing officer. Because of this, the court concluded, "[T]he findings of the traffic hearing officer had the effect of a final determination, a result incompatible with the limited authority granted to subordinate judicial officers."<sup>10</sup> Because of this, the court of appeal held that only when the reviewing juvenile court judge is given sufficient data to form a judgment independent from the traffic hearing officer is the procedure used here constitutional.<sup>11</sup>

#### MATTER OF JAMES S.

81 Cal. App. 3d 198, 144 Cal. Rptr. 893 (1978)

James was found to come within the provisions of the California Welfare and Institutions Code section 602<sup>1</sup> because he had

---

6. Cal. Const. art. VI, § 23 (1879, amended by 1966).

7. *In re Edgar M.*, 14 Cal. 3d 727, 537 P.2d 406, 122 Cal. Rptr. 574 (1975).

8. *Id.* at 735, 537 P.2d at 412, 122 Cal. Rptr. at 580.

9. *In re Kathy P.*, 79 Cal. App. 3d 416, 425, 144 Cal. Rptr. 868, 872 (1978).

10. *Id.* at 425, 144 Cal. Rptr. at 873.

11. *Id.*

1. California Welfare and Institutions Code § 602 provides that a minor who has violated the law is within the jurisdiction of the juvenile court and may be adjudged a ward of the court. CAL. WELF. & INST. CODE § 602 (West Supp. 1978).

committed attempted forcible rape. Following a Youth Authority diagnostic study, James was declared a ward of the court and ordered suitably placed.

All suitable placement facilities refused to accept the minor. A supplemental petition pursuant to Welfare and Institutions Code section 777<sup>2</sup> was filed alleging that the "suitable placement" disposition order had not been effective in James' rehabilitation. At issue was "whether a section 777 modification *requires* some misconduct upon the part of the minor or whether the inability of the juvenile court to effectuate its own disposition permits the escalation of restriction."<sup>3</sup>

Here the Court of Appeal, Second District, decided that a section 777 modification does not require any misconduct upon the part of the minor. The inability of the juvenile court to effectuate its own disposition is sufficient to permit the escalation of the restriction.

The court determined that a suitable placement disposition is *conditional* upon obtaining placement which is suitable. "To impose an 'absolute' upon such a disposition by the juvenile court would cause hesitancy to try a *possible* adequate disposition."<sup>4</sup>

In the customary type of case, a section 777 hearing would follow an act on the part of the ward causing his rehabilitation to be ineffective.<sup>5</sup> Here, the court determined that no misconduct on the minor's part was necessary for a modification: "When . . . the preferred disposition is in fact nonexistent, i.e., there exists no 'suitable placement' facility, then certainly *that disposition* has failed of effectiveness within the meaning of § 777."<sup>6</sup>

2. The applicable part of California Welfare and Institutions Code § 777 states:

An order changing . . . a previous order . . . by directing commitment to the Youth Authority shall be made only after noticed hearing upon a supplemental hearing.

(a) The supplemental petition shall be filed by the probation officer in the original matter and shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the rehabilitation or protection of the minor.

CAL. WELF. & INST. CODE § 777 (West Supp. 1978).

3. *Matter of James S.*, 81 Cal. App. 3d 198, 201, 144 Cal. Rptr. 893, 894-95 (1978).

4. *Id.* at 201, 144 Cal. Rptr. at 895.

5. *See In re Arthur N.*, 16 Cal. 3d 226, 545 P.2d 1345, 127 Cal. Rptr. 641 (1976).

6. 81 Cal. App. 3d 198, 201, 144 Cal. Rptr. at 895 (1978).

The minor was charged with battery and was brought before a juvenile court referee who determined that there was reasonable doubt that the minor had committed the offense. The referee dismissed the petition brought pursuant to Welfare and Institutions Code section 602.<sup>1</sup>

A juvenile court judge ordered a *de novo* rehearing of the petition pursuant to sections 559 and 560 of the Welfare and Institutions Code.<sup>2</sup> Counsel for the minor contended that this procedure is contrary to the fifth amendment prohibition against double jeopardy because re-examination of the possibility of his guilt constituted second exposure to jeopardy for the same offense.

The supreme court looked to its decision in *In re Edgar M.*<sup>3</sup> and the California Constitution.<sup>4</sup> It stated that a referee is constitutionally limited to the performance of only "subordinate judicial duties," and a "referee's determinations are not binding . . . until adopted by the court itself."<sup>5</sup> The court said that a referee's subordinate judicial duties are so limited that "unless a minor waives his right to judicial redeterminations, a referee's findings and orders are advisory only."<sup>6</sup>

The People argued that since a referee's function is advisory the minor's exposure to jeopardy in a proceeding where a referee presides is not separate and apart from the action of the juvenile court when it finally adjudicates the issue. This "on-going proceeding" argument was rejected by the court because at issue here was a *de novo* rehearing and not a review of advisory determinations made by a referee. A *de novo* rehearing "is in no sense a review of the hearing previously held, but is a complete trial of the controversy, the same as if no previous hearing had ever been

---

1. Welfare and Institutions Code § 602 provides that any minor under the age of eighteen 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. 1978).

2. At the time of adjudication § 559 provided: "A judge of the juvenile court may, on his own motion . . . order a rehearing of any matter heard before a referee." CAL. WELF. & INST. CODE § 559 (West 1972). This section was repealed in 1976 and § 253 now provides for a rehearing on the court's own motion. At the time of adjudication § 560 provided: "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 § 560 (West 1972) (emphasis added). This provision is currently contained in section 254.

3. 14 Cal. 3d 727, 537 P.2d 406, 122 Cal. Rptr. 574 (1975).

4. Cal. Const. art. VI, § 22.

5. 14 Cal. 3d at 734, 537 P.2d at 411, 122 Cal. Rptr. at 579.

6. 20 Cal. 3d at 897, 576 P.2d at 965, 145 Cal. Rptr. at 3.

held.”<sup>7</sup>

The court acknowledged that the supreme court in *Breed v. Jones*<sup>8</sup> emphasized the fifth amendment prohibition against double jeopardy is “a prohibition against multiple trials—not the threat of multiple punishment.”<sup>9</sup> The court reasoned that a juvenile prosecution is the equivalent of a criminal prosecution. Further, because the proceedings before a referee in this case had reached a conclusion and the minor is threatened with a second prosecution for the offense in the *de novo* rehearing, he is being subjected to double jeopardy.

“If that hearing [referee’s jurisdictional hearing] is terminated and the juvenile is subjected again to a *de novo* hearing—not a review of the first hearing and determinations therein—he would necessarily be exposed to jeopardy a second time within the meaning of *Breed v. Jones* . . . .”<sup>10</sup>

The court concluded that a rehearing, granted by a juvenile court judge on the judge’s own motion pursuant to sections 559 and 560 of the Welfare and Institutions Code, of a referee’s determination that a minor had not committed the offense alleged in the petition constitutes a violation of the fifth amendment prohibition against double jeopardy.

The effect of this decision upon nonjurisdictional referee determinations such as detention hearings, fitness hearings, and annual reviews was not determined.

Because this decision precludes rehearing of a referee’s findings during a jurisdictional hearing under the double jeopardy prohibition, a referee’s decision becomes a final adjudication. This result is inconsistent with the court’s requirement of “subordinate judicial duties” discussed in *Edgar M.*<sup>11</sup> The effect of this decision is to prohibit referee jurisdictional hearings.<sup>12</sup>

---

7. *Collier & Wallis Ltd. v. Aston*, 9 Cal. 2d 202, 205, 70 P.2d 171, 173 (1937).

8. 421 U.S. 519 (1975).

9. 20 Cal. 3d at 898, 576 P.2d at 966, 145 Cal. Rptr. at 4.

10. *Id.* at 899, 576 P.2d at 967, 145 Cal. Rptr. at 4.

11. 14 Cal. 3d 727, 537 P.2d 406, 122 Cal. Rptr. 574 (1975).

12. 20 Cal. 3d at 901, 576 P.2d at 967, 145 Cal. Rptr. at 5 (concurring opinion).

The Los Angeles County Department of Social Services filed the petition alleging that Lisa and her brother were dependent children within the meaning of Welfare and Institutions Code section 600 (now § 300).<sup>1</sup> The evidence showed that twelve-year-old Lisa was sexually molested on almost a daily basis by her mother's boyfriend and that her eight-year-old brother witnessed the molestation on at least one occasion. This, in addition to the fact that the mother was aware of the molestations and refused to do anything to prevent them, led the lower court to conclude the evidence was sufficient to support the dependency orders. The children were removed temporarily to the home of their father. At issue was the standard of proof used by the lower court to support the dependency order. The lower court used a preponderance of the evidence standard instead of a clear and convincing test. The Second District Court of Appeal said the correct standard of proof necessary to support the factual allegations of dependency under Welfare and Institutions Code section 600 (section 300) are the same as that under section 355, "proof by a preponderance of evidence, legally admissible in the trial of civil cases. . . ."<sup>2</sup>

The court concluded that "a more stringent standard do[es] not arise until a finding of dependency results in a disposition which severs the parent-child relationship either temporarily or perma-

1. Applicable parts of Welfare and Institutions Code § 300 provide:

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. 1978).

2. Welfare and Institutions Code § 355 provides:

At the hearing, the court shall first consider only the question whether the minor is a person described by Section 300, and for this purpose, any matter or information relevant and material to the circumstances or acts which are alleged to bring him within the jurisdiction of the juvenile court is admissible and may be received in evidence; however, proof by a preponderance of evidence, legally admissible in the trial of civil cases must be adduced to support a finding that the minor is a person described by Section 300 . . . .

CAL. WELF. & INST. CODE § 355 (West Supp. 1978).

nently."<sup>3</sup> No such question arose here since the children were removed from the home of the mother to that of the father only temporarily.<sup>4</sup>

IN RE ROBIN M.

21 Cal. 3d 337, 579 P.2d 1, 146 Cal. Rptr. 352 (1978)

A minor who has been detained in custody on a petition filed against him in the juvenile court is entitled to have his jurisdiction hearing within fifteen judicial days of his detention hearing.<sup>1</sup> Here the court decided that a minor cannot be detained for more than these fifteen judicial days even if a second petition is filed against him based on the same transaction as the initial petition.

On July 19, 1977, the minor was taken into temporary custody and detained at a juvenile hall. A detention hearing held on July 21 ordered the minor to remain in custody at the juvenile hall. Upon denial of the allegations the jurisdiction hearing was set for August 12. At that time the prosecution asked for a continuance

---

3. 81 Cal. App. 3d 192, 196, 146 Cal. Rptr. 178, 180 (1978).

4. *Id.* at 196, 146 Cal. Rptr. at 181.

1. The purpose of a detention hearing is to determine whether the court should assume custody of the minor pending the jurisdiction hearing. The hearing must take place one court day after a petition is filed against the minor. The minor is provided with court appointed counsel at the hearing if he has none, pursuant to Welfare and Institutions Code § 700.

During the detention hearing the minor is read the accusation on the petition and is asked whether they are admitted or denied. If they are denied an adjudication hearing is set for two weeks later. CAL. RULES OF COURT, RULE 1321.

In order to detain a minor during the detention hearing one of the grounds listed in California Rules of Court, Rule 1327 must be found to exist:

- (1) that the minor has violated an order of the court.
- (2) that the minor has escaped from a commitment of the court.
- (3) that the minor is likely to flee to avoid the jurisdiction of the court.
- (4) that it is a matter of immediate and urgent necessity for the protection of the minor.
- (5) that it is reasonably necessary for the protection of the person or property of another.

CAL. RULES OF COURT, RULE 1327.

Welfare and Institutions Code § 334 provides the time limits for the setting of a hearing.

Upon the filing of the petition, the clerk of the juvenile court shall set the same for hearing within 30 days, except that in the case of a minor detained in custody at the time of the filing of the petition, the petition must be set for hearing within 15 judicial days from the date of the order of the court directing such detention.

CAL. WELF. & INST. CODE § 334 (West Supp. 1978).

due to the absence of a key witness. The court denied the request and released the minor. While attempting to secure his release at juvenile hall, the minor was rearrested and on August 15, an identical petition was refiled. At his second detention hearing he was once again ordered to be detained. The minor's actual period of detention extended from July 19 until his jurisdiction hearing on September 6, a total of forty-nine calendar days.

Petitioner, Robin M., did not challenge the propriety of filing a second petition after the first had been dismissed. The petitioner only attacked his custodial status during the pendency of the second petition. The court did not decide if there are limitations on the state's power to refile a petition. However, they seem to frown upon such a technique as employed in these facts.

The Supreme Court of California, strictly construing California Welfare and Institutions Code section 632, said that once a petition is filed in a timely manner the detained minor is entitled to a detention hearing "as soon as possible but in any event before the expiration of the next judicial day after a petition . . . has been filed."<sup>2</sup> If the minor is not released at the detention hearing, the court may further detain him "for a period not to exceed 15 judicial days."<sup>3</sup>

It should be pointed out that the purpose of the detention hearing is to determine whether the court should assume custody of the minor pending the jurisdiction hearing. The court reiterated that the legislature has intended such detention as being the exception and not the rule.

The supreme court determined that the legislature intended that a minor be released from detention if a jurisdictional hearing is not held within fifteen days after the detention hearing since it specifically limited the length of time a court may order a minor detained following the detention hearing to fifteen judicial days. Also, the legislature refused to provide for any rehearing or extension of that detention order when the original fifteen-day pe-

---

2. Unless sooner released, a minor taken into custody under the provisions of this article shall be brought before a judge or referee of the juvenile court for a hearing (which shall be referred to as a "detention hearing") to determine whether the minor shall be further detained, as soon as possible but in any event before the expiration of the next judicial day after a petition to declare such minor a ward or dependent child has been filed. If the minor is not brought before a judge or referee of the juvenile court within the period prescribed by this section, he shall be released from custody.

CAL. WELF. & INST. CODE § 632 (West 1972). The subject matter of this section is now contained in Welfare and Institutions Code § 315.

3. The detention hearing may be continued only "upon motion of the minor or a parent or guardian of such minor." CAL. WELF. & INST. CODE § 638 (West 1972). The subject matter of this section is now contained in § 322.

riod expires.<sup>4</sup>

The court also considered the report of the Governor's Special Study Commission on Juvenile Justice,<sup>5</sup> which was substantially followed by the legislature. The commission recommended that "maximum time limits for hearings should be set forth in the law" and that "[p]riority should be given . . . to reducing the time spent in detention prior to a finding of jurisdiction."<sup>6</sup>

IN RE MICHAEL C.

21 Cal. 3d 471, 579 P.2d 7, 146 Cal. Rptr. 358 (1978)

Michael C. requested to see his probation officer at the commencement of a custodial interrogation. The interrogation resulted in the minor's confession of murder.

Declaring the confession inadmissible, the California Supreme Court said that Michael's request to see his probation officer at the commencement of his interrogation negated any willingness on his part to discuss his case with the police. Therefore, the court considered that his request had invoked his fifth amendment privilege.<sup>1</sup>

The California Supreme Court referred to its decision in *People v. Burton*<sup>2</sup> where it held that a minor's request to consult his parents invoked the minor's fifth amendment privilege.

It would certainly severely restrict the "protective devices" required by *Miranda* in cases where the suspects are minors if the only call for help which is to be deemed an invocation of the privilege is the call for an attorney. It is fatuous to assume that a minor in custody will be in a posi-

---

4. A rehearing is authorized in limited circumstances. California Welfare and Institutions Code § 637 permits a rehearing within 24 hours of the filing of an affidavit by a parent or guardian alleging that no parent or guardian had been present at the detention hearing and had actual notice of the hearing. Also, § 637 provides for a rehearing at the minor's request to consider evidence of a prima facie case. However, neither of these rehearings affects the 15-day time limits of §§ 636 and 657. CAL. WELF. & INST. CODE § 637 (West Supp. 1978). Since the legislature provided for a rehearing in these situations, it is apparent that its failure to provide for a rehearing to extend the 15-day period was deliberate. *In re Robin M.*, 21 Cal. 3d 337, 345 n. 15, 579 P.2d 1, 5 n. 15, 146 Cal. Rptr. 352, 356 n. 15 (1978).

5. Report of the Governor's Special Study Commission of Juvenile Justice, Part I—Recommendations for Changes in California's Juvenile Justice, Part II—A Study of the Administration of Juvenile Justice in California (1960).

6. Commission Report, pt. 1 at p. 28.

1. *In re Michael C.*, 21 Cal. 3d 471, 475, 579 P.2d 7, 8, 146 Cal. Rptr. 358, 360 (1978).

2. 6 Cal. 3d 375, 491 P.2d 793, 99 Cal. Rptr. 1 (1971).



tion to call an attorney for assistance and it is unrealistic to attribute no significance to his call for help from the only person to whom he normally looks—a parent or guardian.<sup>3</sup>

Considering the emphasis which the juvenile court system places upon the close relationship between a minor and his probation officer, the court determined the “normal reaction” of the minor would be to request consultation with his probation officer.<sup>4</sup>

By analogy to *Burton*, the court held that the minor’s request for his probation officer was essentially a “call for help” and indicated that the minor intended to assert his fifth amendment privilege.<sup>5</sup>

IN RE RICHARD E.

21 Cal. 3d 349, 579 P.2d 495, 146 Cal. Rptr. 604 (1978)

Los Angeles County Department of Adoptions sought to free Richard from the custody and control of his parents pursuant to California Civil Code section 232, subdivision (a)(4).<sup>1</sup> The minor had been provided for by public agencies, without support from his parents who had abandoned him. His father was unfit to have custody because he had been convicted of a felony and his confinement was for such a time as to deprive Richard of a normal home life.

Richard’s father, who was represented by appointed counsel at the hearing on the petition, contended the judgment be reversed

---

3. *Id.* at 382, 491 P.2d at 798, 99 Cal. Rptr. at 5-6.

4. 21 Cal. 3d at 476, 579 P.2d at 9-10, 146 Cal. Rptr. at 361 (1978).

The probation officer testified at trial that he had “instructed Michael that at any time he has a police contact, even if they stop him and talk to him on the street, he is to contact me immediately,” reasoning that “many times the kids don’t understand what is going on, and what they are supposed to do relative to police . . . .”

*Id.* at 476 n.2, 579 P.2d at 9 n.2, 146 Cal. Rptr. at 361 n.2.

5. *Id.* at 476, 579 P.2d at 10, 146 Cal. Rptr. at 361.

1. When the petition was filed, California Civil Code § 232, subdivision (a) read 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 [is] convicted of a felony, if the felony of which such parent [was] convicted is of such nature as to prove the unfitness of such parent . . . to have future custody and control of the child, *or if any term of sentence of such parent . . . is of such length that the child will be deprived of a normal home for a period of years.*

CAL. CIV. CODE § 232 (West Supp. 1975). (Note: The italicized portion of the statute was deleted by 1976 amendment (1976 Cal. Stats. ch. 940 § 2)).

because the court failed to also appoint counsel for his son.<sup>2</sup>

The California Supreme Court first examined Civil Code section 237.5 which provides procedures for hearing on a petition to free a child from parental custody and control. The section states:

[T]he judge *shall* first read the petition to the child's parents, if they are present, . . . the judge *shall* explain any term or allegation contained therein and the nature of the proceeding, its procedures, and possible consequences. The judge *shall* ascertain whether the minor and his parents have been informed of the right . . . to be represented by counsel, . . . [and] . . . advise [them of such right if they were unaware]. . . . The court *may* appoint counsel to represent the minor whether or not [he] is able to afford counsel. [T]he court *shall* appoint counsel to represent each parent who appears . . . [and is unable to afford counsel].<sup>3</sup>

The supreme court construed the use of "shall" and "may" as conveying mandatory and discretionary meanings, respectively. Thus, an exercise of such discretion will not be disturbed on review unless it is abused.

The court then noted that a proceeding to free a child from parental custody and control is essentially accusatory in nature, directed against the parent and not the child. Therefore, the issue at such a proceeding is whether a parent is fit to raise the child. The supreme court determined that it is probable a "court will be fully advised of matters affecting the minor's best interests, and little assistance may be expected from independent counsel for the minor in furtherance of his client's or the court's interests."<sup>4</sup> But, the supreme court also said that when a child is found to have separate interests that are not protected, the court must exercise its discretion and appoint separate counsel for the minor. Finally, the supreme court concluded that "failure to appoint counsel for a minor in a free from parental custody and control proceeding does not require reversal of the judgment in the absence of miscarriage of justice."<sup>5</sup>

---

2. *In re Richard E.*, 21 Cal. 3d 349, 353, 579 P.2d 495, 497, 146 Cal. Rptr. 604, 606 (1978).

3. CAL. CIV. CODE § 237.5 (West Supp. 1978) (emphasis added).

4. *In re Richard E.*, 21 Cal. 3d 349, 354, 579 P.2d 495, 498, 146 Cal. Rptr. 604, 607 (1978).

5. *Id.* at 355, 579 P.2d at 499, 146 Cal. Rptr. at 608.

Carmaleta and her four brothers and sisters first came to the attention of the juvenile authorities in July 1970 when her brother Clarence was treated for a head injury similar to that suffered by his sister the previous year.<sup>1</sup>

In 1973 the children were removed from their parents' custody and declared dependent children of the San Diego County Juvenile Court. The wardships were ordered under Welfare and Institutions Code section 600 which permitted a child to be declared a dependent child when the home was an unfit place for him because of neglect, cruelty or physical abuse.<sup>2</sup> The action was the result of a petition alleging that the home was unfit because the father had subjected the girls to sexual abuse and he had subjected the boys to physical abuse.

The department of public welfare pursuant to section 232.9<sup>3</sup> filed a petition to release the minors from their parents' control and custody. Mrs. B. appealed from the ensuing judgment under section 232 subdivisions (a)(2) and (a)(6).<sup>4</sup>

1. Carmeleta's sister Carlotta suffered damage as a result of her injury and Clarence was partially paralyzed and lost his vision in the left eye.

2. Welfare and Institutions Code § 600 (now § 300), provided:

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 § 600 (West 1972).

3. The applicable parts of Civil Code § 232.9 provide:

The State Department of Health, a county welfare department, a county adoption department . . . which is planning adoptive placement of a child with a licensed adoption agency, or the State Department of Health acting as an adoption agency . . . may initiate an action under section 232 to declare a child free from the custody and control of his parents. The fact that a child is in a foster care home . . . shall not prevent the institution of such an action by any such agency or by a licensed adoption agency pursuant to section 232. If, at the time of filing of a verified petition by any department or agency specified in this section, the child is in the custody of the petitioner, such petitioner may continue to have custody of the child pending the hearing on the petition unless the court, in its discretion, makes such other orders regarding custody . . . which it finds will best serve and protect the interests and welfare of the child.

CAL. CIV. CODE § 232.9 (West Supp. 1978).

4. Civil Code § 232, subdivision (a)(2) provides that any person under 18 may be declared free from the custody and control of his parents if the youth "has been

The California Supreme Court first examined the finding under Civil Code section 232 subdivision (a)(6). Section 232 provides:

[A]n 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: . . . (6) [person] [w]hose parent or parents are, and will remain incapable of supporting or controlling the child . . . because of mental deficiency or mental illness . . . ."<sup>5</sup>

Citing *In re Baby Boy T.*,<sup>6</sup> the California Supreme Court defined mentally ill persons under section 232 as those persons who are either or both "(a) . . . of such mental condition that they are in need of supervision, treatment, care or restraint. (b) . . . of such mental condition that they are dangerous to themselves or to the person or property of others . . . ."<sup>7</sup>

Declining to liberalize the meaning of mental illness under the statute the court said, "the strictness of this definition of mental illness had acted as a safeguard to protect the primacy of the family."<sup>8</sup> Also, where the parents may be incapable of providing proper care, any significant harm to the child's welfare can be adequately addressed by subdivision (a)(7). California Civil Code § 232, subdivision (a)(7) provides that parental custody and control may be terminated when a child "has been cared for in one or more foster homes . . . 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 . . . ."<sup>9</sup> The court said this section "balances the interests of the child in secure and sufficient parenting with the conjoined interests of both parent and child in preserving the familial bond."<sup>10</sup>

---

cruelly treated or neglected by either or both of his parents, . . . has been a dependent child of the juvenile court, and such parent or parents deprived of his custody for the period of one year prior to the filing of a petition praying that he be declared free from the custody and control of such cruel or neglectful . . . parents." The applicable part of Civil Code § 232 subdivision (a)(6) provides that "any person under the age of 18 years" may be declared free from the custody and control of "either or both parents" if the "parent or parents are and will remain incapable of supporting the child in a proper manner because of mental deficiency or mental illness . . . ." CAL. CIV. CODE § 232 (West Supp. 1978).

5. CAL. CIV. CODE § 232 (a)(2)(6) (West Supp. 1978).

6. *In re Baby Boy T.*, 9 Cal. App. 3d 815, 88 Cal. Rptr. 418 (1970).

7. *Id.* at 820, 88 Cal. Rptr. at 421.

8. *In re Carmeleta B.*, 21 Cal. 3d 482, 491, 579 P.2d 514, 519, 146 Cal. Rptr. 623, 628 (1978).

9. CAL. CIV. CODE § 232(a)(7) (West 1978).

10. 21 Cal. 3d at 491, 579 P.2d at 520, 146 Cal. Rptr. at 629.

The supreme court found there was insufficient evidence to show Mrs. B. was mentally ill under the *In re Baby Boy T.*<sup>11</sup> standard. Therefore, the trial court erred to the extent it based its decision to grant the petition on the basis of section 232 subdivision (a)(6).

The lower court's second finding supporting the section 232 petition was that the children had been cruelly treated or neglected by their parents under subdivision (a)(2) of section 232.<sup>12</sup>

The supreme court found that the record indicated that the trial judge did not take Mrs. B.'s present circumstances into account before making a decision. Citing *In re Morrow*<sup>13</sup> the court said:

It is well settled that an order to free a child from parental custody and control must rest on present circumstances as well as past acts although such prior acts are evidence which may be considered by the court deciding whether there is sufficient showing to justify the order.<sup>14</sup>

The court determined that Mrs. B. was therefore entitled to have the circumstances leading to the dependency orders reviewed in light of subsequent events. Also, it was reasonable to consider under section 232 subdivision (b) whether the conditions which gave rise to the neglect still persisted.

The supreme court also examined Civil Code section 4600.<sup>15</sup> This section requires:

Before the court makes any order awarding custody to a person or persons other than a parent without the consent of the parents, it shall 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

---

11. 9 Cal. App. 3d 815, 88 Cal. Rptr. 418 (1970).

12. 21 Cal. 3d at 493, 579 P.2d at 520-21, 146 Cal. Rptr. at 629.

13. *In re Morrow*, 9 Cal. App. 3d 39, 88 Cal. Rptr. 142 (1970).

14. 21 Cal. 3d at 493, 579 P.2d at 514, 146 Cal. Rptr. at 630 (1978).

15. 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.
- (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 shall 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 Supp. 1978).

of the child . . . ."<sup>16</sup>

Previously, in *In re B.G.*<sup>17</sup> the supreme court held section 4600 applicable to all cases involving child custody. The court further added that section 4600 requires placement away from the parent in an effort to avoid harm to the child.

Here the trial court declared the children free of their parents' custody and control under Civil Code section 232 without making an express finding of detriment as required by Welfare and Institutions Code section 4600. This was also in error and resulted in reversal and remand.

IN RE DARRYL T.

81 Cal. App. 3d 874, 146 Cal. Rptr. 771 (1978)

Darryl T., a seventeen-year-old minor, was charged with various criminal offenses, including robbery, assault with a deadly weapon, and kidnapping. He was subsequently found guilty, declared a ward of the court under Welfare and Institutions Code section 602, and committed to the California Youth Authority.

At issue in this case was whether the juvenile court judge had used inappropriate criteria in committing Darryl Lee T. to the California Youth Authority. The Second District Court of Appeal found that the only criteria used by the referee were the seriousness of the offenses and a disposition as punishment for the minor's violations of the criminal law. The referee made no effort to evaluate the appropriateness of other available dispositions.<sup>1</sup>

In reversing the disposition order committing the minor to the California Youth Authority the court relied on *In re Michael R.*<sup>2</sup> There it was said that a juvenile court cannot base its decision to commit a minor to the Youth Authority "on the nature or gravity of the offense."<sup>3</sup> "[T]he rejection of lesser remedies [is to] be supported by evidence on the record of their inappropriateness necessitating use of the California Youth Authority [as a] 'final treatment resource.'"<sup>4</sup>

---

16. *Id.*

17. *In re B.G.*, 11 Cal. 3d 679, 523 P.2d 244, 114 Cal. Rptr. 444 (1974).

1. *In re Darryl T.*, 81 Cal. App. 3d 874, 880, 146 Cal. Rptr. 771, 774 (1978).

2. 73 Cal. App. 3d 327, 140 Cal. Rptr. 716 (1977).

3. *Id.* at 337, 140 Cal. Rptr. at 723.

4. *Id.* at 336-37, 140 Cal. Rptr. at 722.

The court noted that in *In re Bryan*<sup>5</sup> the California Supreme Court said, "Commitment to the Youth Authority is the placement of last resort for juvenile offenders."<sup>6</sup>

Also, the court of appeal said that commitment to the Youth Authority was not to be for the purpose of punishment. Citing *In re Michael R.*,<sup>7</sup> the court said a punitive commitment is contrary to the rehabilitative purposes of the juvenile court law.

If the Legislature had intended for the juvenile court to consider *punishment* of the minor as one of the criteria in determining a disposition for the minor, it would have so provided in section 202 of the Welfare and Institutions Code as it has so provided in section 1170 of the Penal Code for an adult who has committed violation of the Penal Code.<sup>8</sup>

Finally, the court referred to *In re Alini D.*<sup>9</sup> where it was said, "Juvenile commitment proceedings are designed for the purposes of rehabilitation and treatment, *not punishment*."<sup>10</sup>

#### IN RE RICKY B.

82 Cal. App. 3d 106, 146 Cal. Rptr. 828 (1978)

Chuck H., Ricky B. and his brother, Delbert B., were involved in the theft of a motor vehicle. Ricky B. was found to be under the provisions of Welfare and Institutions Code section 602<sup>1</sup> and was ordered committed to the Youth Authority.

One of the issues the Fifth District Court of Appeal considered was whether Ricky could use discovery to obtain Chuck's rap sheet. The trial judge approved the request only insofar as no criminal records of any juvenile witness would be released. The minor's counsel argued that this denial precluded a fair trial because his ability to cross-examine his client's accomplice was impeded.

Citing *Pitchess v. Superior Court*,<sup>2</sup> the court of appeal said Cali-

---

5. 16 Cal. 3d 782, 548 P.2d at 697, 129 Cal. Rptr. at 297.

6. *Id.* at 788, 548 P.2d at 697, 129 Cal. Rptr. at 297.

7. 73 Cal. App. 3d 327, 140 Cal. Rptr. 716 (1977).

8. 81 Cal. App. 3d 874, 882, 146 Cal. Rptr. 771, 776 (1978).

9. 14 Cal. 3d 557, 536 P.2d 65, 121 Cal. Rptr. 816 (1975).

10. *Id.* at 567, 536 P.2d at 70, 121 Cal. Rptr. at 822 (emphasis added).

1. Welfare and Institutions Code § 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. 1978).

2. 11 Cal. 3d 531, 522 P.2d 305, 113 Cal. Rptr. 897 (1974).

fornia criminal defendants have an extensive judicially created right of discovery. This right "is based on the fundamental proposition that [defendants are] entitled to a fair trial and an intelligent defense in light of all relevant and reasonably accessible information."<sup>3</sup>

The court noted that the California Supreme Court held in *Hill v. Superior Court*<sup>4</sup> that the right of discovery does encompass rap sheets. Quoting *Hill*, the court of appeal said:

[T]he state has no interest in denying the accused access to all evidence that can throw light on the issues in the case, and *in particular* it has no interest in convicting on the testimony of witnesses who have not been as rigorously cross-examined and *as thoroughly impeached as the evidence permits*.<sup>5</sup>

The court concluded that the trial court erred in denying Ricky B. the right to discover his accomplice's rap sheet. The court also added that under California Evidence Code section 788<sup>6</sup> only felony convictions can be used to impeach a witness. Because a juvenile court adjudication is not considered a conviction, it cannot be used for impeachment.<sup>7</sup>

IN RE ROLAND K.  
82 Cal. App. 3d 295, 147 Cal. Rptr. 96 (1978)

A minor, age fourteen, was detected by a private security guard throwing rocks at passing automobiles. The guard placed the minor under citizen's arrest until custody was transferred to a policeman. The deputy advised the minor of his *Miranda* rights. While being booked Roland K. was informed of his right to call his parents and his attorney. The officer who placed the call was informed that the parents would not be at home until midnight. The minor requested to be allowed to make another call when the parents were likely to be home. The officers neither awoke the

3. *Id.* at 535, 522 P.2d at 308, 113 Cal. Rptr. at 900.

4. 10 Cal. 3d 812, 518 P.2d 1353, 112 Cal. Rptr. 257 (1974).

5. *Id.* at 816, 518 P.2d at 1356, 112 Cal. Rptr. at 260.

6. California Evidence Code provides: "For the purpose of attacking the credibility of a witness, it may be shown by the examination of the witness or by the record of the judgment that he has been convicted of a felony . . ." CAL. EVID. CODE § 788 (West 1966).

7. Welfare and Institutions Code § 203 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." CAL. WELF. & INST. CODE § 203 (West Supp. 1978).



minor who had since fallen asleep nor attempted to communicate with his parents.

The next morning an officer spoke with the minor and read him his *Miranda* rights. After stating that he understood his rights, the minor confessed to the rock throwing. The officer who obtained the confession testified that he was unaware of the minor's request to telephone his parents.

The issue presented was whether a juvenile's request to call his parents is an invocation of his fifth amendment privilege and, if so, is any subsequent interrogation unlawful and any resulting confession inadmissible.

The court relied heavily upon the decision in *People v. Burton*.<sup>1</sup> There the California Supreme Court said:

[W]hen . . . a minor is taken into custody and is subjected to interrogation, without the presence of an attorney, his request to see one of his parents, made at any time prior to or during questioning, must, in the absence of evidence demanding a contrary conclusion, be construed to indicate that the minor suspect desires to invoke his Fifth Amendment privilege.<sup>2</sup>

With Roland K. the court found that it made no difference that the minor's request to call his parents was not made in the custodial interrogation.

The fact that . . . the request was made at a time he was not being subjected to interrogation, and the subsequent confession was preceded by *Miranda* warnings and a knowing and intelligent waiver of those rights, is no solace to respondent [citation omitted], nor is the fact that the interrogation producing the confession did not immediately follow the minor's request to call his parents.<sup>3</sup>

Discussing the minor's later waiver of his rights and his subsequent confession, the court said the people's reliance on *Michigan v. Mosely*,<sup>4</sup> which held that "*Miranda* does not create per se prescription of any further interrogation once the person being questioned has indicated a desire to remain silent,"<sup>5</sup> was misplaced because the California Constitution imposes a stricter standard than required by *Mosley* when the police seek to interrogate a suspect who has previously refused to waive his *Miranda* rights. The California Supreme Court has said, "[T]he *Fioritto* rule, rather than the *Mosley* test, will remain the rule of decision in all state prosecutions in California."<sup>6</sup>

---

1. *People v. Burton*, 6 Cal. 3d 375, 491 P.2d 793, 99 Cal. Rptr. 1 (1971).

2. *Id.* at 383-84, 491 P.2d at 798, 99 Cal. Rptr. at 6.

3. *In re Roland K.*, 82 Cal. App. 3d 295, 301, 147 Cal. Rptr. 96, 99 (1978). See also *People v. Pettingill*, 21 Cal. 3d 231, 578 P.2d 108, 145 Cal. Rptr. 861 (1978).

4. 423 U.S. 96 (1975).

5. 82 Cal. App. 3d at 301, 147 Cal. Rptr. at 100.

6. *People v. Pettingill*, 21 Cal. 3d 231, 251, 578 P.2d 108, 121, 145 Cal. Rptr. 861, 874 (1978).

IN RE CARL L.

82 Cal. App. 3d 423, 147 Cal. Rptr. 125 (1978)

Carl L., age ten at the time of the incident at issue, was seen throwing matches into a neighbor's garage which was ultimately destroyed by fire. There was substantial testimony by Carl's father that he warned his son that "his fire setting activities were wrong and should be stopped." The referee found that Carl was able to differentiate right from wrong.

In deciding this case the Court of Appeal of the Second District, relied upon *In re Gladys R.*<sup>1</sup> There the California Supreme Court held that, in the situation of a minor under the age of fourteen, a California Welfare and Institutions Code section 602<sup>2</sup> finding cannot be made unless the trier of fact shall find "clear proof" that the child at the time of committing the act appreciated its wrongfulness.

Here the court found that the "clear proof" requirement set forth in *Gladys R.*<sup>3</sup> was satisfied since there was extensive testimony to support that Carl had understanding of his actions. The court of appeal distinguished this case from *In re Michael B.*<sup>4</sup> in which only single conclusionary testimony was introduced.

IN RE CHRISTOPHER B.

82 Cal. App. 3d 608, 147 Cal. Rptr. 390 (1978)

A deputy sheriff investigating a report of child abuse was given consent by Mrs. B. to enter her house without a search warrant to observe her children. The children were not physically abused. However, the house was filthy and cluttered with piles of wet and

---

1. 1 Cal. 3d 855, 464 P.2d 127, 83 Cal. Rptr. 671 (1970).

2. California Welfare and Institutions Code § 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. 1978).

3. 1 Cal. 3d 855, 464 P.2d 127, 83 Cal. Rptr. 671 (1970).

4. 44 Cal. App. 3d 443, 118 Cal. Rptr. 685 (1975).

dry clothing, dried feces and other miscellaneous items. The deputy also noticed a strong odor of urine.

When the deputy then asked Mrs. B. to dress the children for removal it became necessary to handcuff Mrs. B. in order to restrain her while the deputy used the telephone. Mrs. B. freed herself from the handcuffs and forced the deputy outside to the patrol car. Additional officers arrived with photographic equipment and were refused admittance until Mrs. B. responded to threats of forcible entry.

The lower court found that the children came within the provisions of Welfare and Institutions Code section 300 subdivision (b).<sup>1</sup> The court also admitted into evidence the photographs of the house.

At issue here was whether the fourth amendment and the exclusionary rule should be applied to Welfare and Institutions Code section 300 dependency proceedings. In holding the exclusionary rule was not applicable to section 300 proceedings the Third District Court of Appeal relied on *In re Robert P.*<sup>2</sup> There the court refused to apply the exclusionary rule in a Welfare and Institutions Code section 600 dependency proceeding<sup>3</sup> where it was found that a mother failed to maintain a fit dwelling and thus had neglected her child. The court said it saw no necessity to extend the exclusionary rule to the few violations in child custody actions which are not of a criminal nature.

Here the court of appeal used a balancing test and concluded that the potential harm to the children outweighed any harm that would result from not suppressing the evidence.

In this case, we feel the potential harm to the children in allowing them to remain in an unhealthy environment outweighs any deterrent effect which would result from suppressing evidence gathered by [deputy] Schock. Recognizing the special protection afforded children by the law, we will not ignore the reliable evidence here presented and risk the welfare of the children on the basis the evidence was the result of an unlawful and warrantless search.<sup>4</sup>

---

1. Welfare and Institutions Code § 300 provides in part:

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:

(b) Who is destitute, or who is not provided with the necessities of life, or who is not provided with a home or suitable place of abode . . . .

CAL. WELF. & INST. CODE § 300 (West Supp. 1978).

2. 61 Cal. App. 3d 310, 132 Cal. Rptr. 5 (1976).

3. Welfare and Institutions Code § 600 was the predecessor of § 300.

4. *In re Christopher B.*, 82 Cal. App. 3d 608, 615, 147 Cal. Rptr. 390, 394 (1978).

IN RE GARY O.

84 Cal. App. 3d 38, 148 Cal. Rptr. 276 (1978)

A petition was filed against seventeen-year-old Gary alleging that he came within Welfare and Institutions Code section 602 because he had possession of marijuana for sale,<sup>1</sup> unlawful possession of more than one ounce of marijuana<sup>2</sup> and had committed petty theft.<sup>3</sup> Gary denied each count at his detention hearing.<sup>4</sup>

Seventeen days later at the minor's jurisdictional hearing he admitted the petty theft charge, and the other counts were dropped. He was told that his admission would result in probation or commitment to a local facility or the California Youth Authority. The minor was told that the maximum confinement time for the petty theft was six months. After admitting to the charge, the referee advised Gary that "there was a possibility that any existing probation orders might be revoked at the dispositional hearing."<sup>5</sup>

During the disposition hearing<sup>6</sup> the judge stated that the com-

---

1. CAL. HEALTH & SAFETY CODE § 11359 (West Supp. 1978).

2. CAL. HEALTH & SAFETY CODE § 11357 (c) (West Supp. 1978).

3. CAL. PENAL CODE § 484 (West 1970).

4. If the minor is in custody at juvenile hall he is entitled to a detention hearing in court. The hearing must take place one court day after a petition is filed against the minor. The minor is provided for court appointed counsel at the hearing if he has none.

During the detention hearing the minor is read the accusations on the petition and is asked whether they are admitted or denied. If they are denied an adjudication hearing is set for two weeks later. During the detention hearing the court determines if the minor will remain in custody until the adjudication hearing or will be released. CAL. RULES OF COURT, RULE 1321.

In order to detain a minor during the detention hearing one of the grounds listed in California Rules of Court, Rule 1327 must be found to exist:

- (1) That the minor has violated an order of the court.
- (2) That the minor has escaped from a commitment of the court.
- (3) That the minor is likely to flee to avoid the jurisdiction of the court.
- (4) That it is a matter of immediate and urgent necessity for the protection of the minor.
- (5) That it is reasonably necessary for the protection of the person or property of another.

CAL. RULES OF COURT, RULE 1327.

5. 84 Cal. App. 3d 38, 40, 148 Cal. Rptr. 276, 277 (1978).

6. At the disposition hearing the minor is given his disposition, the equivalent of an adult's sentence. In deciding what is the best disposition the judge will rely upon a probation officer's social study which examines the minor's attitude, prior record, need for a secure setting and performance at school and at home. The probation officer will also make a recommendation as to what he feels is best for the minor. CAL. WELF. & INST. CODE § 706 (1978).

mitment would be based upon the minor's "entire record" and would exceed the previously stated six month maximum confinement time for petty theft alone.

Counsel for the minor moved to withdraw the admission but the motion was denied. The court committed the minor to the Youth Authority for six months and revoked probation in the previous proceeding involving six batteries. The court also extended the minor's Youth Authority commitment for an additional six months for *each* of the six batteries.

The Fifth District Court of Appeal determined that at the time the minor made his admission he did not fully understand the consequences of his plea. It was only after the minor had made his admission at the jurisdictional hearing that he was advised by the referee that his probation may be revoked on the earlier charges. The minor had no notice that he would be subjected to more than six months total confinement.

The court of appeal concluded that the juvenile court had abused its discretion when it denied the motion to withdraw admission to the petty theft charge. The court held that "the revocation of probation at a disposition hearing is a direct consequence of an admission, and a juvenile must be appraised of the possibility of such revocation before entering his admission."<sup>7</sup>

IN RE TONY C.

21 Cal. 3d 888, 582 P.2d 957, 148 Cal. Rptr. 366 (1978)

Tony C. was adjudged a ward of the juvenile court based on findings that he committed rape by threat of great bodily harm. At the time of committing the rape Tony was only eight weeks short of his fourteenth birthday. Tony forced his victim, an eighteen-year-old married woman, at knife point, to a secluded dead-

---

The juvenile court judge has several ways of disposing of a case. The judge may commit the minor to the California Youth Authority and may have him remain under its custody up to the age of 21. The minor may be placed in one of the county camps or homes for juveniles. The minor might be turned over to another public or private institution for rehabilitation. CAL. RULES OF COURT, RULE 1372.

The judge may also determine that the minor should be returned home on probation. As a condition to probation the minor can be ordered to spend a short period of time in juvenile hall. The minor's parents may also be ordered to attend a counseling program with him. CAL. WELF. & INST. CODE § 727 (West Supp. 1978). A probation officer is assigned to monitor the minor during his probation and work with him and his family towards rehabilitation. The probation officer will also see that the minor complies with all the court's instructions. CAL. WELF. & INST. CODE § 280 (West Supp. 1978).

7. 84 Cal. App. 3d at 43, 148 Cal. Rptr. at 278.

end street and then raped her. After the rape he asked the woman if she was going to call the police.

Two of the issues raised on appeal were whether the minor appreciated the wrongfulness of his actions and whether his capacity to commit rape was sufficiently shown.

The California Supreme Court first noted that Penal Code section 26, subdivision (1) presumes that minors under the age of fourteen are "incapable of committing a crime in the absence of clear proof that at the time of the act 'they knew its wrongfulness.'"<sup>1</sup> This rule was held applicable to proceedings under Welfare and Institutions Code section 602, declaring a minor a ward of the juvenile court by reason of his violation of a law, by the supreme court in *In re Gladys R.*<sup>2</sup> In this instance the court said that although it would "frustrate the intent of Penal Code section 26 to infer such knowledge from the bare commission of the act itself," reference may "properly be made to the attendant circumstances of the crime such as its preparation, the particular method of its commission and its concealment."<sup>3</sup>

The court concluded that the minor's constant use of the threat of deadly force and his conduct in taking the victim to a secluded location demonstrated that he was aware of the risk of detection and punishment. The court added that Tony's asking his victim "if she intended to call the police . . . manifested both knowledge of illegality and consciousness of guilt."<sup>4</sup>

The Supreme Court then interpreted section 262 of the Penal Code which requires that a minor's physical ability to commit rape be "proved as an independent fact."<sup>5</sup> The court said that this section required evidence independent of the testimony of

1. California Penal Code § 26 provides in pertinent part: "All persons are capable of committing crimes except those belonging to the following classes: One—children under the age of 14, 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 (West Supp. 1978).

2. 1 Cal. 3d 855, 464 P.2d 127, 83 Cal. Rptr. 671 (1970).

3. *In re Tony C.*, 21 Cal. 3d 888, 900, 582 P.2d 957, 964, 148 Cal. Rptr. 366, 373 (1978).

4. *Id.* at 901, 582 P.2d at 964, 148 Cal. Rptr. at 373.

5. California Penal Code § 262 provided that: "No conviction for rape can be had against one who was under the age of fourteen years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact, and beyond a reasonable doubt." CAL. PENAL CODE § 262 (West 1970). On March 9, 1978 an urgency measure was passed repealing section 262. (Stats. 1978, ch. 29, § 1, p. —).

the rape victim. The court held "the requirement did not prevent persuasive inferences from being drawn from the attendant circumstances of the crime."<sup>6</sup> Therefore, the presence of sperm not more than six hours old on vaginal smears created an obvious inference that satisfied the statute's requirement.

IN RE JON D.  
84 Cal. App. 3d 337, 148 Cal. Rptr. 677 (1978)

The juvenile court declared Jon a ward of the court pursuant to Welfare and Institutions Code section 602<sup>1</sup> and committed him to camp for ninety days and imposed a \$250 fine. Jon was arrested for driving while intoxicated, reckless driving and resisting arrest. The ninety-day commitment and the \$250 fine are provided for in section 23103 of the Vehicle Code.<sup>2</sup>

The Second District Court of Appeal determined that the permissible alternatives available to the juvenile court for the treatment of a ward does not include the power to impose a fine.

Under Welfare and Institutions Code section 258<sup>3</sup> the juvenile court may impose a \$50 maximum fine for traffic offenses. However, this section applies only to a proceeding conducted pursuant to section 257<sup>4</sup> and not to the petition for wardship route provided

---

6. 21 Cal. 3d at 901, 582 P.2d at 965, 148 Cal. Rptr. at 374.

1. CAL. WELF. & INST. CODE § 602 (West Supp. 1978) provides that any minor who violates any law or ordinance is within the jurisdiction of the juvenile court and may be adjudged a ward of the court.

2. CAL. VEHICLE CODE § 23102.2 (West Supp. 1978) provides:

Any person who drives any vehicle upon a highway in willful or wanton disregard for the safety of persons or property is guilty of reckless driving and upon conviction thereof shall be punished by imprisonment in the county jail for not less than five days nor more than 90 days or by fine of not less than twenty-five dollars (\$25) nor more than two hundred fifty dollars (\$250) or by both such fine and imprisonment, except as provided in Section 23104.

3. CAL. WELF. & INST. CODE § 258 (West. Supp. 1978) provides in pertinent part:

(a) Upon a hearing conducted in accordance with Section 257, upon an admission by the minor of the commission of a traffic violation charged, or upon a finding that the minor did in fact commit such traffic violation, the judge, referee, or traffic hearing officer may do any of the following:

(3) Make any or all of the following orders: . . . .

(iii) That the minor pay to the general fund of the county a sum, not to exceed fifty dollars (\$50). . . .

4. CAL. WELF. & INST. CODE § 257 (West Supp. 1978) deals with the consent of a minor to a hearing before a traffic hearing officer, referee, or juvenile court judge when a minor is charged with a traffic offense. Such a hearing may be conducted upon a copy of notice to appear at the hearing in lieu of a petition filed against the minor in accordance with Article 16 commencing with § 650 of the Welfare and Institutions Code.

in section 650. The court found no corresponding statutory provision for fining a minor who has been declared a ward.

The statutory scheme provides for fines to be levied upon a minor when proceedings which do not involve the possibility of a declaration of wardship are conducted upon the charge of a traffic offense. It provides for a number of financial consequences including reparations as a condition of probation, restitution, and uncompensated work where wardship is imposed. But the statutory scheme does not authorize the juvenile court to impose a fine where a minor is adjudicated a ward and confined without probation.<sup>5</sup>

Since no probationary order was involved here, the court did not consider the issue of a juvenile court's power to impose a fine as a condition of probation.

IN RE PATRICK W.

84 Cal. App. 3d 520, 148 Cal. Rptr. 735 (1978)

Patrick W., thirteen years of age, was found to be within the provisions of Welfare and Institutions Code section 602<sup>1</sup> because he had allegedly committed murder. Patrick shot his stepfather and then left home with his sister. A day later, they were picked up by their school's principal while hitchhiking on a freeway. He then told the principal that he had shot and buried his stepfather. The principal drove the children to school where they were taken into custody by sheriff's deputies. Unknown to Patrick, his maternal grandparents were staying at a nearby motel.

The minor was interviewed by sheriff's deputies three and one-half hours after being placed in custody. The trial court determined that one of the deputies knew that the minor's maternal grandparents were nearby before the minor was asked any questions. After being properly advised of his *Miranda* rights, Patrick made a full and detailed confession of the killing of his stepfather. During the questioning Patrick was asked if he wanted an attorney. He said he was not sure and that he would like to talk to his mother. This confession was admitted into evidence at his adjudication hearing.<sup>2</sup>

---

5. *In re Jon D.*, 8 Cal. App. 3d 337, 340, 148 Cal. Rptr. 677, 679 (1978).

1. CAL. WELF. & INST. CODE § 602 (West Supp. 1978) specifies that a minor under the age of 18 who violates any law or ordinance is within the jurisdiction of the juvenile court and may be adjudged a ward of the court.

2. The adjudication hearing is similar to a trial. A Deputy District Attorney presents the evidence on behalf of the Probation Officer who filed the petition. A



Patrick's counsel on appeal contended that the confession should not have been admitted in evidence because it was not shown that there had been a valid waiver of his right against self-incrimination.

The court of appeal determined that the availability of a responsible adult to advise a minor is one of the circumstances to consider in determining whether a fifth amendment waiver is valid. The court said adult advice is a factor to be considered in determining the admissibility of the confession and that such advice should be obtained whenever feasible. "Whether or not such adult advice was sought and obtained for a minor is a factor to be considered in determining the admissibility of a minor's confession to the police."<sup>3</sup>

The failure to seek the presence of the grandparents rendered the confession inadmissible and constituted a violation of the minor's *Miranda* rights since there was no reason for the sheriff's deputies not to have the grandparents present to counsel the minor before he was questioned. The court held that the "confession . . . was inadmissible on the totality of the circumstances present."<sup>4</sup>

IN RE FERDINAND R.

85 Cal. App. 3d 303, 149 Cal. Rptr. 342 (1978)

Two petitions were filed against Ferdinand R. pursuant to Welfare and Institutions Code Section 602 asserting the jurisdiction of the juvenile court. The petitions alleged robbery and assault with the intent to commit murder. After finding the minor was a person described in Welfare and Institutions Code § 602, the juvenile court referee sustained both petitions and scheduled a disposition hearing for February 3.

Four days prior to the scheduled disposition hearing, the minor filed an application for rehearing pursuant to Welfare and Institutions Code § 252. The application sought a rehearing of the proceedings leading to the order sustaining the petition and also a rehearing of the disposition hearing to be conducted in the *future*.

---

Deputy Public Defender represents the minor or the court may appoint counsel pursuant to § 700 of the Welfare and Institutions Code. The minor has most of the same constitutional and statutory rights during the hearing as an adult in a criminal trial. He has the right to a trial by the court (a minor does not have the right to a jury trial), the right to remain silent, the right to confront and to cross-examine any witness called to testify and the right to subpoena witnesses on his behalf. CAL. RULES OF COURT, RULE 1354.

3. *In re Patrick W.*, 84 Cal. App. 3d 520, 525, 148 Cal. Rptr. 735, 738 (1978).

4. *Id.* at 526, 148 Cal. Rptr. at 739.

This appeal presented the Second District Court of Appeal with the narrow issue of the legal effect of an application for rehearing of a juvenile court referee's order filed before the referee's hearing.

The pertinent part of Welfare and Institutions Code § 252 provides: "At any time prior to the expiration of 10 days after service of a written copy of the order and findings of a referee, a minor . . . may apply to the juvenile court for a rehearing. Such application . . . shall contain a statement of the reasons such rehearing is requested."<sup>1</sup> Rule 1319 of the California Rules of Court parallels the statutory language of section 252. Rule 1319, subdivision (a) provides "that the reasons stated in the application must be factual or legal."<sup>2</sup> The court of appeal concluded that it must interpret Welfare and Institutions Code section 252 and rule 1319 to give effect to all terms where such an interpretation is possible and within reason.

The court determined that so construed, the statute and the rule permit an application for rehearing to be effective only after the hearing. "Otherwise, the requirement of a statement of legal and factual reasons for the application is rendered meaningless."<sup>3</sup>

IN RE RAMON M.

22 Cal. 3d 419, 584 P.2d 524, 149 Cal. Rptr. 387 (1978)

Ramon, a fourteen-year-old boy, was declared a ward of the court pursuant to section 602<sup>1</sup> of the Welfare and Institutions Code because he had made an unprovoked assault in violation of Penal Code Section 415.<sup>2</sup> Expert testimony during the trial placed

---

1. CAL. WELF. & INST. CODE § 252 (West Supp. 1978).

2. California Rules of Court, Rule 1319 provides in part:

(a) [Application for rehearing (§ 252)] An application for a rehearing of an order or findings by a referee may be made by the minor, parent, or guardian at any time prior to the expiration of 10 calendar days after service of a written copy of the order and findings. The application may be directed to all or any specified part of the order or findings and shall contain a brief statement of the factual or legal reasons for requesting the rehearing.

3. *In re Ferdinand R.*, 85 Cal. App. 3d 303, 306, 149 Cal. Rptr. 342, 344 (1978).

1. Welfare and Institutions Code § 602 provides that a minor who breaks any law other than a curfew law will be under the jurisdiction of the juvenile court and will be made a ward of the court. CAL. WELF. & INST. CODE § 602 (West Supp. 1978).

2. The pertinent portion of the Penal Code provides:

Ramon's I.Q. at forty to forty-two. This level of intelligence is equivalent to a five or six-year-old child. Ramon cannot read or tell time and was believed to be incapable of abstract thought. Also, he suffered from a severe speech impediment.

Ramon presented a defense of idiocy, but the juvenile court found under Penal Code § 26<sup>3</sup> that he was not an idiot and therefore was "of sound mind" as defined in Penal Code § 21.<sup>4</sup>

In reversing this case the California Supreme Court extended its decision in *People v. Drew*.<sup>5</sup> There the M'Naghten test was rejected as the test for insanity and was replaced by the American Law Institute standard. In *Drew* the court concluded that the M'Naghten test was inadequate because it emphasizes cognitive capacity without regard for volitional control; it fails to recognize degrees of incapacity; and it has a stultifying effect on expert testimony.<sup>6</sup>

The ALI standard states: "A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality wrongfulness of his conduct or to conform his conduct to the requirements of law."<sup>7</sup>

Here the supreme court adopted the ALI standard as the determining test for idiocy as well as for insanity. The court reasoned:

[T]o maintain M'Naghten as a test of idiocy, now that it has been replaced

---

Any of the following persons shall be punished by imprisonment in the county jail for a period of not more than 90 days, a fine of not more than two hundred (\$200), or both such imprisonment and fine: (1) Any person who unlawfully fights in a public place or challenges another person in a public place to fight.

CAL. PENAL CODE § 415 (West Supp. 1978).

3. The court interpreted Penal Code § 26 as establishing separate defenses of idiocy and insanity and concluded that the term insanity refers to mental capacity arising from both mental illness or mental retardation. The court said that a defendant asserting the defense of idiocy should raise that defense by a separate plea.

The applicable portions of Penal Code § 26 provide: "All persons are capable of committing crimes except those belonging to the following classes: . . . Two—Idiots. Three—Lunatics and insane persons. . ." CAL. PENAL CODE § 26 (West Supp. 1978).

4. Penal Code § 21 in full provides: "The intent or intention is manifested by the circumstances connected with the offense, and the sound mind and discretion of the accused. All persons are of sound mind who are neither idiots nor lunatics, nor affected with insanity." CAL. PENAL CODE § 21 (West 1970).

5. *People v. Drew*, 22 Cal. 3d 333, 583 P.2d 1318, 149 Cal. Rptr. 275 (1978).

6. The M'Naghten test, the predominant rule in the United States requires: [T]o establish a defense on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it that he did not know he was doing what was wrong.

M'Naghten's Case, 8 Eng. Rep. 718, 722 (1843).

7. Model Penal Code § 4.01 (ALI 1962).

by the ALI standard as a test of insanity, would give rise to difficult and unnecessary complications. A defendant who knew that his act was wrong, but was unable to conform to legal requirements, would be acquitted if his incapacity arose from mental illness but convicted if it arose from mental retardation—a discrimination difficult to justify. Juries confronted with two different tests, would be compelled to determine the source of a defendant's mental incapacity; experts would debate whether disabling conditions which arose during childhood constitute insanity or idiocy; courts would ponder the case of the retarded person who is also mentally ill.<sup>8</sup>

The court concluded that these difficulties will be avoided by utilizing the same test for the separate defenses of idiocy and insanity.

IN RE ERIC CRAIG J.  
86 Cal. App. 3d 513, 150 Cal. Rptr. 299 (1978)

Eric was questioned by his manager regarding his role in the burglary of his employer. After forty-five minutes of questioning the minor confessed to the burglary. A police officer was present during the questioning and no *Miranda* warnings were given. Following a finding that he fell within Welfare and Institutions Code Section 602, the minor was declared a ward of the juvenile court. After the jurisdictional hearing he was committed to the California Youth Authority for the *maximum* term of confinement permitted by law.

The court of appeal first considered the constitutionality of the commitment of a juvenile to the Youth Authority for the upper term without the need of a finding of aggravation or the possibility of presenting mitigating circumstances as accorded adults convicted of identical offenses.

California Welfare and Institutions Code Sections 726 and 731<sup>1</sup>

---

8. *In re Ramon M.*, 22 Cal. 3d 419, 426, 584 P.2d 524, 529, 149 Cal. Rptr. 387, 392 (1978).

1. § 726 provides in pertinent part:

In any case in which the minor is removed from the physical custody of his parent or guardian as the result in order of wardship made pursuant to § 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.

*As used in this Section and in Section 731, 'maximum term of imprisonment' means the longest of the three time periods set forth in paragraph (2) of subdivision (a) of Section 1170 of the Penal Code, but without the need*

provide that a minor may not be confined by the Youth Authority longer than an adult could be imprisoned when convicted of the same offense.

Welfare and Institutions Code section 726 permits the automatic imposition of the upper term of confinement without the opportunity of showing aggravation or mitigation. Counsel for Eric contended that this statute denies juveniles equal protection of the laws as guaranteed by the United States Constitution, Amendment XIV and the California Constitution, Article 1, section 7(a).

The court of appeal relied upon the California Supreme Court's decision in *People v. Olivas*<sup>2</sup> in holding that this disparity of treatment was unconstitutional. In *Olivas*, Welfare and Institutions Code Section 1770 was held unconstitutional insofar as it authorized the Youth Authority to maintain "control over misdemeanants committed to its care for any period of time in excess of the maximum jail term permitted by the status for the offense or offenses committed."<sup>3</sup> The supreme court concluded that since the *fundamental interest* of personal liberty was at stake "the state was required to show not only there was a compelling interest which justified the law, but also the distinctions drawn by the law were necessary to further its purpose."<sup>4</sup> There the court held the disparity of confinement periods violated *Olivas'* constitutional right to equal protection, since the state could not show that the distinctions drawn by the law were necessary to further its purpose.<sup>5</sup>

The court of appeal determined that, although the purposes for incarceration of an adult and commitment of a juvenile are different,<sup>6</sup> there is no "distinguishable feature other than age between

---

*to follow the provisions of subdivision (b) of Section 1170 of the Penal Code or to consider time for good behavior or participation pursuant to Section 2930, 2931 and 2932 of the Penal Code, plus enhancements which must be proven if pled.*

Physical confinement means placement . . . in any institution operated by the Youth Authority.

CAL. WELF. & INST. CODE § 726 (West Supp. 1978) (emphasis added). Section 731 provides in part:

A minor committed to the Youth Authority may not be held in physical confinement for a period of time in excess of the maximum period 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. Nothing in this section limits the power of the Youth Authority to retain the minor on parole status for the period permitted by section 1769.

CAL. WELF. & INST. CODE § 731 (West Supp. 1978) (emphasis added).

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

3. *In re Eric Craig J.* 86 Cal. App. 3d 513, 519, 150 Cal. Rptr. 279, 302-03 (1978).

4. *Id.* at 519, 150 Cal. Rptr. at 302.

5. 17 Cal. 3d at 243, 551 P.2d at 379, 131 Cal. Rptr. at 59.

6. California Penal Code § 1170 subdivisions (a) declares that the purpose be-

adult persons who have committed a public offense and are imprisoned, and juveniles who commit the same offense and lose their liberty by commitment to the Youth Authority."<sup>7</sup> The court of appeal concluded that "a juvenile processed as a juvenile in the juvenile court committed to CYA is similarly situated to an adult in the criminal court sentenced to state prison."<sup>8</sup> The court then held that the provision within Welfare and Institutions Code Section 726 relating to the automatic imposition of the upper term of confinement was unconstitutional because it precluded the equal protection of the laws. The court also held that "[J]uvenile court shall be required to apply the substantive rule of Penal Code Section 1170(b) providing for the sentencing of the middle term unless aggravating or mitigating circumstances have been established in determining a minor's potential term of incarceration."<sup>9</sup>

The court also interpreted the meaning of Welfare and Institutions Code Section 726<sup>10</sup> dealing with the computation of the maximum term of confinement for consecutive sentences. The court determined that Welfare and Institutions Code Section 726 when "read in conjunction with Penal Code section 1170.1(a)<sup>11</sup> provides

---

hind adult incarceration is punishment. The California Supreme Court in *In re Aline D.*, 14 Cal. 3d 557, 536 P.2d 65, 121 Cal. Rptr. 816 (1975), stated that the purpose behind juvenile commitment is treatment and rehabilitation which are implemented by "methods of training and treatment directed toward the correction and rehabilitation of young persons found guilty of public offenses . . . ."

7. *In re Eric Craig*, 86 Cal. App. 3d 513, 521, 150 Cal. Rptr. 299, 304 (1978).

8. *Id.* at 522, 150 Cal. Rptr. at 304.

9. *Id.* at 524, 150 Cal. Rptr. at 305.

10. Here, Welfare and Institutions Code § 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 of imprisonment" shall be specified in accordance with subdivision (a) of Section 1170.1 of the Penal Code.*

If the charged offense is a misdemeanor or a felony not included with the scope of Section 1170 of the Penal Code, the "maximum term of imprisonment" is the longest term of imprisonment prescribed by law.

"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.

CAL. WELF. & INST. CODE § 726 (West Supp. 1978) (emphasis added).

11. Penal Code § 1170.1(a) states:

Except as provided in subdivision (b) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 699 and 1170, the aggre-

for the aggregation of multiple petitions by calculating the sum of the maximum term of the subordinate offense if it is a misdemeanor."<sup>12</sup> The court concluded that the "Legislature, through its incorporation of Penal Code section 1170.1(a) in Welfare and Institutions Code section 726, intended that only the procedure embodied within section 1170.1(a) be used to determine the maximum term of imprisonment when sentencing a juvenile to consecutive terms, regardless of the nature of the subordinate crime."<sup>13</sup>

Finally, the court of appeal determined that a juvenile is entitled to "credit against his CYA commitment for time spent in custody pending juvenile court proceedings, pursuant to Penal Code section 2900.5."<sup>14</sup>

IN RE DENNIS C.  
86 Cal. App. 603, 150 Cal. Rptr. 356 (1978)

Dennis C. was found to be a person within Welfare and Institutions Code Section 602<sup>1</sup> because he had committed forgery and battery against a police officer, and had resisted an officer in the

---

gate term of imprisonment for all such convictions shall be the sum of the principal term, the subordinate term and any additional term imposed pursuant to Section 667.5. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancement imposed pursuant to Section 12022, 12022.5, 12022.6 or 12022.7. The subordinate term for each consecutive offense shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements when the consecutive offense is not listed in subdivision (c) of Section 667.5. In no case shall the total of subordinate terms for consecutive offenses not listed in subdivision (c) of Section 667.5 exceed five years.

CAL. PENAL CODE § 1170.1(a) (West Supp. 1978).

12. 86 Cal. App. 3d at 524-25, 150 Cal. Rptr. at 306. Eric's maximum term of commitment was set at three years and six months. This includes the three year upper for burglary (CAL. PENAL CODE § 459 (West Supp. 1978)) and a six month misdemeanor contempt sentence (CAL. PENAL CODE § 166(4) (West 1970)). Under the court of appeal's interpretation of Welfare and Institutions Code § 726 Eric's principal term would be two years. (The maximum term of confinement must be designated at the middle term absent mitigation or aggravation). Because the court applied Penal Code § 1170.1(a) the six month misdemeanor contempt term (the subordinate term) would be reduced to one-third. Therefore, the minor's maximum term of commitment is two years and two months.

13. 86 Cal. App. 3d at 526, 150 Cal. Rptr. at 307.

14. *Id.*

1. Welfare and Institutions Code § 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

discharge of his duty. The juvenile court, acting under the authority of Welfare and Institutions Code Section 726<sup>2</sup>, committed the minor to the California Youth Authority for seven years. The juvenile court did not consider circumstances of mitigation or aggravation for any of the crimes for which the youth was committed.

Welfare and Institutions Code Section 726<sup>3</sup> authorizes a juvenile court to commit a minor adjudged a ward of the court to a potential physical confinement in the 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, without a finding of aggravating circumstances as required for adults under subdivision (b) of § 1170.1.<sup>4</sup>

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. 1978).

2. Welfare and Institutions Code § 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.

As used in this section and in Section 731, "maximum term of imprisonment" means the longest of the three time periods set forth in paragraph (2) of subdivision (a) of Section 1170 of the Penal Code, but without the need to follow the provisions of subdivision (b) of Section 1170 of the Penal Code or to consider time for good behavior or participation pursuant to Sections 2930, 2931, and 2932 of the Penal Code, plus enhancement which must be proven if pled.

CAL. WELF. & INST. CODE § 726 (West Supp. 1978).

3. *Id.*

4. Under Penal Code section 1170.1, subdivision (a), made applicable to juvenile commitments by section 726, where the court finds aggravating circumstances the maximum consecutive term to which an adult can be sentenced is three years for the principal term (either the forgery or the battery) plus one-third 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. Thus, an adult convicted of the same crimes as appellant with a finding of aggravating circumstances would be sentenced to a total base term of three years and eight months under section 726 as it now reads. However, where no aggravation is found, under Penal Code section 1170, subdivision (b), the adult court would be required to select a middle term for the principal felony, two years, plus one-third of the middle term for the subordinate felony, eight months, for a total base term of two years and eight months. Thus, under section 726 as it now reads, appellant is subject to potential Youth Authority confinement for one year longer than an adult would be confined for the identical offenses.

*In re Dennis C.*, 86 Cal. App. 603, 606 n.2, 150 Cal. Rptr. 356, 357 n.2 (1978).



The Fifth District Court of Appeal, citing *People v. Olivas*,<sup>5</sup> held that Welfare and Institutions Code section 726 works as a denial of the equal protection of the law as to any minor committed to the Youth Authority. The court stated:

*Olivas* specifically reserved consideration of the issue whether the "term of involuntary confinement" of a juvenile adjudged under the juvenile law "may exceed that which might have been imposed on an adult or juvenile who committed the identical unlawful act and was thereafter convicted in the criminal courts" [citations omitted]. . . . [W]e believe that the court's holding as to the effect of a Youth Authority commitment on a ward's personal liberty interest including possible revocation of parole, can lead to but one conclusion—that such disparate terms of confinement are constitutionally impermissible.<sup>6</sup>

Specifically, the court of appeal held that the maximum period of physical confinement of juveniles authorized by Welfare and Institutions Code Section 726 could not survive the strict scrutiny test because the state "failed to show that longer periods of confinement for juvenile felony offenders than adult offenders are necessary for rehabilitative purposes."<sup>7</sup>

IN RE MITCHELL P.

22 Cal. 3d 946, 587 P.2d 1144, 151 Cal. Rptr. 330 (1978)

The minor was charged with burglary, grand theft and receiving stolen property. During the jurisdictional hearing, an accomplice of the minor, granted immunity from further proceedings, testified he had witnessed the appellant commit the alleged acts. Subsequently, the petition which alleged receiving stolen property was sustained and the minor was declared a ward of the court pursuant to Welfare and Institutions Code § 602.<sup>1</sup> The only evidence of misconduct presented was the accomplice's testimony.

Counsel for the minor argued that under Penal Code § 1111 the judgment must be reversed because the only evidence presented was the uncorroborated testimony of the minor's accomplice.

Penal Code § 1111 would indeed have required reversal of the decision. It provides: "A conviction can not be had upon the testimony of an accomplice unless it be corroborated by other such evidence as shall tend to connect the defendant with the commission of the offense. . . ."<sup>2</sup>

---

5. 17 Cal. 3d 236, 551 P.2d 375, 131 Cal. Rptr. 55 (1976).

6. 86 Cal. App. 608, 150 Cal. Rptr. 356, 359 (1978).

7. 86 Cal. App. at 611, 150 Cal. Rptr. at 361.

1. Welfare and Institutions Code § 602 provides that any minor under the age of 18 is within the jurisdiction of the juvenile court when he violates any criminal law or ordinance. CAL. WELF. & INST. CODE § 602 (West Supp. 1978).

2. CAL. PENAL CODE § 1111 (West 1970).

In determining that § 1111 does not apply to juvenile cases the California Supreme Court first said that "a finding of wardship pursuant to section 602 does not constitute a 'conviction' within the meaning of Penal Code section 1111, . . . and our courts have uniformly held Penal Code section 1111 has no application in juvenile proceedings."<sup>3</sup> The court referred to Welfare and Institutions Code Section 203 which states: "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. . . ."<sup>4</sup>

The supreme court then concluded that there is no due process violation in not applying section 1111 to juvenile proceedings because the rule is not constitutionally based but was created by the common law. The court also noted that the rule does not exist in many states and that the rule has been rejected in the federal courts.

Next the court considered whether the state can require a lesser quality of evidence in juvenile proceedings without denying juvenile's equal protection of the laws. The supreme court determined that the state can so require and that "disparities among classes are constitutionally permissible when reasonably related to proper purpose."<sup>5</sup> The purpose of the accomplice testimony rule is to limit the weight given to accomplice testimony by juries because such testimony is usually suspect and may have been given in hope of leniency or immunity. The court said this rationale did not apply to juvenile cases because "a judge rather than a jury is trier of fact [and] it is not unreasonable to assume he is more critical of accomplice testimony and more likely to accord it appropriate weight."<sup>6</sup>

The court also used a balancing test to reject the equal protection argument. The court stated that:

judicial intervention in the interest of rehabilitating an impressionable minor outweighs policies against the use of particular kinds of testimony not otherwise constitutionally proscribed. . . .

In the absence of direct constitutional prohibition or compulsion, equal protection has not been held in any instance to compel in juvenile proceedings evidentiary determinations identical to those in criminal courts.<sup>7</sup>

The supreme court concluded that "when due process and

---

3. 22 Cal. 3d 946, 949, 587 P.2d 1144, 1146, 151 Cal. Rptr. 330, 333 (1978).

4. CAL. WELF. & INST. CODE § 203 (West Supp. 1978).

5. 22 Cal. 3d at 950, 587 P.2d at 1147, 151 Cal. Rptr. at 334.

6. *Id.* at 951, 587 P.2d at 1148, 151 Cal. Rptr. at 335.

7. *Id.* at 957, 587 P.2d at 1148, 151 Cal. Rptr. at 335.

other constitutional demands have been satisfied, reasonable differences in criminal and juvenile evidentiary procedures are constitutionally permissible.”<sup>8</sup>

IN RE PERRONE C.  
90 Cal. App. 3d 97, 153 Cal. Rptr. 275 (1979)

Perrone, a fifteen year-old youth, was found to come within section 602 of the California Welfare and Institutions Code<sup>1</sup> because he had allegedly committed false imprisonment in violation of Penal Code section 236.<sup>2</sup>

The minor contended that he was denied due process under the Fourteenth Amendment of the United States Constitution<sup>3</sup>, and article I, § 7a and § 15 of the California Constitution.<sup>4</sup> This is because he was placed in jeopardy before a referee who could not dismiss a petition against him although the referee could sustain one. The minor also contended that the recent decisions of *Swisher v. Brady*<sup>5</sup> and *Jesse W. v. Superior Court*<sup>6</sup> must be interpreted to mean a juvenile court referee can no longer hold a jurisdictional hearing absent a stipulation between the parties.

Agreeing with this argument the court of appeal reviewed *In re Edgar M.*<sup>7</sup> There it was determined that juvenile referees are constitutionally limited to only “subordinate judicial duties” under art. VI, section 22 of the California Constitution.<sup>8</sup> A result

---

8. *Id.* at 953, 587 P.2d at 1149, 151 Cal. Rptr. at 336.

1. Welfare and Institutions Code § 602 places a minor in the jurisdiction of the juvenile court who breaks any law, statute or ordinance. CAL. WELF. & INST. CODE § 602 (West Supp. 1978).

2. The Penal Code states: “False imprisonment is the unlawful violation of the personal liberty of another.” CAL. PENAL CODE § 236 (West Supp. 1979).

3. The fourteenth amendment states: “No State shall . . . deprive any person of life, liberty, or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.” U.S. CONST. amend. XIV.

4. Article 1 § 7(a) of the California constitution provides: “A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws.” CAL. CONST. art. 1, § 7(a). Article 1, § 15 clause 4 provides: “Persons may not twice by put in jeopardy for the same offense, be compelled in a criminal cause to be a witness against themselves, or be deprived of life, liberty, or property without due process of law.” CAL. CONST. art. 1, § 15 cl. 4.

5. In *Swisher v. Brady* the United States Supreme Court condemned a California-like procedure which permits two separate trials, one before a master and the other before a judge, as constituting double jeopardy. *Swisher v. Brady*, 438 U.S. — (1978).

6. The California Supreme Court held double jeopardy to exist when a referee has acquitted or dismissed a petition against a minor at the jurisdictional hearing and a juvenile court judge then orders a de novo hearing. *Jesse W. v. Superior Court*, 20 Cal. 3d 893, 576 P.2d 963, 145 Cal. Rptr. 1 (1978).

7. 14 Cal. 3d 727, 537 P.2d 406, 122 Cal. Rptr. 574 (1975).

8. Article 6 § 22 of the California Constitution provides: “The Legislature may

of this decision is that a referee cannot constitutionally make a final adjudication on guilt or innocence. Yet because the supreme court held that jeopardy does attach during the referee's jurisdictional hearing, a rehearing before a juvenile court judge of a decision favorable to a minor would result in double jeopardy.<sup>9</sup>

The court of appeal also examined the California Supreme Court's decision in *Jesse W. v. Superior Court*<sup>10</sup> which held that a referee's finding of innocence is a final determination because jeopardy had attached. There the supreme court also relied on *Edgar M.*<sup>11</sup> in holding that a referee cannot constitutionally make a final determination. As a result of these two conflicting principles, a referee who conducts a jurisdictional hearing cannot dismiss a petition. Although the California Supreme Court held that a referee did not have the authority to dismiss a petition, the court left the referee with the ability to sustain one. As a result, a referee may find against the juvenile but cannot acquit him no matter how weak the evidence.

In holding that this procedure was a denial of due process the court said:

A trial procedure in which the trier of fact can only find against the accused, even if only advisory, is a blatant violation on constitutional standards.

We hold that absent a stipulation conferring judicial power, a juvenile court referee does not have authority under the California Constitution to conduct a jurisdictional hearing. Our decision applies only to jurisdictional hearings based on section 602(a) of petition.<sup>12</sup>

COMPILED BY JOHN W. TEETS

---

provide for the appointment by trial courts of record of officers such as commissioners to perform subordinate judicial duties. CAL. CONST. art. 6 § 22.

9. *Jesse W. v. Superior Court*, 20 Cal. 3d 893, 576 P.2d 963, 145 Cal. Rptr. 1 (1978).

10. *Id.*

11. 14 Cal. 3d 727, 537 P.2d 406, 122 Cal. Rptr. 574 (1975).

12. *In re Perrone C.* 90 Cal. App. 3d 97, 105, 153 Cal. Rptr. 275, 280 (1979).

